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PROCEEDINGS AND DEBATES OF THE 102^d CONGRESS, FIRST SESSION

SENATE—Wednesday, June 5, 1991

(Legislative day of Monday, June 3, 1991)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable HERBERT KOHL, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Come now, and let us reason together, saith the Lord: though your sins be as scarlet, they shall be as white as snow; though they be red like crimson, they shall be as wool.—Isaiah 1:18.

Loving Father in Heaven, we thank You for this gracious assurance from the prophet Isaiah that You are a forgiver of sins rather than one who condemns. We thank You for Your appeal to reason rather than emotion—that forgiveness and cleansing are the rational approach of the God of the Bible to sinners.

Dear Father, help us to see that the problem is not that we sin but that we will not turn to You in confession to receive forgiveness and cleansing. Teach us the reasonableness of confession. Help us refrain from hiding our sins rather than coming to You in confidence, knowing that You will remove our sins from us and free us from guilt which is so inwardly destructive and enervating.

We pray in His name who loved us and gave Himself for us. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 5, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERBERT KOHL, a Sen-

ator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is now recognized.

THE SCHEDULE

Mr. MITCHELL. Mr. President, this morning following the time reserved for the two leaders, there will be a period for the transaction of routine morning business not to extend beyond 10 a.m., during which Senators may speak for up to 5 minutes each.

When morning business closes at 10 a.m., the Senate will resume consideration of S. 173, the modified final judgment bill. This bill has been pending since Monday afternoon.

Yesterday, the chairman of the Commerce Committee and manager of the bill encouraged Senators who have indicated an intention to offer amendments to the bill to come to the floor and offer those amendments for debate and disposition. I want now to reiterate what the chairman and manager has stated and to urge all Senators to come to the Senate floor if they want to offer an amendment and to offer the amendment so that we can proceed with consideration of and disposition of this bill.

It is my hope and my expectation that the Senate can complete action on this legislation today. This will have been the third day of consideration. Therefore, Mr. President, Senators should be aware that as amendments are offered and debated during the day rollcall votes may occur at any time.

Upon the completion of this bill, it is my hope we can proceed to the surface transportation bill. That is a very important comprehensive measure, re-

ported out by a large majority of the Environment and Public Works Committee. It affects every State in a very direct way. I know there will be a number of Senators who will want to address the subject both during debate and amendments. I hope we can get to that bill as soon as possible.

Thereafter, it is my intention to proceed to crime legislation. I hope we can get to that by sometime during next week.

So the schedule for the next several days will be to complete action on the modified final judgment bill, hopefully today; to move as promptly as we can to the surface transportation bill, and as soon as we can complete action on that to move to crime legislation. I am talking now about the period of the remainder of this week and next week to consider such measures.

Senators should be aware that both the surface transportation and crime bills are likely to attract a large number of amendments and a large number of votes, so Senators should prepare for that eventuality and adjust their schedules accordingly.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time and I reserve all of the time of the distinguished Republican leader.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

• This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

Mr. BURNS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE COMMUNICATIONS COMPETITIVENESS AND INFRASTRUCTURE MODERNIZATION ACT OF 1991—S. 1200

Mr. BURNS. Mr. President, it seems in this Congress we are highlighting some policy being discussed not only on the manufacturing bill, S. 173, before this body now, to take control and revamp our policy as far as telecommunications are concerned.

Mr. President, I rise today to introduce, along with Senators GORE and DOLE, S. 1200. It is called the Communications Competitiveness and Infrastructure Modernization Act of 1991. This is designed to advance the national interest by promoting and encouraging the more rapid deployment and development of nationwide, advanced broadband communications networks by the year 2015.

S. 1200 presents a powerful vision of harnessing the convergence of video, telephone, and other services in a nationwide broadband communications system. The bill, by creating a structure for the early deployment of broadband communications systems, is designed to move America forward into the information age of the 21st century.

A broadband communications infrastructure will be every American's tool of personal emancipation, will generate a quantum increase in America—freedom of speech, freedom of choice, freedom of ideas. This will allow Americans to recapture and expand upon the democratic tradition and community spirit of the early years of this great Nation by freeing Americans from the constraints of space and time and will allow civic and economic participation for all members of this great Republic.

Mr. President, the U.S. economy is becoming increasingly dependent on the provision of services that require efficient distribution and dissemination of information. Over 50 percent of all U.S. workers are currently employed in information intensive service industries that are heavily reliant on communications.

Even traditional manufacturing firms increasingly depend on the swift movement of information from headquarters to factories to distribution points to customers in order to remain competitive with their domestic and foreign rivals.

This transformation has heightened the importance of communications to the Nation's economic and social welfare. Communications infrastructure will be as important in the future to the information economy as the trans-

portation infrastructure has been to the industrial economy.

It is, therefore, essential that the United States have a nationwide, broadband communications infrastructure capable of satisfying the information handling needs of our citizens, now and in the future.

The more rapid deployment of a broadband communications infrastructure will stimulate the development of American technology for domestic use and for export abroad and will help ensure that the United States is not forced to import broadband communications systems and export the jobs to develop and manufacture the related technology. Such networks will enhance the ability of all-sized businesses to compete on a nationwide and global basis, thus ensuring America's place as an economic world leader.

Such an infrastructure will improve the ability to transfer information-intensive business tasks to rural areas, which are much in need of economic stimulation; will reduce personal and business travel through video conferencing, enabling employees to work at home and easing congestion in urban areas; and reducing the United States' reliance on foreign sources of oil; and will bring educational opportunities to children and adults in all areas of the country through two-way interactive video education and training.

Such an infrastructure also will improve access to affordable health care through the transmission of medical imaging and diagnostics; will enable the elderly, through daily monitoring of their well-being, to remain at home longer rather than being prematurely forced into a medical care facility; and will permit disabled Americans, and individuals who are for one reason or another bound to the home, to actively participate in the work force.

A broadband communications infrastructure will be every American's tool of personal emancipation; will generate a quantum increase in American's freedom of speech, freedom of choice, and freedom of ideas; will allow Americans to recapture, yet expand upon, the democratic tradition and community spirit of the early years of this great Nation; and by freeing American's from the constraints of space and time will allow civic and economic participation for all members of the Republic.

A nationwide, broadband communications system available to all Americans by the year 2015 will, in short, propel America into the information age of the 21st century by making our domestic economy robust through the availability of advanced communications technologies and services to all businesses, by ensuring America's position in the global information economy remains unrivaled, and by securing for our citizens a quality of life unparalleled in our previous history.

II. ECONOMIC COMPETITIVENESS

The more rapid deployment of a broadband communications infrastructure to every business, educational and health care institution, and home in America will fundamentally improve the U.S. international competitiveness in the information age. Our foreign competitors in the Pacific rim and European Community are marshaling their resources and pushing ahead aggressively with communications infrastructure modernization with the expectation that their massive investments will be recovered by selling the related technology abroad.

If the United States, and States like my home State of Montana, can develop a superior broadband communications infrastructure, they will be in an excellent position to compete globally for new industry. Our ability to build and grow this broadband network will be the deciding factor as to how we survive and, hopefully, prosper in the 21st century.

National broadband networks and telecommunications infrastructure goes to the heart of our Nation's ability to compete, in the future, in global markets.

Other countries are making substantial investments in their communications networks with the expectation that those investments will be recovered by selling the related technology abroad. Our Nation must be competitive or risk importing the technology and exporting the jobs.

Japan, through a national public policy discussion and decision that took place 10 years ago, designated telecommunications as the key, strategic industry for the 21st century. This emphasis on telecommunications as a strategic industry calls for Japan to spend \$240 billion over the next 10 years.

Much of Japan's multibillion dollar investment is targeted to export markets—the United States, in particular. By the year 2015, the Japanese Government plans to have every Japanese business, home, and institution served by broadband communications technology. The Japanese Government estimates that by the year 2020 fully one-third of Japan's gross national product will be generated through its broadband communications network.

Mr. President, this is the reason for this legislation. It is just what we have drawn up here. This legislation forces us into a situation where by 2015, we can be on level terms with our competitors. Right now, with current policy, it is estimated that we will not be in a competitive position until 2040 under present policy. That is why we have to change.

The French, whose telecommunications system was once the laughing stock of the Western World, have developed the largest and most successful video text system in the world—the

Minitel system. The French introduced Minitel in 1985. By October of last year, more than 4½ million terminals were in operation, offering more than 11,000 information services including personal financial management, computerized catalog shopping and hotel and airline reservations. In France, more than 30 percent of the working population has access to a Minitel terminal at the home or office.

In Great Britain, the British Government recently announced that it would pursue wide-ranging deregulation of its nation's telecommunications industry, including erasing most of the legal restrictions separating the telephone and cable television industries. The British Government intends to allow largely unrestricted access to the local, long distance and international service markets. This proposal makes the United Kingdom the most open telecommunications market in the world, including the United States.

The approval of these recommendations lets the United Kingdom in effect, leapfrog the United States in progressive regulatory actions. The impact of this procompetitive communications policy is already paying handsome dividends. Many American telephone companies are investing in startup cable television franchises.

Our great Nation must not be a late-comer to the world information revolution. S. 1200 is specifically designed to ensure that we are ahead of the curve by removing obstacles to U.S. competitiveness.

While our competitors marshal their resources, the U.S. telecommunications industry is mired in a regulatory and legal quagmire that often discourages investment in new technology and stunts innovation. Why is this happening? Why are we allowing it to happen?

The answers can be found in our public telecommunications policy. Or more precisely, our lack of a clear and forward-looking public policy.

Nations, like Japan, France, and England, our economic competitors, believe that telecommunications infrastructure is critical to their country's economic future. The United States, on the other hand, has not reached anything close to a consensus. We are still arguing at the starting line.

If those nations are moving forward, surely we have to, also. What are the possibilities for broadband networks? Nobody really knows how big the market is; who will use it. Some imaginative and innovative entrepreneur may use it in ways that we have not even dreamed of yet. But as long as our policy is in place, those entrepreneurial young people and people with imaginations will not have a chance.

III. QUALITY OF LIFE

But there is more to all this than just meeting the competitiveness challenge on the international playing

field. My vision in S. 1200 also promises to enhance the quality of life for American citizens here at home. All Americans deserve to have access to information, and broadband communications networks both wire-based and wireless—will make that information available.

Information can improve our way of life. It can empower individuals to succeed.

What are some of the possibilities of broadband networks envisioned by S. 1200?

The shortage of doctors and health care professionals in rural areas could be overcome. Health care facilities in smaller towns could hook up with hospitals in larger towns and take advantage of their equipment and expertise. Preliminary examinations could be carried out without patients having to travel hundreds of miles each way.

Our schools could access any library in the United States or the world and have guest teachers via a two-way interactive audio and visual network. This would give America's children unlimited opportunities to learn. For large, rural States like Montana, and for inner-city school systems struggling with limited resources, the impact on education could be dramatic.

A broadband network would also be important to elderly Americans, like my parents, who are both in their eighties and who will soon celebrate their 60th wedding anniversary. They could stay in their homes longer if they had the ability to monitor their well-being on a daily basis—which is something a broadband network can make possible—rather than being prematurely forced into a medical care facility or nursing home. An additional year or two in their own home would mean a lot to them.

And think of the impact of a broadband network on jobs. An engineer or stockbroker could live in any city, town, or rural community in this country and still work anywhere in the world via a broadband network. In Montana, many of our graduating seniors want to stay in our beautiful State where the skies are blue, the water is crisp, the air is healthy, and the quality of life is good. But they are forced to leave the State to find jobs. We need to keep our best and brightest at home.

Data processing or telemarketing jobs could be relocated to areas where the cost of living is lower and the people are hard working and well-educated. There's a vast, untapped work force out there, all we have to do is reach out and touch them through broadband networks.

Underprivileged Americans living in the inner cities would be able to tap into vast resources of information via fiber optics. This would help to further open the door of opportunity.

Handicapped Americans and individuals who are for one reason or another

bound to the home could actively participate in our work force via broadband networks.

These are but just a few examples of the how broadband networks and S. 1200 could enhance the lives of all Americans. The possibilities are limited only by the human mind.

For instance, workers in the Washington area are fast becoming the Nation's leading telecommuters. Many Washington employers are seeing advantages to letting employees work outside the confines of the corporate office.

To meet the challenges of congestion in urban areas, not to mention U.S. reliance on foreign sources of oil, we must look at telecommuting. Our highways of the future will not be made of concrete and steel but of glass and spectrum. We will not travel in cars, but on bits of pulsating light. It will not take us hours or days to travel around the world, only a second.

Along with millions of others who commute to and from our Nation's Capital, I know the meaning of the word congestion. I like to call I-395, which I drive each day, the world's largest parking lot.

In addition to those that are employed elsewhere but work at home—the true telecommuters—there are a growing number of people whose home is their place of employment. In 1989, there were 14.6 home-based businesses. By 1995, the number is expected to grow to 21 million. More and more of these home-based businesses are communications-intensive, relying on PC's with modems, fax machines, 800 numbers, etc. This strongly suggests to me that by 2015 home users will demand and need a lot more than just plain old telephone service [POTS].

The advent of broadband networks as envisioned in S. 1200 will make it possible for people from every corner of this nation to plug into super computers and an unlimited information network around the world. Our highways of the future should include our telecommunications infrastructure.

Workers will travel to work on information highways instead of our traditional highways. The cars on these information highways will be bits of information which can travel anywhere in the world instantly. These highways will be clean, instantaneous and permit Americans to live where they please. With the advent of broadband networks, our traditional highways will be less congested, we'll save on fuel consumption, and we'll reduce the release of automobile pollutants into the environment.

Think of it, a stockbroker could live in Circle, MT, with a population of 931, and be in instant contact with anyone, anywhere, anyway. That person won't have to burn thousands of gallons of fossil fuel each year to drive to and from work. We don't have to invest bil-

lions of dollars for a mass transit system to move that person around. And, best of all that person will be able to live and work in rural America.

For the first time in the history of this country, people are moving to rural areas and away from cities and suburban areas. One estimate is that by 2010, between one-third and one-half of the middle class in America will live outside metropolitan and suburban areas. Of course, jobs are moving as well, and the communications infrastructure must be there to support them.

The same is true for underprivileged Americans living in the inner city. They may not have the income or ability to travel the world, but the world can be brought to them via these information highways.

IV. CONCLUSION

Yes, the vision I have is indeed a grand one. And it can happen without investing huge amounts of government money. Money that we don't have. Our telecommunications industry is willing to invest in the necessary infrastructure to make it possible. We as Members of Congress only need to update our telecommunications policy to make what's possible a reality. We need broadbased agreement on cohesive communications public policy goals. S. 1200 is a good faith effort to do just that.

As a member of both the Senate Commerce, Science, and Transportation Committee and the Senate Energy and Natural Resources Committee, it is my goal during this session of Congress to enact legislation that will make the United States the world leader in the information age. In addition to S. 1200, I added a telecommuting amendment to the national energy strategy bill, and I plan to offer a tax bill which will create communications infrastructure enterprise zones.

If we wait until the middle of the next century to complete the Nation's broadband networks; the world will have passed us by and taken much of our economy with it.

The challenge facing regulators and legislators is how to provide the necessary incentives for upgrading the infrastructure while at the same time preserving universal service.

We do not need to mortgage our future; but we do need to invest in it. We must encourage competition among our telecommunications companies to invest and reinvest in this country, ways that will still ensure affordable basic service, so that the average family can afford these marvelous 21st-century opportunities for human growth and consequent human fulfillment and prosperity.

I look forward to working with each of my colleagues in making this vision a reality with passage of S. 1200.

Mr. President, let me take this opportunity to personally thank Senator

GORE for his leadership and foresight in pursuing a vision for an information rich America.

I look forward to working closely with Senator GORE, Minority Leader DOLE and all of the cosponsors of this measure.

Mr. President, I ask unanimous consent that a summary of the bill and a copy of the bill be printed immediately following my remarks.

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

EXECUTIVE SUMMARY COMMUNICATIONS COMPETITIVENESS AND INFRASTRUCTURE MODERNIZATION ACT OF 1991

The following is a description of the major provisions of the new Burns/Gore bill:

The bill sets a new national goal in the Communications Act that by the year 2015 the United States establish an advanced, interactive, interoperable, broadband communications system available to all homes, businesses, educational institutions, health care organizations, and other users. The year 2015 was selected as the goal because that is the same date which the Japanese have targeted for completion of their fiber optic network. The Japanese government estimates that by the year 2020 fully one-third of Japan's GNP will be generated through its broadband communications system. A nationwide, advanced broadband communications system available to all Americans by 2015 will propel America into the Information Age of the 21st Century by:

- (1) Making our domestic economy robust through the availability of advanced communications technologies and services to all businesses;
- (2) Ensuring that the United States is not forced to import broadband systems and related technology and export the jobs to develop and manufacture these systems;
- (3) Providing a broad range of new educational opportunities for students of all ages;
- (4) Delivering better health care and services, especially in rural areas and at home;
- (5) Enabling handicapped Americans and other employees to work at home through telecommuting; and
- (6) Securing for our citizens a quality of life unparalleled in our previous history.

In order to achieve the 2015 goal, telephone companies will be required to submit a construction and deployment plan with the State regulatory commission in each State. The plan shall include:

- (1) A schedule for completion of the system by 2015;
- (2) A description of the technology to be employed;
- (3) Estimates of costs for new construction; and
- (4) The pace of retirement of plant which will be displaced by the broadband communications system.

The plan must provide for early deployment of broadband technology to educational institutions, health care facilities and small businesses. The plan must also provide for deployment to less densely populated areas and economically disadvantaged areas at a rate reasonably related to the rate of deployment in more populous and affluent areas.

The State commission then has one year to act on the plan. After the State commission acts, the FCC will review the plan to certify

compliance with the national goals and objectives of the Burns/Gore bill.

Telephone companies will initially be precluded from engaging in any content control, ownership or generation of video programming—only common carrier, "video dial tone" service will be permitted. "Video dial tone" service will be defined to include:

- (1) Transport of video signals;
- (2) Broadband video gateways to ease access between programmers and subscribers;
- (3) Standard and customized menus and other navigational aides;
- (4) Standard and customized video storage and forwarding services;
- (5) Billing and collection services;
- (6) Network management, including service ordering, installation and maintenance, testing, repair, and directory information services;
- (7) Advertising and marketing the video dial tone to subscribers;
- (8) Other ancillary services and functions designed to improve the access to and utility of video programming, so long as they are outside actual content control or ownership;
- (9) No local cable franchise requirement for the telco or for a programmer providing fewer than 10 channels of programming.

Then, only after the State commission renders a final determination regarding the plan and the FCC certifies the plan, telephone companies are permitted to license, package, own and produce video programming subject to the following strict regulatory safeguards designed to deal quite specifically with alleged anti-competitive activity:

- (1) 25 percent channel limitation (75 percent of channels on a common carrier, "video dial tone" basis with guaranteed access to all third party programmers);
- (2) Separate video programming subsidiary, clearly delineating programming business from the regulated telephone business, to ease auditing and to prevent cross-subsidization;
- (3) Local cable franchise and all other regulatory constraints faced by cable industry;
- (4) Cross subsidization prohibition and cost allocation rules to protect telephone ratepayers and competitors;
- (5) Buyout prohibition to preclude telco from monopolizing cable service;
- (6) Joint marketing prohibition to prevent telephone company from favoring its subsidiary's programming;
- (7) Federal right of access to telco poles/conduits for cable industry and other competitors;
- (8) Free carriage for broadcasters; and
- (9) "Death penalty", i.e., divestiture of separate video programming subsidiary, for willful violation of any safeguard.

Cable operators are encouraged to provide basic telephone service and personal communications services (PCS) in competition with telephone companies so long as the cable operator obtains authorization from the appropriate state regulatory authorities. This is included as a matter of simple fairness and as a mechanism to further open all communications markets to competition.

The Communications Act is amended to specifically establish a policy to permit multiple uses of communications technologies and to eliminate restrictions on communications technologies to single lines-of-business. This policy is strongly supported by FCC Chairman Al Sikes.

The Commission is instructed to develop rules and procedures for coordinated communications infrastructure planning—most importantly, those actions necessary to ensure the interconnectability and interoperability between communications networks.

The rural exemption which allows telephone companies to provide cable service in certain rural areas is increased to areas of 10,000 population (from the current level of 2500). The FCC is required to complete a proceeding within one year to review the state of video programming and information services provision in rural areas to ensure that rural America is not left behind in the Information Age.

S. 1200

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Communications Competitiveness and Infrastructure Modernization Act of 1991".

TITLE I—COMMUNICATIONS INFRASTRUCTURE MODERNIZATION POLICY FINDINGS

SEC. 101. The Congress makes the following findings:

(1) The United States economy is becoming increasingly dependent on the provision of services that require efficient distribution and dissemination of information.

(2) Over 50 percent of all United States workers are currently employed in information intensive service industries that are heavily reliant on communications.

(3) Even traditional manufacturing firms increasingly depend on the swift movement of information from headquarters to factories to distribution points to customers in order to remain competitive with their domestic and foreign rivals.

(4) This transformation has heightened the importance of communications to the Nation's economic and social welfare.

(5) Communications infrastructure will be as important in the future to the information economy as the transportation infrastructure has been to the industrial economy.

(6) It is, therefore, essential that the United States have a nationwide, advanced, interactive, interoperable, broadband communications infrastructure capable of satisfying the information handling needs of our citizens, now and in the future.

(7) The more rapid deployment of a nationwide, advanced, interactive, interoperable, broadband communications infrastructure to every business, educational and health care institution, and home in America will fundamentally improve the international competitiveness of the United States in the Information Age by bringing new and different services and products which will improve our national productivity and our quality of life.

(8) Foreign competitors in the Pacific Rim and European Community are marshalling their resources and pushing ahead aggressively with communications infrastructure modernization, with the expectation that their massive investments will be recovered by selling the related technology abroad.

(9) By the year 2015, the Japanese Government plans to have every Japanese business, home, and institution served by broadband communications technology, whereas in the United States—given current public policy—it is estimated that it will take until 2030 or 2040 to achieve the same result.

(10) The Japanese Government estimates that by the year 2020 fully one-third of Japan's Gross National Product will be generated through its broadband communications infrastructure.

(11) The more rapid deployment of a broadband communications infrastructure

will stimulate the development of American technology for domestic use and for export abroad and will help ensure that the United States is not forced to import broadband communications systems and related technology and export the jobs to develop and manufacture these systems.

(12) Such an infrastructure will improve the ability to transfer information-intensive business tasks to rural areas, which are much in need of economic stimulation; will reduce personal and business travel through at-home or business video conferencing, thereby enabling employees to work at home and reducing congestion in urban areas and the reliance by the United States on foreign sources of oil; and will bring educational opportunities to children and adults in all areas of the Nation through two-way interactive video education and training.

(13) Such an infrastructure also will improve access to affordable health care through the transmission of medical imaging and diagnostics; will enable the elderly, through daily monitoring of their well-being, to remain at home longer rather than being prematurely forced into a medical care facility; and will permit disabled Americans, and individuals who are for one reason or another bound to the home, to actively participate in the workforce.

(14) A broadband communications infrastructure will be every American's tool of personal emancipation; will generate a quantum increase in Americans' freedom of speech, freedom of choice, and freedom of ideas; will allow Americans to recapture, yet expand upon, the democratic tradition and community spirit of the early years of this nation; and by freeing Americans from the constraints of space and time will allow civic and economic participation for all members of the republic.

(15) Such an infrastructure available to all Americans by the year 2015 will, in short, propel the United States into the Information Age of the twenty-first Century by making our domestic economy robust through the availability of advanced communications technologies and services to all businesses, by ensuring that the position of the United States in the global information economy remains unrivaled, and by securing for our citizens a quality of life unparalleled in our previous history.

THE NEW NATIONAL GOAL

SEC. 102. Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended by inserting immediately after "at reasonable charges," the following: "for the purpose of establishing a nationwide, advanced, interactive, interoperable, broadband communications system available to all people, businesses, services, organizations, and households on or before the year 2015."

BROADBAND COMMUNICATIONS SYSTEM IMPLEMENTATION PLAN

SEC. 103. Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding at the end the following new section:

"BROADBAND COMMUNICATIONS SYSTEM IMPLEMENTATION PLAN

"SEC. 9. (a) In order to achieve the goal of a nationwide, advanced, interactive, interoperable, broadband communications system, as provided in section 1, each local exchange carrier shall prepare and carry out a broadband communications system implementation plan for the States in which such carrier operates.

"(b) To accomplish the purposes of this section, the Commission shall, within sixty

days after the date of enactment of this section, convene a Joint Board under section 410(a) to recommend the rules and regulations governing such broadband communications system implementation plan. The Joint Board shall make its recommendation to the Commission within one year after the date of enactment of this section, and the Commission shall thereafter issue final rules and regulations within sixty days after receipt of the recommendations of the Joint Board.

"(c)(1) Each local exchange carrier shall prepare its broadband communications system implementation plan in accordance with this section and the final rules and regulations issued by the Commission under subsection (b). Such plan shall, within one year after the date of issuance of such final rules and regulations, be filed with each State in which such carrier operates, by submitting the plan to the regulatory agency of such State with jurisdiction over the operations of such carrier or, in the absence of such a regulatory agency, a State agency designated by the Governor of such State. Submission of the plan shall not be construed to subject such carrier to State regulation if such carrier is not subject to such regulation on the date of enactment of this section.

"(2) Such plan shall include but not be limited to the schedule for implementation, a description of the technology to be employed, estimates of costs for new construction, a description of the methods to be used to recover costs, and the time schedule for replacement of facilities to be displaced.

"(3) Such plan shall give priority consideration to accelerated deployment of an advanced, interactive, interoperable, broadband communications system for—

- "(A) educational institutions;
- "(B) health care facilities; and
- "(C) small businesses.

"(4) In order to ensure that deployment of a broadband communications system in economically disadvantaged and less densely populated areas is not unreasonably deferred in relation to the overall pace of system construction, such plan shall set a rate of deployment in those areas which is reasonably related to the rate of deployment in affluent and populous portions of such local exchange carrier's service area.

"(e) States shall approve, disapprove, or require modifications to the plan within a reasonable period of time, not to exceed two years after the date of issuance of final rules and regulations under subsection (b). States may only disapprove plans after finding that the plan is not in the public interest.

"(f) Following final action (including any disapproval) by the affected States under subsection (e), such plan shall be submitted to the Commission for review and certification, not later than three years after the issuance of final rules and regulations under subsection (b), that the plan is consistent with the objectives of section 1 and the provisions of sections 9 and 10 of this Act. If a State has not taken final action on such plan within two years after such date of issuance, such carrier may file the plan for such review and certification by the Commission.

"(g) The affected States and the Commission shall periodically review the progress of a carrier in effectuating under this section its broadband communications implementation plan, once such States and the Commission have taken final action on the plan under this section.

"(h) In the event of willful and knowing failure of a local exchange carrier to make substantial progress in preparing or revising

such a plan or toward achieving the goals of a plan that has received final action under this section, the affected States and Commission may impose sanctions and penalties that are necessary to ensure future compliance with the obligations undertaken pursuant to the plan. Such sanctions and penalties may include, but not be limited to, the suspension of the right to engage in the provision of video programming provided for in section 613(b)(3) and part V of title VI.

"(i) Any information contained in a plan prepared under this section that is specific to customers, groups of customers, or specific transmission facilities shall be for the sole and proprietary use of the affected States and the Commission. Such information shall not be disclosed by any such State or the Commission, or any other person, without the express permission of the carrier preparing the plan."

COMMUNICATIONS INFRASTRUCTURE PLANNING

SEC. 104. Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended by section 103 of this Act, is further amended by adding at the end the following new section:

"COMMUNICATIONS INFRASTRUCTURE PLANNING

"SEC. 10. (a) Notwithstanding any other provision of law, and in order to improve and foster the continued development of a nationwide communications infrastructure and to assure the broad availability of information services, the Commission shall prescribe rules and regulations establishing procedures for local exchange carriers to ensure that—

"(1) there will be coordinated network planning by local exchange carriers sufficient to ensure interconnectability and interoperability among communications networks;

"(2) standards for the telephone exchange service networks of local exchange carriers are developed by appropriate standard-setting bodies; and

"(3) local exchange carriers providing telephone exchange service in the same area of interest shall provide timely information, to other such carriers in the same area of interest, on the deployment of communications equipment that will affect changes in interconnectability or interoperability among communications networks.

"(b) Local exchange carriers shall not be required to share information with carriers with whom they directly compete except as may be necessary to meet interconnection and interoperability requirements.

"(c) A local exchange carrier which is the recipient of any information described in subsection (a) shall use it only for its own exchange network and service planning and not disclose it to any person other than a local exchange carrier in the same area of interest."

LOCAL EXCHANGE CARRIER DEFINED

SEC. 105. Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end the following new subsection:

"(hh) 'local exchange carrier' means a carrier which is required upon request to provide under tariff both businesses and residences with two-way communications by means of a comprehensive network which interconnects subscribers within a geographic area."

TITLE II—REGULATORY CHANGES TO PROMOTE EFFICIENT MULTIPLE USES OF COMMUNICATIONS TECHNOLOGIES

FINDINGS

SEC. 201. The Congress makes the following findings:

(1) Domestic deployment of emerging communications technologies by competitive private enterprise is hampered by numerous legislative, regulatory, and judicial restrictions.

(2) Federal and State regulatory restrictions on the efficient deployment of technologies that are capable of supporting multiple uses threaten to retard development of new and underutilized communications technologies in the United States.

(3) Difficulties in deploying new communications technologies result in making unavailable to Americans competitive communications options which impact directly on economic well-being and quality of life.

(4) It is essential to ensure the creation of a regulatory and business environment that stimulates greater and more rapid availability of, access to, investment in, and use of emerging communications technologies and promote and encourage the more rapid development and deployment of an advanced, interactive, interoperable, broadband communications system by the year 2015.

POLICY TO PROMOTE EFFICIENT MULTIPLE USE OF COMMUNICATIONS TECHNOLOGIES

SEC. 202. Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended by sections 103 and 104 of this Act, is further amended by adding at the end the following new section:

"MULTIPLE USES OF COMMUNICATIONS TECHNOLOGIES

"SEC. 11. (a) It shall be the policy of the United States—

"(1) to promote the deployment of communications technologies in a manner that will secure communications services for the public at a reasonable cost;

"(2) to obtain substantial progress toward the goal stated in paragraph (1) by permitting efficient multiple uses of communications technologies and avoiding restrictions of communications technologies to single lines-of-services;

"(3) to eliminate outdated or unnecessary obstacles to efficient multiple uses of communications technologies to permit more economical, higher-load use of already deployed facilities and thereby decrease costs to the public; and

"(4) to foster the maximum efficient use of communications facilities, consistent with the public interest, by minimizing regulatory or other obstructions to efficient multiple uses of communications technologies by such facilities.

"(b) The Commission shall conduct, on request or on its own initiative, such rule-making proceedings as are necessary to implement the policy established by subsection (a).

"(c)(1) In any proceeding under subsection (b) to remove an obstruction to efficient multiple uses of technologies, the Commission—

"(A) shall include rules and regulations that waive or modify any regulatory or other obstruction to such uses by any communications facility unless the Commission determines, by preponderance of the evidence, that the waiver or modification is inconsistent with the public interest; and

"(B) may prescribe such rules and regulations as may be necessary—

"(i) to ensure the universal availability of basic communications services at just and reasonable rates;

"(ii) to prevent unfair competition and promote effective competition in the delivery of communications and information services; and

"(iii) to promote diversity of viewpoints and guard against undue concentrations of economic power; and

"(iv) to otherwise protect the public interest in the delivery of such services.

"(2) To the extent required for purposes of paragraph (1) and notwithstanding any other provision of this Act, the Commission may by rules and regulations require—

"(A) cost accounting standards and requirements, including audits;

"(B) structural or nonstructural separations or other safeguards;

"(C) nondiscriminatory access to essential facilities, services, or products;

"(D) procurement standards or procedures; and

"(E) such other procedures or requirements as are necessary to protect the public interest, convenience, and necessity, consistent with the policy of this section.

"(d) Nothing in this section shall be construed to change the balance between the Federal and State regulatory authorities with respect to multiple uses of communications technologies, as in effect on the date of enactment of this section."

TITLE III—MODIFICATION OF IMPEDIMENTS TO CONVERGENCE OF TELEPHONE AND VIDEO TECHNOLOGIES

FINDINGS

SEC. 301. (a) The Congress makes the following findings:

(1) There should be the widest possible dissemination of information from diverse sources.

(2) Advanced broadband facilities should be widely available throughout the Nation for interactive access to information not later than the year 2015.

(3) Freed from unnecessary and counterproductive statutory, regulatory, and judicial barriers, local exchange carriers and cable television companies could better serve their customers, and collectively the Nation, through the accelerated deployment of advanced broadband distribution systems, including but not limited to fiber optics, digital broadband switching, digital compression technology, and other new technologies.

(4) Among the governmental actions which may be necessary to promote such an environment and provide an effective incentive to complete a nationwide, advanced, interactive, broadband communications system is the modification of current restrictions on—

(A) the provision of video programming by local exchange carriers; and

(B) if regulatory parity exists between cable television systems and local exchange carriers, the provision of telecommunications and other services by cable television companies.

(5) Consumers will benefit from the competition which could occur if local exchange carriers are permitted to provide video programming, and cable television companies to provide telecommunications service, subject to appropriate safeguards.

(6) Such competition also will stimulate innovative two-way interactive multimedia services with applications for education, health care, and information exchange.

(7) Competition in the provision of video programming and telecommunications services by local exchange carriers and cable television companies will accelerate the development of modern video networks and technology.

(8) Competition in the provision of video programming and telecommunications services will strengthen the competitiveness of the United States in world markets by stimulating innovation.

(9) Competition will help to ensure that video programming, telecommunications services, and advanced communications services are made available in all areas of the country and to all consumers, rural and urban, rich and poor.

(10) The ability of local exchange carriers and cable television companies to create new video programming and telecommunications services will expand consumer choice and accelerate the deployment of modern broadband networks.

(11) The creation of video gateway services will guarantee access for video programming and ensure diversity.

DEFINITIONS

SEC. 302. Section 602 of the Communications Act of 1934 (47 U.S.C. 552) is amended by striking "and" at the end of paragraph (15), by striking paragraph (16), and by adding at the end the following new paragraphs:

"(16) the term 'affiliated video programming' means any video programming which is owned or controlled by the separate video programming subsidiary of a local exchange carrier which distributes such video programming directly to subscribers;

"(17) the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area;

"(18) the term 'video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; except that such term includes neither video gateway services nor video transmission services;

"(19) the term 'video gateway services' means broadband services to providers of video programming or to subscribers which has the capability to improve ease of access to or utility of video programming; such term includes but is not limited to the provision of protocol, code and format conversions, storage services, and services facilitating subscriber interaction with information, including selection of video programming; and

"(20) the term 'video transmission services' means services that furnish to a provider of video programming the capability to access subscribers, or that furnish to a subscriber the capability to access a provider of video programming, which capability may be offered over any physical or radio media, or on a switched or unswitched basis, and may be furnished through the long-term lease of bulk facilities, through the long-term or occasional use of shared facilities, or through other means; such term includes services normally and traditionally adjunct to common carrier services, including billing and collection, service ordering, installation, maintenance, testing, repair, and directory information services, if associated with the furnishing of such capability."

OWNERSHIP RESTRICTION MODIFICATION

SEC. 303. (a) Section 613(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended to read as follows:

"(b)(1) It shall be unlawful for any local exchange carrier, subject in whole or in part to title II of this Act, to provide video programming in its local exchange service area except as provided in paragraphs (2) through (5) of this subsection and in part V and other provisions of this title.

"(2) If the public network of a local exchange carrier, subject in whole or in part to title II of this Act, has the capability to

transmit video programming directly to its subscribers, if such local exchange carrier has no editorial control over, ownership interest in, or other involvement in the content of such video programming, and if such capability is offered to providers of video programming on a common carrier basis, including nondiscriminatory access, neither the local exchange carrier nor any person who provides less than 10 channels of such video programming shall be required to have a franchise. Nothing in this subsection shall be construed to prohibit a local exchange carrier from providing video transmission services, video gateway services, and ancillary services and functions, as long as the local exchange carrier does not control or own the video programming. A local exchange carrier shall also be permitted to advertise and market video gateway services.

"(3) A local exchange carrier may own or control video programming only if—

"(A) the Commission certifies that the broadband communications system implementation plan required under section 9 will achieve the objectives of section 1 and complies with this section and sections 9 and 10 of this Act; and

"(B) the Commission certifies that such local exchange carrier has filed a complete compliance plan that commits such carrier to full compliance with the requirements of part V of this title.

"(4) This subsection does not apply to a local exchange carrier to the extent such carrier provides local exchange service in any rural area, but this paragraph shall not be construed as relieving such carrier from the requirement to comply with section 9 concerning broadband communications system implementation plans.

"(5) In those areas where a local exchange carrier offers video gateway services, if no video programmer subscribes to such services, the Commission may, on petition for waiver, waive the applicability of paragraphs (1) and (2) so that the local exchange carrier involved may arrange for video programming to be provided by an affiliate, which would subscribe to such video gateway service and pay the tariffed rates. Any such waiver shall be granted by the Commission upon a finding that the issuance of such waiver is justified by the particular circumstances demonstrated by the petitioner, taking into account the policy of this subsection."

(b) Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) is amended by adding at the end the following new part:

"PART V—SAFEGUARDS FOR CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES "SEPARATE VIDEO SUBSIDIARY

"SEC. 651. (a) A local exchange carrier shall not own or control video programming to be distributed over its local exchange service area unless such video programming is owned or controlled through an affiliated video programming subsidiary that is separate from such carrier.

"(b) An affiliated video programming subsidiary of a local exchange carrier shall—

"(1) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

"(2) carry out directly (or through any nonaffiliate or any other subsidiary of such carrier) its own marketing and sales except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs, except as provided for under section 613(b)(2); and

"(3) not own real or personal property in common with such carrier.

"(c) Any contract, agreement, arrangement, joint venture, partnership, or other manner of conducting business, between a local exchange carrier and an affiliated video programming subsidiary, providing for—

"(1) the sale, exchange, or leasing of property between such subsidiary and such affiliated carrier;

"(2) the loan of money or other extension of credit between such subsidiary and such affiliated carrier or between such subsidiary and a third party directly or indirectly guaranteed by such affiliated carrier;

"(3) the furnishing of goods between such subsidiary and such affiliated carrier; or

"(4) the transfer to or use by such subsidiary for its benefit of any assets of such affiliated carrier,

shall be pursuant to regulation prescribed by the Commission, shall be on a fully compensatory and auditable basis, shall be without cost to the ratepayer of the local exchange carrier, and shall be in compliance with rules established by the Commission which will be sufficient to enable the Commission to assess the compliance of any transaction.

"PROHIBITION OF CROSS-SUBSIDIZATION

"SEC. 652. A local exchange carrier shall not engage in any practice (including but not limited to the improper assignment of costs) which is prohibited by the Commission or by a State in order to prevent the subsidization of its affiliated video programming subsidiary.

"PROVISION OF VIDEO PROGRAMMING BY TELEPHONE EXCHANGE COMPANIES

"SEC. 653. (a) Upon certification by the Commission that a local exchange carrier's broadband communications system implementation plan required under section 9 achieves the objectives of section 1 and complies with sections 9 and 10 of this Act, and that such local exchange carrier has filed a complete compliance plan in accordance with section 613(b)(3)(B), such local exchange carrier shall be authorized to distribute its affiliated video programming over the broadband communications system in an amount not to exceed 25 percent of the equipped capacity of its video gateway services.

"(b) Notwithstanding any law, regulation, or order which was enacted, promulgated, or entered prior to the date of enactment of this part, the local exchange carrier or an affiliate may own and operate the facilities for transmission, reception, and processing of video programming signals at any of its distribution locations so long as it contracts with any authorized carrier for any interexchange connections to, between, and among such locations.

"(c) The Commission shall, not later than two years after the date of enactment of this part and every two years thereafter—

"(1) evaluate the effect of subsection (a) on the video programming and distribution marketplace, including but not limited to the effect of such subsection on competition in the marketplace; and

"(2) on the basis of that evaluation, make recommendations to Congress concerning appropriate modifications, if any, to such subsection.

"VIDEO GATEWAY SERVICES

"SEC. 654. Any local exchange carrier which distributes its affiliated video programming over a broadband communications system in its local exchange service area shall provide video gateway services. The Commission, together with the States, shall establish the rates, terms, and conditions for access to such video gateway services; except

that such local exchange carrier, in providing access to such video gateway services, shall be prohibited from discriminating in favor of its affiliated video programming, except on the same terms available to non-affiliated programmers.

"PROHIBITION ON BUYOUTS

"SEC. 655. No local exchange carrier, nor any entity owned by or under common ownership or control with such carrier, may obtain control, by purchase or otherwise, over any cable system which is located within its local exchange service area and is owned by an unaffiliated person.

"POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

"SEC. 656. (a) Any local exchange carrier which distributes its affiliated video programming in its local exchange service area shall demonstrate to the Commission that it makes available to one or more unaffiliated cable operators, within the limits of technical feasibility, attachment rights to any pole, duct, conduit, or right-of-way which is owned by the local exchange carrier within its service area.

"(b) The showing required by subsection (a) shall be deemed to have been made if an unaffiliated cable operator currently has obtained the attachment rights described in subsection (a).

"(c) Nothing in this section shall affect the authority of the Commission or the States to regulate the rates, terms, and conditions for pole attachments as provided for in section 224.

"MARKETING AND SELLING OF VIDEO PROGRAMMING

"SEC. 657. Notwithstanding any provision of this part or any rule or regulation prescribed by the Commission under this part, all marketing and selling of the affiliated video programming of a local exchange carrier shall be carried out by the carrier's affiliated video programming subsidiary.

"CUSTOMER PROTECTION

"SEC. 658. (a) The Commission shall, within 180 days after the date of enactment of this part, convene a Federal-State Joint Board under the provisions of section 410(c) for the purpose of establishing the practices, classifications, and regulations as may be necessary to ensure proper jurisdictional separation and allocation of the costs of providing broadband services, including video transmission service.

"(b) The Commission, with respect to interstate switched access service, and the States, with respect to local exchange service and intrastate switched service, shall within one year after the date of enactment of this part establish rules and regulations as may be necessary to ensure that no customer pays more for such services than would have been the case if the carrier providing such services to such customer was not also providing video programming.

"(c) Nothing in this section shall be construed to limit or supersede the authority of any State or the Commission with respect to the allocation of costs associated with intrastate or interstate communication services.

"REQUIREMENT FOR FREE CARRIAGE OF LOCAL BROADCAST SIGNALS

"SEC. 659. (a) Notwithstanding any other provision of this subsection, a local exchange carrier that distributes its affiliated video programming in its local exchange service area may not charge a local broadcast station as defined by rules and regulations of the Commission, for making available its signal to subscribers.

"(b) Capacity provided to satisfy the requirements of this subsection shall not constitute the provision of affiliated video programming and, therefore, shall not be counted against the equipped capacity limitation imposed on affiliated video programming under section 653(a).

"RURAL AREA EXEMPTION

"SEC. 660. The requirements of this part shall not apply to video programming provided in a rural area by a carrier that provides local exchange service in the same area.

"EFFECT ON CERTAIN ANTITRUST RESTRICTIONS

"SEC. 661. Except as provided in section 653(b), nothing in this part shall be construed to permit any local exchange carrier to have any ownership interest in any video programming provided to subscribers, if such local exchange carrier is otherwise prohibited under the antitrust laws of the United States from owning such an interest.

"PENALTIES

"SEC. 662. (a) If the Commission finds, after notice and opportunity for hearing, including the oral examination and cross-examination of witnesses, that any local exchange carrier has willfully and knowingly violated any provision of this part, the Commission shall assess fines and penalties pursuant to title V of this Act.

"(b) If the Commission finds, after notice and opportunity for hearing, including the oral examination and cross-examination of witnesses, that a local exchange carrier has engaged in a consistent pattern of willfully and knowingly violating a provision or provisions of this part, the Commission shall order such carrier to divest itself of any ownership in, or control over, its affiliated video programming subsidiary.

"ENFORCEMENT ACTION TIME FRAME

"SEC. 663. The Commission shall process, analyze, and take appropriate enforcement action within 180 days after receipt of complaints filed concerning violations of any provision of this part.

"FRANCHISES

"SEC. 664. Any local exchange carrier that distributes its affiliated video programming in its local exchange service area pursuant to section 613(b) shall be subject to those franchise and franchise-related requirements that a cable television franchising authority deems appropriate, including but not limited to franchise fees, customer service standards, and requirements for public, educational, and governmental access channel capacity and facilities. Nothing in this section shall be construed to limit the authority of cable television franchising authorities under this title."

MULTIPLE CABLE FRANCHISES

SEC. 305. (a) Section 621(a)(1) of Communications Act of 1934 (47 U.S.C. 541(a)(1)) is amended—

- (1) by striking "1 or more"; and
- (2) by adding at the end the following: "A franchising authority shall not, in awarding franchises within its jurisdiction, unreasonably refuse to award additional franchises because of the previous award of a franchise to another cable operator. For purposes of this paragraph, refusal to award a second franchise shall not be unreasonable if, for example, such refusal is on the ground (A) of technical infeasibility; (B) of inadequate assurance that the cable operator will provide the public adequate public, educational, and governmental access channel capacity and facilities; (C) that such award would inter-

fere with the right of the franchising authority to deny renewal; or (D) of inadequate assurance that the cable operator has the financial qualifications to provide cable service. Nothing in this title shall be construed to authorize franchising authorities to award exclusive franchises for any geographic area to any cable operator. Nothing in this subsection shall be construed as limiting the authority of local municipalities to assess fees or taxes for access to public rights-of-way."

(b) Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," immediately after "section".

FEDERAL COMMUNICATIONS COMMISSION STUDIES

SEC. 306. (a) Within two years after the date of enactment of this Act, the Federal Communications Commission shall initiate a proceeding, and within three years after such date of enactment shall submit to Congress a report, regarding the state of competition and consumer choice in the delivery of video programming and telephone services. The report shall include, but not be limited to, an assessment of the extent to which the provisions of this Act (including amendments made by this Act to the Communications Act of 1934) have—

(1) increased competition and consumer choice among providers of video programming, including cable operators; and

(2) enabled telephone common carriers to increase competition among providers of video transmission services, including themselves and cable operators.

The report shall include such legislative recommendations as the Commission considers appropriate.

(b) The Federal Communications Commission shall, within one year after the date of enactment of this Act, complete a proceeding to review the definition of the term "rural area" which is the basis for the rural area exemption in part V of the Communications Act of 1934, as added by section 30 of this Act, and to determine how to ensure that all areas of the country have access to broadband multichannel video programming as soon as possible.

THE COMMUNICATIONS COMPETITIVENESS AND INFRASTRUCTURE MODERNIZATION ACT OF 1991—S. 1200

Mr. DOLE, Mr. President, I am pleased to join Senator CONRAD BURNS in cosponsoring the Communications Competitiveness and Infrastructure Modernization Act of 1991.

There's no doubt about it, communications technology is vital to America's future. This bill is a visionary yet realistic plan to establish an advanced, interactive, broadband communications system in the United States by the year 2015.

The benefits of such a system are potentially limitless. Those of us from rural States know how badly those benefits are needed. Rural areas in Kansas face crises in keeping communities together, due in part to the decreasing availability of quality health care, and educational opportunities. This bill promises to help.

The latest health care becomes widely available at lower cost through tech-

nologies such as medical imaging and diagnostics. Education becomes available at lower cost through interactive video technologies. And businesses operate more efficiently exchanging larger quantities of information at greater speeds and lower cost. In short, all America prospers.

Thus, as this legislation helps thrust America as a nation into the information age, it also assures that individual Americans will not be left behind. A high school student in western Kansas will have access to the Nation's finest libraries and information services. An ailing senior citizen in the same community can be monitored at home using remote diagnostic technologies, rather than being admitted—at great expense—to a distant urban medical care facility. And disabled Americans can be mainstreamed into the workforce more quickly, more effectively, and into a wider range of jobs, with the help of these technology networks.

Finally, a word about what this bill is not. It is not a telco bill. It is not a cable bill. Rather, it is a bill to bring the information age to all Americans who wish to participate.

I applaud the foresight and leadership of Senator BURNS on this legislation and urge the Senate to match Senator BURNS' effort in working toward its passage.

The PRESIDING OFFICER (Mr. FORD). The Senator from Wisconsin is recognized.

DEMOCRATIC HEALTH REFORM PACKAGE

Mr. KOHL. Mr. President, this morning I would like to briefly commend my colleagues, who have worked so hard in crafting the comprehensive health care reform bill to be introduced today.

We need not repeat the numbers of underserved. We know them. We need not repeat statistics on the benefits of prevention—we are paying dearly for those past failures. We need not repeat health cost inflation figures. Nor the tragic stories about citizens young and old who have been denied access to quality care. Each of us has heard those numbers and those stories in hundreds of ways.

The problem is real. Our health care system is in crisis. And we have a responsibility to lead the Nation out of that crisis.

Our colleagues from West Virginia, Massachusetts, Maine, and Michigan—among others—have met the challenge in offering this blueprint for national health care reform. It is a commendable and meritorious plan. It offers hope and answers to questions of universal access, quality, and cost.

I believe we are faced with a real opportunity here and I hope we do not let it pass. We have had similar chances in

the past—in the late 1960's and early 1970's when President Nixon offered the Nation a plan for employment based health care; in the late 1970's when President Carter, through Secretary Califano, offered a comprehensive employment based plan that also included Medicaid reforms. For various reasons, we let those opportunities pass us by. It has cost us dearly.

I believe it will be easy for each of us to sit back and critique this package. Surely each of us—and each of our constituencies—can find fault with one aspect or another. I hope we resist that easy path for it will take us nowhere once again. Those who have not been close to the drafting of this legislation have an obligation to study it carefully. We need to go back to our States and talk to our people about it. But, we have a responsibility to study and consider it from a positive perspective. And that is what I intend to do.

I thank our colleagues and their staffs who have worked so hard for so many months and years to bring us to this new threshold.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBB). Without objection, it is so ordered.

REVISED CONGRESSIONAL BUDGET OFFICE COST ESTIMATE OF S. 210, THE COMPREHENSIVE URANIUM ACT OF 1991

Mr. JOHNSTON. Mr. President, on May 23, 1991, I submitted on behalf of the Committee on Energy and Natural Resources Senate Report 102-63, to accompany S. 210, the Comprehensive Uranium Act of 1991. Included in the report was a May 10, 1991, letter from the Congressional Budget Office that estimated the cost of the bill.

In its May 10 letter, CBO concluded that certain provisions of the bill as originally approved by the Committee would have resulted in direct spending during fiscal years 1992 through 1996.

As explained in Senate Report 102-63, the Committee on Energy and Natural Resources amended S. 210 on May 22, 1991, to remove the direct spending identified by CBO from the bill.

Accordingly, CBO revised its cost estimate. In a May 31, 1991, letter, CBO stated that S. 210 as amended and reported "would not affect direct spending over the next 5 years, and would not be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985."

I ask unanimous consent that CBO's revised cost estimate for S. 210 be printed in the RECORD in its entirety.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 31, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 210, the Comprehensive Uranium Act of 1991, as amended by the Senate Committee on Energy and Natural Resources on May 22, 1991. This bill, as amended, would not affect direct spending over the next five years, and would not be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER.

COST ESTIMATE

MAY 31, 1991.

1. Bill number: S. 210.
2. Bill title: Comprehensive Uranium Act of 1991.
3. Bill status: As amended by the Senate Committee on Energy and Natural Resources, May 22, 1991.
4. Bill purpose: S. 210 would reorganize the government's uranium enrichment enterprise and assist the domestic uranium industry.

Title I would establish a wholly owned government corporation to replace the existing Department of Energy (DOE) program for providing uranium enrichment services to commercial nuclear powerplants and to government defense and research programs. Key features of the proposed corporation are summarized below. This bill would:

Set the corporation's initial debt at \$364 million, payable with interest to the Treasury over a period of 20 years. Payment of the \$364 million debt would constitute all of the recovery of past costs associated with the uranium enrichment program. By contrast, the General Accounting Office (GAO) estimates that unrecovered federal costs for uranium enrichment now total about \$11 billion.

Provide the uranium enrichment corporation with up to \$2.5 billion in borrowing authority, but would not allow the corporation to borrow from the Treasury's Federal Financing Bank. The corporation would fund its spending through a combination of its revenues and borrowing from the public. Under current law, the Congress provides an annual appropriation to fund the DOE program.

Provide that the proposed corporation be managed by an Administrator and a corporate board, both appointed by the President. The Secretary of Energy would have general supervision over the Administrator for health, safety, environment, and national security concerns.

Transfer current DOE production facilities for uranium enrichment to the corporation. The corporation would then issue capital stock to the Treasury to represent the book value of assets transferred.

Require the corporation to set prices to (1) recover its initial debt; (2) pay for its costs of service; (3) recover costs of decontamination and decommissioning; and (4) provide a

"normal business" profit—to be paid in dividends to the Treasury.

Exempt the corporation from sequestration under the Balanced Budget Act (Gramm-Rudman-Hollings). With the exception of initial set-up costs, the corporation's spending would not be subject to annual appropriations.

Title I also would establish a fund for the decontamination and decommissioning (D&D) of the government's uranium enrichment facilities.

Title II contains provisions that would assist and attempt to revitalize the domestic uranium industry by:

Establishing a program that could lead to increased purchases of domestic uranium by nuclear utilities;

Establishing a national strategic uranium reserve (consisting of uranium stocks currently held by the U.S. government);

Directing the Secretary of Energy to encourage the use and export of domestic uranium;

Requiring the federal government to purchase only domestic uranium for defense needs; and

Establishing a program for partial reimbursement, by the federal government, of remedial action at active uranium and thorium processing sites. The bill authorizes \$300 million for this purpose.

5. Estimated cost to the Federal Government:

(By fiscal year, in millions of dollars)

	1992	1993	1994	1995	1996
AUTHORIZATIONS					
Corporation Setup costs:					
Estimated authorization level	5	—	—	—	—
Estimated outlays	3	2	—	—	—
Remedial action at uranium and thorium processing sites:					
Authorization level	300	—	—	—	—
Estimated outlays	—	25	50	50	75

The costs of this bill fall within budget function 270.

BASIS OF ESTIMATE

Title I

The major potential short-term budget impact of the bill would result from the creation of a new Uranium Enrichment Corporation, which would carry out functions currently performed by the Department of Energy (DOE). The bill would authorize such sums as necessary to pay the costs of setting up the corporation. Except for these initial expenses, the new corporation's spending would not be subject to annual appropriation. Once it is established, the corporation would have the authority to spend any funds obtained from the sale of enriched uranium or through borrowing from the public. For the 1992-1996 period, CBO estimates that the corporation would spend an average of \$1.5 billion to \$1.6 billion a year and take in similar amounts in annual commercial receipts; net outlays—excluding intragovernmental transactions—would be about \$50 million in fiscal year 1992 and about \$125 million over the 1992-1996 period. The corporation would also provide enrichment services for government programs, primarily for defense activities. Receipts from these intragovernmental sales would total about \$130 million in 1992 and slightly higher amounts in subsequent years. The annual totals of commercial and government receipts for enrichment services are likely to be greater than gross spending on uranium enrichment activities over the 1992-1996 period. Hence, net spending by the corporation would be negative over the next five years. Some of the corporation's receipts, however, would be offset by spending in other programs (primarily defense), spe-

cifically for the purchase of those enrichment services.

Whether the proposed change in the uranium enrichment program would significantly affect the government's net spending over the next five years depends on what appropriations would otherwise be. Spending plans for uranium enrichment are particularly uncertain because of potentially large increases in the program's costs for power, environmental cleanup activities and new enrichment facilities.

Nevertheless, it is possible that spending on enrichment under the bill would exceed that under current law because the enrichment program no longer would have to compete with other federal programs for appropriations and because it would have to bear certain costs that are not required under current law. For example, CBO estimates that setting up the corporation would require up to \$5 million in administrative and legal costs. The bill would authorize the appropriation of such sums as necessary to meet these set-up costs. The bill also would require the corporation to make payments to states, in lieu of taxes, beginning in fiscal year 1997. We estimate that these payments would total \$5 million to \$15 million per year, starting in 1997.

Use of Corporation Borrowing Authority

On average, projected spending would remain below or close to the total of estimated corporation receipts (commercial and government sales) for the 1992-1996 period. Hence, CBO does not estimate that the corporation would use any of its \$2.5 billion borrowing authority in the near term—except perhaps for some short-term borrowing to meet cash-flow requirements. Long-term borrowing would become more likely if and when the corporation builds new enrichment facilities, depending on whether new technology and market demand warrant an expansion of enrichment capacity. Initial spending for construction of a new enrichment plant could begin before 1996, but would not be completed until the late 1990s. This estimate does not assume any such spending in excess of that which would have been spent from appropriated funds under current law.

Decontamination and Decommissioning (D&D)

The bill would establish a fund for the eventual decontamination and decommissioning of uranium enrichment facilities. The three principal facilities are the production plants in Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee. (The Oak Ridge plant is no longer in active service, but DOE has not conducted any major D&D work for the plant.) Costs to complete D&D will probably total considerably more than \$1 billion, in 1991 dollars, per facility. Based on information provided by DOE, CBO does not estimate any significant spending on D&D activities during the 1992-1996 period. In fact, most of the eventual D&D spending will probably take place after the year 2000.

The corporation would have to set aside, from its receipts, at least 50 percent of estimated total D&D costs by the year 2000. CBO does not estimate any change in commercial receipts over the 1992-1996 period, as a result of this D&D set-aside provision. Intragovernmental enrichment receipts could increase under the bill, but any such changes would have no net budget impact because these receipts are exactly offset by spending in defense and other nuclear materials programs. The D&D set-aside provision could affect pricing of commercial enrichment serv-

ices after 1996, when most new contracts would be agreed to.

Title II

The provisions of Title II would result in \$300 million of additional spending, indexed to inflation and subject to appropriations, to fund remedial actions at uranium and thorium processing facilities. Assuming appropriations of the authorized funds, CBO estimates that about \$200 million would be spent during the 1992-1996 period, with the remaining funds spent after 1996. This estimate is based on information provided by the Nuclear Regulatory Commission's Denver field office, which monitors uranium site plans and cleanup activities. Estimated spending for remedial action over the 1992-1996 period is shown under "Authorizations" in the table.

CBO estimates that other provisions of Title II would have no significant impact on the budget over the 1992-1996 period.

6. Pay-as-you-go Considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. Because the uranium enrichment corporation would not require annual appropriations, any spending it conducts would be direct spending, and any corporation receipts would reduce direct spending. Although all net spending by the corporation would be direct spending, CBO believes that only new spending should be counted for pay-as-you-go procedures. The only new spending estimated for this bill consists of payments to states, which would not begin until 1997 and corporation set-up costs, which are subject to appropriations. Therefore, CBO does not estimate any pay-as-you-go effects.

7. Estimated cost to State and local governments: Under Title I, both Kentucky and Ohio are likely to receive federal payments in lieu of state and local taxes for facilities operated by the proposed uranium enrichment corporation. Under the bill as amended, however, these payments would not begin until 1977. The corporation would determine the amount of any such payments. Potential payments would depend on estimates of the corporation's annual net income and the value of the corporation's property. Based on tax information provided by the two states, CBO estimates that payments could total between \$5 million and \$15 million per year, beginning in fiscal year 1977.

8. Estimate comparison: None.

9. Previous estimate: On May 10, 1991, CBO prepared a cost estimate of S. 210, as ordered reported by the Senate Committee on Energy and Natural Resources on April 23, 1991. The April 23 version of the bill would have required the uranium enrichment corporation to begin making payments to states, in lieu of taxes, in fiscal year 1992, while the bill as amended by the Committee on May 22 would delay the start of such payments until 1997. The May 22 version of the bill also would make funding for the costs of setting up the corporation subject to appropriations. This condition was not contained in the April 23 version of S. 210.

10. Estimate prepared by: Pete Fontaine (226-2860)

11. Estimate approved by:

JAMES L. BLUM,
Assistant Director,
for Budget Analysis.

REPEAL OF THE 10-PERCENT
LUXURY TAX ON BOATS—S. 649

Mr. KASTEN. Mr. President, last year I vigorously opposed the budget summit agreement because it included over \$165 billion in new taxes. I believe this tax increase has contributed to the current recession. Among the most damaging of these taxes was the 10-percent luxury tax on boats costing more than \$100,000. While this tax was designed to somehow punish rich people, it is in fact putting thousands of middle-class workers in the unemployment lines. It is a classic example of how tax increases imposed by Washington end up destroying jobs in communities across the Nation.

One of the great ironies here is that the tax will end up costing the Government far more than it will raise. Initially the National Marine Manufacturers Association estimated the tax would cost 8,000 jobs in the boating industry, now that figure has been revised upward to 18,000. In addition to the pain caused to the workers, the Government is a big loser in tax receipts. Each lost job costs the Government income tax and payroll tax receipts, it also increases unemployment payouts. In addition, the boating industry is now in such bad shape that many boat manufacturers are closing their plants. This also costs the Government money in lost business tax receipts. In addition, there is the administrative cost to both the Government and the private sector in complying with a tax that will generate tremendous paperwork.

In Wisconsin, the luxury tax is doing tremendous damage to our boating industry. Carver Boat Co. in Pulaski, was forced to declare bankruptcy in April and is now working toward a comeback under new ownership. Brunswick Corp., which manufactures boat motors has been forced to lay off workers. Skipperliner Industries, a boat builder in La Crosse, has sold only one boat subject to the tax since it went into effect in January. Cruisers, Inc., in Oconto, is in serious trouble due to the tax.

Nationwide sales of recreational boats have declined more than 40 percent over the past 2 years and employment in the industry has declined from roughly 600,000 to approximately 400,000. This fact alone demonstrates that absolutely no research was done before this tax was proposed and approved. The worst possible policy for an industry already hit hard by recession would be to add an additional 10-percent excise tax on top of the product. The only solution now is for Congress to admit that this tax makes no sense and to immediately repeal it. I have joined as a cosponsor of S. 649, which would repeal the tax and I urge all of my colleagues in the Senate to join me as a cosponsor.

I ask unanimous consent that articles on this topic by James Taylor, chairman of the National Marine Manufacturers Association, and by Mike Royko, a syndicated columnist, be entered into the RECORD.

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

[From the Wall Street Journal, Apr. 23, 1991]

LUXURY TAX SINKS U.S. BOATING INDUSTRY

(By James W. Taylor)

A simple ceremony during the Miami Boat Show this winter illustrates why the Bahamian government has a better grasp of simple economic theory than does our own. Prime Minister Sir Lynden Pindling used the backdrop of the world's largest boat show to announce that the Bahamas would be reducing boat taxes to less than 1% of a vessel's value and accelerating marina development. Sir Lynden's motive was straightforward: to lure American boaters, draw boat sales and service to the islands and, in turn, create jobs.

Sir Lynden's action came less than two months after imposition in the U.S. of a 10% excise tax on that part of a new pleasure boat's price tag that exceeds \$100,000. While that will make it better in the Bahamas for those who wish to buy and slip their boats there—and for people looking for work there—it will further eliminate jobs in the U.S. boating industry.

In fact, the blood is already running here. Because of local labor sensitivities and fear that their names in the media will further jeopardize sales, many boat builders won't go on record to explain how hurtful the tax is. But one major builder confides he has cut \$100,000-plus production to custom orders only and given more than 450 workers layoff notices. A household name in sport-fishing yachts has closed its Southern plant, forcing 600 people out of work. The tax is cited regularly by those entering bankruptcy proceedings.

In Florida, the nation's top boat-building state, the Labor Department estimates that builders alone laid off 5,000 of 18,800 workers by the end of 1990. Marine retailers, original equipment manufacturers, and services allied to boating, such as lending, insurance and publishing, are feeling the ripple effects. Are all of these job losses directly the result of the excise tax? No. But the new tax deepens our industry's woes.

The boat tax and other so-called luxury taxes on jewelry, furs, private aircraft and high-ticket autos were originally included in the budget reconciliation game as a swap for the capital gains tax cut for the "rich" that never happened. Worse for all taxpayers, the Joint Committee on Taxation of the U.S. Congress has released an estimate of collections showing only \$3 million attributable to boats in 1991.

In an interview, Peter K. Scott, a partner at Coopers & Lybrand and former general counsel to the IRS, stated: "The revenue gains from the luxury tax are illusory; businesses and the IRS will spend two or three times more to comply with and collect it than the small amount of revenue it raises. This is the ultimate in bad tax policy." Fred Goldberg Jr., commissioner of internal revenue, has been quoted saying he has no estimate of the cost of collecting the new taxes and questions whether the revenues collected are worth the burden to the IRS and the taxpayer.

Before you dismiss this issue as parochial, consider what consequences an arbitrary 10%

price hike on shoreside condominiums, backyard pools. European travel, wide-screen televisions, season pro football tickets or a host of other "luxury" goods and services might have. The excise tax on boats set a dangerous precedent.

Price points affect boat sales, just as they affect refrigerator and clothing sales. Pleasure boats are affected by a price elasticity of two, according to industry pricing and marketing studies and as illustrated by the experience of two European nations. Lawmakers in Britain and Italy found that boat sales decreased by double the percentage amount of the excise taxes they levied and tax revenues decreased. Subsequently, Britain withdrew the tax and Italy reduced it significantly. In the U.S., this means we could expect sales of affected boats to be depressed 20%.

The National Marine Manufacturers Association estimates that 10,000 to 15,000 boats will be affected by the tax and that 6,000 to 8,000 workers will lose their jobs this year. Those workers pay more than \$30 million in federal income taxes annually.

America's boating industry is one of few U.S. manufacturing industries that maintains a net trade surplus—\$239.4 million in 1989, the latest year available. U.S.-built recreational boats are highly regarded in all world markets and in demand in countries, such as Japan and Germany, where insistence on quality is high. The new excise tax, while not collected on exported goods, lowers domestic demand and volume, thus reducing American boatbuilder productivity. It will directly jeopardize our competitiveness with trading partners and could ultimately sacrifice the boating trade surplus, which is an economic benefit shared by all Americans.

The boating industry has found members in Congress who recognize the folly of the boat tax. Sens. John Breaux (D., La.), John Chafee (R., R.I.) and Claiborne Pell (D., R.I.) and Reps. Clay Shaw (R., Fla.) and David Bonior (D., Mich.) have cosponsored bills in their respective chambers to repeal the excise tax on boats.

For businessmen now unaffected by an excise tax burden, helping these bills succeed might be the best insurance to keep matters that way.

[From The Washington Times]
CONGRESS MISSES THE BOAT ON TAXES
(by Mike Royko)

It seemed like a smart idea to congressmen at the time. In fact, it's always a clever political move, although not very original: Soak the rich. Let fat cats pay more tax because they can afford it.

And what better symbol of self-indulgent wealth than The Yacht? Yeah, look at those rich swells, in their fancy yachting whites, lounging in a harbor, guzzling gin and tonic while decent, hard-working folk can't afford a rowboat.

Nobody ever lost an election by boldly standing up to rich and pampered yachtsmen.

So Congress last year showed its concern for the middle class by enacting a special 10 percent tax on certain luxury items, including boats that cost more than \$100,000.

They were in such a hurry to grandstand that they didn't bother to hold hearings, get opinions from the boating industry or talk to economists.

If they had, they might have been told what would happen. And they wouldn't be feeling as stupid as they are right now.

It didn't occur to them that somebody considering a \$300,000 boat might say: "Let's see, in this state I have to add about \$20,000 in

sales tax. Now they want me to pay another \$20,000 in federal taxes? so that's \$40,000 more. And since I'm going to finance the deal, I'm also going to be paying interest on that \$40,000. Hey, forget it. I'll buy a good used boat instead, or maybe I'll just charter one."

It seems that a lot of potential boat buyers thought that way. That shouldn't have been a surprise. Not every big-boat buyer is a Rockefeller. Many are successful small businessmen, lawyers, doctors, and the boat is the big payoff of their professional lives. For some, it takes the place of the weekend house on a lake or in the country. Others use boats as retirement homes.

In a way, it was like slapping a 10 percent tax on any lake or beach house, weekend farm or other second home that costs more than \$100,000.

But Rep. Dan Rostenkowski, Illinois Democrat and chairman of the House Ways and Means Committee, and those other creative minds wanted to show voters that they weren't afraid to soak the rich, even if the tax caused some fat cat financial pain.

And cause pain it has. But to the rich? Nah. Hardly any at all. The super-rich already have their yachts or can buy them in another country that isn't tax-goofy.

What Congress managed to do was put thousands of people out of work, close some small businesses and deprive the Treasury of taxes that these thousands of working stiff would have otherwise been paying.

Apparently Congress didn't know that boats are built by people. That's not surprising, since congressmen don't build anything. Mostly, they babble. Just watch C-Span.

But it's true. Boats are put together by craftsmen. The bigger and more luxurious the boats, the more skill and time are required.

When the tax took effect, right on top of a recession, people stopped buying, and the luxury boat business sank.

Boat companies had to lay off workers. The National Marine Manufacturers Association estimates that more than 19,000 jobs will be lost this year because of the tax.

Nobody knows how many of those 19,000 people will stay unemployed or find lesser jobs. But the association estimates that without incomes, they will be paying at least \$30 million less in income tax. Maybe as much as \$60 million.

Some boat companies, especially small, family-run operations, went out of business. For example, David Walters, 49, has been building quality yachts in Rhode Island for 20 years. He sold about six boats a year, ranging in price from \$300,000 to \$600,000. He employed 40 people.

He had to close down. His 40 workers lost their jobs. Now he's in Florida, selling used boats, which aren't taxed, on commission.

"People are upset about this tax. They're not going to give 10 percent to the government, especially as a tax that doesn't apply to other recreations. Congress isolated a very small group. It looked fashionable, going after people who build boats that are being penalized.

"At the time I left New England, they had wiped out three of seven builders in my area. And the ones remaining are hanging on by their fingernails.

"Congress made a terrible mistake. This tax is revenue negative and put a lot of people out of work. I lost everything. I worked 60 and 70 hours a week, and everything I've built is gone. I could have stayed in business if they didn't have that tax."

And there is the ripple effect. The thousands of people who lose their jobs stop

spending, and that hurts local merchants. The suppliers to the boat companies sell less, so they lay off workers, who pay less tax and spend less. And on and on it goes.

To show you how smart Congress is, this country's private boat industry is—or maybe was—the world's leader. It exported American boats. Well, maybe the Japanese will fill that gap.

And how much revenue has the boat tax brought to the federal government? Economists aren't sure, but they say it's possible that the cost of collecting it is wiping out what is being collected.

That means Congress came up with a tax that loses money, has wiped out thousands of jobs and deprives the Treasury of millions in income tax dollars. Not to mention the misery that comes with being tossed out of work or losing a business.

This is just another of many reasons congressmen should always sit up straight in their chairs. If they tilt their heads to the side, their brains might fall out of their ears.

TOBACCO RESEARCH UNCOVERS MANY HEALTH USES

Mr. HELMS. Mr. President, last month in the Senate, another in a long line of legislative attacks against tobacco was introduced.

It is becoming increasingly popular and politically safe for self-righteous Members to come to the Senate floor and deliver endless diatribes about the evils of tobacco and smoking. Never mind the thousands of small, family farmers who rely upon tobacco for their livelihoods. Never mind the many billions of dollars generated for the Federal Treasury through taxes on tobacco. And most importantly, never mind that those preaching the elimination of tobacco have no tobacco farmers in their States and, therefore, have no constituents affected.

As long as the cameras roll and the newspapers carry the story, tobacco will continue to be a whipping boy for zealous antismokers.

Mr. President, I read in the May 19 edition of the Charlotte Observer an article which I hope will convince some of my colleagues that tobacco has a benefit to society at large and can be politically safe. The article reports on the scientists across the Nation who are becoming increasingly interested in the different uses of tobacco.

Some of my colleagues may be pleasantly surprised to learn what may be in tobacco's future.

Mr. President, I ask unanimous consent that the article from the Charlotte Observer concerning tobacco research be printed in the RECORD at the conclusion of my remarks.

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

RESEARCH ON TOBACCO TURNS UP HEALTHY USES, FROM DRUGS TO COLOGNE (By Donna Shaw)

Who says North Carolina's No. 1 cash crop can't be politically correct?

For those who thought tobacco was socially unacceptable in any form, you should

know that in labs across the country, scientists are devising innovative—even healthy—uses for tobacco.

Among the products that can be derived from the plant, researchers say, are high-quality proteins, fat substitutes and melanin, a natural pigment that protects the skin from ultraviolet radiation.

A California company is even field-testing a tobacco that contains proteins for potent anti-cancer drugs.

"The irony of that should not be lost on anybody," says Walker Merryman, vice president of the Tobacco Institute, a trade group of cigarette manufacturers.

Such research is important to North Carolina, where tobacco is a \$6 billion-a-year industry, employing more than 100,000 workers and manufacturing 60% of the nation's cigarettes. Farms in 89 of the state's 100 counties produced 628 million pounds of the crop last year.

The problem with many of recent tobacco experiments has been translating them into commercial products.

Now, DNA Plant Technology Corp. of Cinnaminson, N.J., is on the brink of doing just that.

DNAP, as the agricultural biotechnology firm is known, this month received a patent on a new variety of tobacco plant that produces high levels of a scarce chemical called sclareol.

Sclareol can be used in deodorants, after-shave lotions and colognes in place of animal-derived musk, and in food as a flavor enhancer. DNAP officials say the chemical has become increasingly scarce and costly because of the elimination of animal sources of musk and the difficulty in growing other plant sources of sclareol.

"The real breakthrough is that this is a valuable chemical that has been known for a long time," said Robert Whitaker, DNAP's managing director of research. "And this is the first time anyone has found a way to produce a steady source of it from plants."

DNAP's tobacco plant, a wild species called "cotiana glutinosa," was modified using somoclonal variation, a technique in which plant cells are cultured in dishes and the variants containing the most sclareol are used to grow new plants. The new variety contains more than 20 times as much sclareol as any other plant, according to DNAP.

Tobacco-derived sclareol also will be much less expensive than current sources, because of the quantity and because tobacco grows quickly. It can be harvested as many as three times a year, Whitaker said.

COMMERCIAL USE IN 1992?

DNAP started working on the tobacco project in 1984, after a client asked the company to find a reliable plant source of sclareol.

So far, the company has grown its tobacco in 1-acre plots, but larger-scale trials are being conducted this year. By the end of the year, Whitaker said, researchers should have a better idea of cost and yield per acre. He said tobacco-derived sclareol should be commercially available next year.

Current market demand for the chemical probably could be met with 1,000 acres of tobacco per year, Whitaker said.

"But our feeling is that if a steady, reliable source was there the market could easily double," he added.

DNAP already has some prospective customers for its new product. Whitaker said flavor and fragrance manufacturers would be the primary buyers.

Besides replacing animal-derived musk, Whitaker said, sclareol is particularly useful

in ridding artificial sweeteners of their bitter aftertaste.

"It gives you a better, more rounded flavor," he said.

OTHER CHEMICALS AROUND

DNAP's process also opens up the possibility that other commercially valuable chemicals can be derived from tobacco grown for its sclareol. Tobacco, said Whitaker, contains more than 4,000 organic chemicals.

Biosource Genetics Corp. of Vacaville, Calif., has modified tobacco to produce melanin and proteins used in the cancer drugs interferon and interleukin 2.

Scientists in the United States and Europe also have been trying to develop a profitable method of extracting high-quality protein from tobacco.

At the University of Kentucky, for example, plant pathologist Shuh Sheen has harvested tobacco proteins that he says could be converted into fat substitutes and nutrient supplements. Tobacco protein is better than soy protein because it contains all 20 of the amino acids important to humans, he says.

"The problem was, the economics never made sense," Whitaker said. "Now, with more than one chemical (to be extracted), it will."

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The period for morning business is now closed.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The PRESIDING OFFICER. The clerk will report the pending business, which is S. 173.

The assistant legislative clerk read as follows:

A bill (S. 173) to permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina [Mr. HOLLINGS].

Mr. HOLLINGS. Mr. President, in working out on yesterday the so-called rural amendment, where we certainly got away from the operations language in the original amendment so there would be no veto, so that we would also require that, in other words, so long as they would be making a profit.

The original amendment, I should point out, the amendment of the Senator from South Dakota, had a veto by the rural telephone companies over the operations of the Bell Cos. It also contained a provision in there that the Bell Cos. had to continue to sell to the rural companies irrespective of whether they had discontinued that particular equipment and moved on to more advanced equipment, and continue to sell it to them even at a loss.

We did away with those things, obviously, and got together with the distin-

guished Senator from South Dakota. I think we have now a good, strong amendment whereby the bigs will not gobble up the smalls; whereby there will be planning; whereby we will be adhering, in a sense, to the admonition of the Office of Technology Assessment, where they said with better planning with the small, rural entities by the larger Bell Cos., that you could get advanced and better services in the rural areas. And that was the intent, I would say, I guess, of all 100 Senators.

However, an atmosphere develops here where now for 2 days they continue to talk about amendments. I am going to have to revert to my old days in the State legislature: You either brought your amendments up or we moved on, and we would just have to get to third reading.

The reason I am making these comments now—I am checking where they say they have certain antitrust language. I am prepared to put up certain antitrust language. If there is any clarification necessary—I do not think so—I have the language that has been used in several other statutes. The precedent is set. There is no intent in this bill.

We did not just bring up this bill yesterday. This bill has been worked on diligently for the last 3 years by all facets and all lawyers and all talents and all abilities.

It is very cautiously and deliberately drawn, with a balance in there to make certain that the Bell Cos. are allowed to manufacture through wholly-owned subsidiaries, entirely separated, without any cross-subsidization, with notification, restricted kind of self-dealings and everything else and, with respect to antitrust—even when we got to the planning, and that is what induced my comments here this morning initially—we said in conformance with the antitrust laws.

Some still think maybe that is not sufficient. They want to rewrite the bill, "provided however," "provided however." We are prepared to try to table those amendments but they do not come with the amendments. We understand there is one with domestic content. The intent is clear. Competition in the world market and everything else, all has domestic content in there. We certainly did not put this bill in for foreign manufacturers. That is where they are. We are trying to bring them back home. There is no doubt about what the intent is here, in this particular bill.

So those who want them to continue to manufacture overseas and everything else about domestic content, let them bring their amendment, or this particular Senator is really encouraged, after 2 days and none of the amendments coming, to just put up the amendment and move to table my own amendment and move on. The Senate has to get on with its business.

Maybe an atmosphere has developed where some think we are wheeling and dealing and ready to accept. We are not being hard headed. We are willing to talk; but in the context of not accepting, it is after due and deliberate consideration. This bill has been worked and worked and worked over and all the caveats are in there. It is a well-balanced bill. It has bipartisan support—strong support on all sides because it has been worked and we have taken care of these misgivings that some could have had. The intent is clear. We are ready to move.

I am checking with the other side of the aisle to see if I cannot just go ahead with the amendment that is rumored, bring it up myself and move to table my own amendment and move on to third reading so no one can complain they did not even get consideration. We are going to get consideration here shortly.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, I respect the diligent efforts on the part of the manager of the bill to pass this legislation. I spoke to the bill shortly after it came to the floor and indicated I had some concerns both from the consumer standpoint as well as from the question of domestic content, the question of whether or not we would be losing jobs rather than making jobs. I was prepared to come here yesterday with a rather fulsome speech. I thought it was a pretty good speech I was going to make. But the fact is some Members on the other side of the aisle saw fit to bring up their position with respect to the civil rights bill, which they certainly had a right to do. But that consumed about an hour and a half of time. Then there was considerable discussion concerning the rural amendment, a matter with respect to which I was not directly involved. And I am over here this morning prepared to address myself to the subject and have already had discussions with the manager of the bill.

It is my understanding, and I said to him I was prepared to go forward, but I was prepared to explore the possibility of accepting or discussing some amendments. The last I had spoken with my friend from South Carolina, the understanding was his representatives and mine were going to sit down and meet. I guess his representatives and mine are sitting back there ready to see if they can work out these matters. If they are able to do so, I think it will accelerate the process greatly. We are ready; they are ready to negotiate.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANFORD). Without objection, it is so ordered.

Mr. GORTON. Mr. President, I ask unanimous consent that I may proceed for 5 or so minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

DRIFT NET FISHING

Mr. GORTON. Mr. President, time and again, this Senator has urged the administration and the Senate to take action to end the deplorable practice of drift net fishing. During the last couple of years, this fishing practice has gone from a scourge few people knew about to one recognized by the world community as so destructive that it must cease totally and immediately.

I am heartened by the U.N. resolution to end this practice by June 30, 1992. I was proud to work with Senators STEVENS and PACKWOOD last year in incorporating new antidrift net amendments in the Magnuson Act. I am also pleased to be a cosponsor of Senator PACKWOOD's bill, S. 884, the Drift Net Moratorium Enforcement Act. This bill, which I predict will be passed by the Senate this year, would require the President, on January 1, 1992, to certify any country which has not notified the United States of its intention to stop drift net fishing by June 30, 1992. If a country is certified, then the President is authorized under the Pelly amendment, to ban the import of fish or fish products from that country. In addition, it gives the President the authority to invoke a wide array of sanctions against a country that continues to violate the moratorium after June 30 of next year.

Unfortunately, Mr. President, not everyone is getting the message that the world community is demanding a ban on drift net fishing. I have just received evidence that on May 13 of this year, a National Marine Fisheries Service agent accompanied Canadian Maritime Forces on a high seas drift net patrol utilizing a high-technology Canadian P-3 aircraft. Over 4 days, the patrol covered nearly 750,000 square miles of high seas areas and 10,000 miles of flight legs. This patrol detected in position 40 41'N/164 32'E a vessel of the People's Republic of China. This citing is especially noteworthy because it is the first instance that a Chinese vessel has ever been documented conducting drift net fishing activities. It was seen in an area where numerous other high seas drift net vessels have been sighted illegally fishing for salmon and steelhead

since April of this year. This vessel was flying a People's Republic of China national flag, displayed a large red star on both smoke stacks, and had a large high seas drift net clearly visible on its deck and ready to set in the water. The vessel's name was determined to be the Luo Ling No. 3.

Mr. President, today I am sending letters to the National Marine Fisheries Service, the Coast Guard, and the Department of State, which has been very reluctant to report this violation, demanding that each of them investigate and pursue this matter aggressively.

I welcome my colleagues' support for this action. Working together with Senators PACKWOOD, STEVENS, and I may say the chairman of the Commerce Committee, who is here managing the current bill, and other colleagues in the Senate who understand the importance of this issue, we will attempt to convince the administration, and the drift netting nations of the world, that this deplorable practice must end.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from Washington, and I hope we can move on that important matter, a matter of concern to all of us.

FLOOR PRIVILEGES

Mr. GORTON. Mr. President, I ask unanimous consent that Keith Krehbiel, the congressional fellow on the staff of the Republican leader, be given privileges of the floor during consideration and votes on S. 173.

The PRESIDING OFFICER. Without objection, it is so ordered.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The Senate continued with the consideration of the bill.

Mr. HOLLINGS. Mr. President, so colleagues will know with respect to the Simon amendment, I understand that they are now finalizing the language of the Simon amendment. The Simon amendment goes to the heart of the issue concerning audit of the RBOC's. Under his amendment, there is a requirement that the FCC establish the rules and regulations and conduct audits of the RBOC's and their Affiliates as well.

I understand the distinguished Senator from Ohio on the matter of the engaging with the collaboration under that section F. A Bell Telephone Co. and its affiliates may engage in close collaboration with any manufacturer of customer premises equipment of telecommunications equipment during the design and development of hard-

ware, software, or a combination thereof. That does not violate the prohibition against cross-subsidization, and it does not repeal the antitrust provisions relative to this particular act.

We would go along with that phrase if it says also consistent with the provisions prohibiting any cross-subsidization by the Bell Cos. with their particular affiliates.

We also would work with Senator SIMON to resolve the issue concerning States audit authority. As now under the law the States have not only that volition but they have that responsibility from time to time to carry out audits of the RBOC's. I imagine that 25 percent of the Bell Cos. business would be in the interstate arena and as a result audited at the Federal level by the Federal Communications Commission. The remaining 75 percent of the Bell Cos. business is regulated at the State level as intrastate and the local public service commissions there would be responsible for the audits.

It is the intent, as I understand, of the Senator from Illinois, that his amendment will require States to oversee audits of the RBOC's. These audits shall be conducted by an independent auditor selected by the local commission, and we are working out the specific language on the issue of access to the books and records of the RBOC's and their affiliates. Of course, you cannot do an audit unless you have the books.

We do have some reservations on the issue of giving access to RBOC's financial information about giving the States the right to look at the books anytime, for any or no reason. RBOC's could find themselves being audited all the time, at every level. We want to make sure that is carried on in a judicious fashion and with probable cause—not just being overregulated—auditors in the RBO offices around the clock all the time. I hope when both sides clear the language we will be ready to go.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 283

Mr. INOUE. Mr. President, I rise on behalf of Senators DODD, LIEBERMAN, AKAKA, WELLSTONE, and myself, to offer an amendment to S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act. The purpose of my amendment is to strengthen the safeguards against self-dealing by the Bell Telephone Cos. This amendment will ensure that the telecommunications equipment market remains competitive by: First, ensuring

other manufacturers continue to have an opportunity to sell equipment to the Bell Cos., and second, requiring that Bell manufacturing affiliates sell equipment to other users.

My amendment addresses the most serious issue raised by this legislation, namely the ability and incentive of the Bell Telephone Cos., which are local monopolies, to purchase equipment from their affiliated manufacturers and joint ventures to the detriment of consumers and competitors. This ability to leverage their control over the local bottleneck poses two dangers.

First, there is a danger that by purchasing from themselves they will do so without regard to the quality or price of the product. This in turn increases rates to local residences and businesses beyond those which would exist in a competitive local exchange setting. Cross-subsidies from monopoly services end up supporting less than competitive enterprises.

The other danger confronts the Bell manufacturing affiliate's competitors, who are forced to compete against a subsidized and favored venture rather than in an open market. Favoritism could take many forms: Sharing advanced network information, standards, marketing and other information; personnel exchanges; or even outright bias in procurement. This amendment does not bar self-dealing entirely.

This amendment recognizes that each Bell Co. which intends to manufacture telephone equipment must submit to and receive FCC approval of a plan ensuring that: First, each Bell Telephone Co. that engages in manufacturing will purchase a majority of its equipment from unaffiliated firms; second, each Bell manufacturing affiliate must sell at least 20 percent of its equipment to unaffiliated companies; third, personnel of the Bell manufacturing affiliates will not participate in formulating or developing generic or specific equipment requirements and standards, or obtain advance notice of such requirements; and fourth, unaffiliated firms have the same opportunity as the Bell manufacturing affiliates to prepare and submit proposals to sell equipment to the Bell Telephone Cos. and have their equipment evaluated on their merits.

The restrictions imposed by this amendment are of limited duration. The FCC must repeal these restrictions upon a finding that there is effective competition in the local exchange service. Under this amendment, effective competition exists when a majority of the residential and business subscribers have access to local telephone service provided by an unaffiliated firm; and a substantial amount of such subscribers actually subscribe to an unaffiliated firm's services.

Finally, this amendment requires the FCC to report to Congress on the state of competition in local telephone mar-

kets, the prospects for the development of competition, and the particular regulatory, technical, and financial barriers to the creation and maintenance of competition. By providing objective standards to judge the behavior of the Bell Telephone Cos. and their affiliates, we prevent the Bells from foreclosing their market to unrelated vendors.

Further, we provide a benchmark to measure the competitiveness of Bell and non-Bell manufacturers. If Bell manufacturing affiliates are unable to sell a substantial fraction of their products to independent third parties, then one might justifiably wonder whether they are truly economically viable in a free market environment, or subsisting on the local exchange monopoly.

This amendment is a reasonable compromise which meets the objections of those who fear that the Bell Co. will engage in cross-subsidies or self-dealing at the public's expense. This amendment provides an additional layer of protection for consumers, consumer advocates, mass media, and competitors.

Mr. President, if I may submit an inquiry to my chairman. I realize he has worked most diligently for a long period on this measure. But, as he knows, I sincerely believe this measure raises some very serious issues which I believe must be addressed. If he would give this amendment his serious consideration if and when we do go into conference, I am prepared to withdraw this amendment and do not wish to prolong this proceeding.

Mr. HOLLINGS. Mr. President, I want to give the distinguished Senator from Hawaii that assurance he requires and requests.

The Senator from Hawaii and the Senator from South Carolina have a similar interest with respect to self-dealing. S. 173, as a result, prohibits the RBOC's from manufacturing in conjunction with one another, they also must have separate financial records and keep their books of accounts of manufacturing activities separate entirely from their telephone company and they must file all of this information publicly.

They cannot perform sales, advertising, installation, production, or maintenance operations for an affiliate. The RBOC must provide opportunities to other manufacturers to sell to the telephone company that are comparable to the opportunities they provide RBOC affiliates and the RBOC may only purchase the equipment from its affiliate at the open market price.

The bill also contains provisions prohibiting cross-subsidization, limiting the equity ownership of the affiliate, and prohibiting the affiliate from incurring debt from the RBOC itself. We think we have the RBOC's manufactur-

ing affiliate pretty well fenced off from the telephone company.

What happens, if you really get an amendment to limit self-dealing to 50 percent or less, which would require the Bell Co. to obtain the majority of its the equipment from unaffiliated firms, you are really going to stultify the incentive that we are trying to obtain—that is to allow the RBOC's to get into research and into development and into manufacture and stay, as we have said, on the cutting edge of telecommunications technology for the benefit of the consumer.

We think this is a consumer bill. I know the Senator thinks his amendment is a consumer amendment. It could be that in conference we could study it and we could make some adjustment, and I would be glad to look at it in that light.

I must, as a caveat, state in a sort of bottom line fashion, that no self-dealing limitations are required of those foreign companies who have taken over the market. It took me over an hour to list their activities, their purchases, their permeation of the telecommunications research and development in this country. These foreign companies manufacture here in this country. You and I think we have an FCC, and we have some little domestic companies over here with some money and we think we are going to control them and we are going to keep free markets. Meanwhile, the foreigners are going to take over our market right under our noses.

You see, that is the fundamental intent here, that the Bell Cos. should be able to buy the equipment they manufacture. But it has to be done on an even-Steven basis, all aboveboard, with no special pricing or anything else of that kind.

We would be delighted to look at that idea in conference.

Mr. INOUE. Mr. President, I am most assured by that commitment, and with that commitment and assurance, I will withdraw my amendment.

But before I do, I ask unanimous consent that Senator METZENBAUM be listed as a cosponsor.

The PRESIDING OFFICER. Without objection, it so ordered.

Mr. DODD. Mr. President, I rise in support of the Inouye-Dodd effort to increase the safeguards against self-dealing in S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act of 1991, and to ensure an open and competitive market in telecommunications equipment.

First, I must compliment Senator HOLLINGS and the Commerce Committee on giving this issue and telecommunications policy, in general, such serious consideration. It is common sense that our ability to achieve is directly related to our ability to communicate—this is as true for a person as for a nation. And this is why de-

fining a telecommunications policy for our Nation is critical and why I commend the chairman and the committee for their work in this area.

However, I remain concerned this bill has insufficient safeguards to assure the desirable goal of the sponsors. One need not go back to the strong case made against MaBell, which brought on the divestiture of AT&T, to locate cases of abuse. Just in the past few years, both NYNEX and U.S. West were found in court to have engaged in anti-competitive behavior. The NYNEX case strikes very close to home in this debate, as NYNEX was caught paying inflated prices to an unregulated manufacturing subsidiary and passing on these costs to their local ratepayers.

I am seriously concerned that this bill, while it does contain important safeguards, does not go far enough to protect ratepayers, other consumers, and manufacturers.

As currently constructed, the potential for abuse remains too great. While the Regional Bell Cos. maintain monopoly control over local telephone service, opportunities and, indeed, incentives exist for them to frustrate and impede competition. For instance, timely information is essential to a competitive manufacturer, if a regional Bell Co. released technical information to its subsidiary directly and then later to the Federal Communications Commission, the delay would disadvantage other manufacturers. There is also the potential for other abuses such as cross subsidization. These effects may not be intended in this measure, but as they would provide a competitive advantage and a greater profit at the expense of captive local ratepayers, we must consider how to lessen the potential for such abuses.

We also owe the current telecommunications manufacturers this extra consideration. Except for AT&T, this industry was nonexistent 10 years ago. Today, however, Bell Communications Research, the joint research arm of the 7 regional companies, lists 9,000 suppliers of products to the Bell systems. While there is a trade deficit in this industry, it is declining—it dropped from \$1.8 billion in 1989 to \$800 million in 1990. In Connecticut alone, several thousand workers are employed in this field and it is a growing number. Just last week, I was in Middlebury and visited a company which has grown from a small 1-man operation to an enterprise which employs over 1,700 individuals in manufacturing switches for shipment around the United States and the world. This company and others like it are not concerned about competition; they are concerned about the establishment of an unfair playing field with the enactment of this measure.

The amendment, which we are now considering, would eliminate the likelihood of such abuses, but at the same

time it would preserve the potential benefits of the entrance of the regional Bell Operating Cos. into research, development, and manufacturing—the benefits to the Regional Bell Cos. as well as to the industry and country as a whole. It would allow the Bells' manufacturing affiliates to participate and compete in the world market and in other domestic markets, but disallow it from selling solely to itself and from being its own sole equipment provider.

This provision would ensure that there is fair competition among manufacturers, including the Bell affiliates, to provide the local Bell Telephone Cos. with the best product at the least cost. Thereby, manufacturers, ratepayers, and the Bell Cos. themselves would be ensured of the benefits of a fair marketplace.

Mr. President, while I am disappointed that this amendment will not be included in this bill at this time, I appreciate Senator HOLLINGS' commitment to give this amendment, and the concerns which it addresses, his serious consideration in the conference on this bill.

The PRESIDING OFFICER. The clerk will report the amendment, and then the amendment will be withdrawn.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUE], for himself, Mr. DODD, Mr. LIEBERMAN, Mr. AKAKA, Mr. WELLSTONE, and Mr. METZENBAUM, proposes an amendment numbered 283.

Mr. INOUE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

"SEC. 228. (a) The Commission shall prescribe regulations requiring that any Bell Telephone Company that has an affiliate engaging in any manufacturing authorized by section 227(a) shall—

"(1) not engage in manufacturing until it has filed and received Commission approval of a plan that ensures—

That the personnel of the Bell Company affiliates that are engaged in the manufacturing of telecommunications equipment will not participate in the formulation of generic or specific requirements for any such equipment that the Bell Telephone Company will purchase and will not obtain notice of such requirements in advance of unaffiliated firms, and

That unaffiliated firms have the same opportunity as the Bell Telephone Company and its affiliates to prepare and submit proposals and quotes for telecommunications equipment to be purchased by the Bell Telephone Company and have that equipment evaluated on the merits;

"(2) purchase from unaffiliated firms at least a majority of each type of telecommunications equipment that is comparable to types of equipment manufactured by the Bell Telephone Company or its affiliate; and

"(3) sell, either directly or through its affiliate, to unaffiliated firms a substantial amount of telecommunications equipment

manufactured by the Bell Telephone Company or its affiliate.

"(b)(1) Within 180 days after the date of enactment of this Act, the Commission shall adopt regulations defining the requirements in subsection (a), including a regulation defining the term "substantial" as an amount not less than 20 percent. The Commission may not alter the definition of the term "substantial" for five years from the date of enactment of this Act.

"(2) The FCC shall repeal the regulations adopted pursuant to subsection (a) when it determines that the Bell Telephone Company faces effective competition in providing local exchange service. The term "effective competition" shall mean that a majority of the residential subscribers and a majority of the business subscribers in the service area have access to local telephone service provided by an unaffiliated firm and that a substantial amount of residential subscribers and a substantial amount of business subscribers actually subscribe to the services of the unaffiliated firm.

"(3) Within one year of the date of enactment of this Act, the Commission shall report to the Congress on the state of competition in local telephone markets, the prospects for the development of competition, and the particular regulatory, technical, and financial barriers to the creation and maintenance of competition."

Mr. INOUE. Mr. President, I ask that my amendment be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 283) was withdrawn.

Mr. INOUE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I will be glad to yield to our distinguished colleague from Ohio. I know we have been negotiating. In talking with the comanager of the bill on the Republican side, our ranking member, Senator DANFORTH, he is prepared and I am prepared to move to third reading.

We do not want to be precipitous. They talk about negotiations but I know the staff of our committee has been talking to the staff of the Senator from Ohio, the Senator from Illinois, and other Senators for weeks on end. We are still talking. We are waiting for telephone calls to come. I know the distinguished Senator can keep us engaged, I should say, for the rest of the afternoon and the evening.

But I say let us be engaged or let us move to third reading. Everybody should know that negotiations as far as this Senator is concerned are terminated. Let them offer their amendments, and we will get a better understanding than we are from the negotiations.

Mr. DANFORTH addressed the Chair. The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I have noticed a certain sluggishness in the process of this legislation. I know it has been on the floor since Monday. It is now afternoon on Wednesday. I believe that during that period of time one amendment has been offered and has been accepted. There have been various rumors about the possibility of other amendments. But they really have been only rumors. I am told that a Senator is headed toward the floor to offer an amendment. That would be fine. But I came to the floor about an hour or so ago and suggested to Senator HOLLINGS that perhaps the time had come to go to third reading. If nothing happens on a bill, we do not wait around forever.

So I encourage my chairman to proceed to third reading at a very early date. I think that if the bill just keeps alive forever, it will start attracting all kinds of extraneous amendments. This is an important bill. It is an important public issue, and it deserves to be attended to.

Mr. HOLLINGS. Mr. President, I appreciate the remarks of our distinguished colleague from Missouri. As I understand it, there are two amendments that are prepared and cleared on this side—one by Senator METZENBAUM, one by Senator SIMON. They must be cleared of course on the side of the Senator from Missouri. I hope we can see whether they would be cleared and, if not, of course the amendments would be offered. We will see what happens.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, let me first say I have had conversations with the manager of the bill, and Senator HOLLINGS has gone to great lengths in order to attempt to accommodate the Senator from New York. I thank him for his attempt at seeing if we could not have the amendment, which I am going to propose, which deals with Syrian participation in the forthcoming parade honoring the brave young men and women who served in Operation Desert Storm and Desert Shield.

That parade is going to take place this Saturday in Washington. That parade is going to involve the use of some \$3 million worth of taxpayers' dollars. One of the terrible things that will be taking place in that parade is the flying of the colors of Syria. We are going to have a U.S. serviceman carrying those colors. I am going to talk about that as we go along.

The Senator who is managing this bill so ably and has spent so much time and effort here attempted to accommodate this Senator by asking if we could have a freestanding sense-of-the-Senate resolution being considered—and I want him to know I am deeply appreciative of that, and I attempted to see if we could do this.

As a matter of fact, I believe the leadership on our side has cleared this amendment for consideration and I want you to know it is bipartisan in nature.

Let me say, I think we could get just about all the Senators to come on this, including the President of the Senate who is now sitting. Let me tell you who we have on it. We have Senator DECONCINI, Senator GRASSLEY, Senator MACK, Senator MURKOWSKI, Senator LIEBERMAN, Senator LAUTENBERG, Senator HELMS, and Senator MOYNIHAN, as well as the Senator from Alabama, Senator SHELBY. So it is bipartisan.

This is something I think should be bipartisan, and I am sorry we have to offer it to this legislation. The only reason we have to do that is because we could not—and I want it to be known that my good friend, dear friend, Senator HOLLINGS, really attempted, starting last evening, to see if we could not clear a spot. And he agreed to suspend business so we could consider this freestanding and not encumber the important legislation before the Senate now and which the Commerce Committee has voted out overwhelmingly and which the Senator is looking to conclude.

AMENDMENT NO. 284

(Purpose: To express the sense of the Senate regarding the victory parade in Washington, District of Columbia, scheduled for June 8, 1991)

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself, Mr. DECONCINI, Mr. GRASSLEY, Mr. MACK, Mr. MURKOWSKI, Mr. LIEBERMAN, Mr. LAUTENBERG, Mr. HELMS, Mr. MOYNIHAN, and Mr. SHELBY proposes an amendment numbered 284.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . SENSE OF THE SENATE REGARDING THE NATIONAL VICTORY PARADE FOR THE PERSIAN GULF WAR.

It is the sense of the Senate that any country—

(1) for which United States assistance is being withheld from obligation and expenditure pursuant to section 481(h)(5) of the Foreign Assistance Act of 1961; or

(2) which is listed by the Secretary of State under section 40(d) of the Arms Export Control Act or section 6(j) of the Export Administration Act of 1979 as a country the government of which has repeatedly provided support for acts of international terrorism,

should not be represented, either by diplomatic, military, or political officials, or by national images or symbols, at the victory parade scheduled to be held in Washington, District of Columbia, on June 8, 1991, to celebrate the liberation of Kuwait and the victory of the United Nations coalition forces over Iraq.

Mr. D'AMATO. Mr. President, what more grotesque an image could greet the grieving survivors of the victims of the bombing of the Marine barracks in Beirut in 1983 and of Pan Am Flight 103 in 1988 than a United States serviceman, perhaps even a marine, carrying the Syrian flag down Constitution Avenue as the Syrian Ambassador sits proudly in the reviewing stand?

Mr. President, the inclusion of Syria in the victory parade, a nation directly responsible for more American deaths than those lost in the recent war, is an outrage.

Why were the Syrians invited?

What about the Assad government? It is a government known to harbor and train a wide spectrum of terrorist groups, including those thought responsible for the bombing of the Marine barracks in Beirut and Pan Am 103. They control the Bekaa Valley. The Bekaa Valley is one of the havens for narcotics production and drug trafficking, one of the areas in which more poison is sent out to the world and to this Nation.

The Government of Syria, the Assad government, is guilty of every kind of human rights violation, including torture, which is routine. It is absolutely a government that will tolerate no opposition. It has wiped out its opposition. It has used tanks, artillery shells, and cyanide gas. It is a government that has employed none other than Alois Brunner, who was a key Eichmann aid personally responsible for the deportation of tens of thousands of Jews to death camps, and he is consultant to the Syrian security forces.

What the Syrians have done and are doing at the present time in Lebanon is unconscionable. The slaughter of the innocent, the slaughter of the Christians, and of the Christian community is something that continues.

Mr. President, that we would be associated with such a regime, no matter what the political change, is difficult if not horrifying. For that reason, I will offer an amendment that prohibits Syrian representation "either by diplomatic, military, or political figures or national images or symbols, at the victory parade to be held in Washington, DC on June 8, 1991, to celebrate the liberation of Kuwait and the victory of the U.N. coalition forces over Iraq."

There is no possible justification for cuddling up to a killer with American

blood on his hands. It is wrong. It is dangerous. If this policy of cozying up to Assad persists, it is one we will long come to regret.

Mr. President, our President put together a coalition and in that coalition maybe we did not have the kinds of choices we would like to, and in the real world sometimes we have to work with killers, we have to work with dictators, we have to work with torturers. That is what Hafez Assad is. And I am not going to be critical of the fact that when that coalition and when our troops were there it may have been necessary for the coalition to be able to maximize its effectiveness to include the Syrians.

But for us to now pay tribute to their nation, to their leader, to their dictator, someone who is a killer, someone who is an international terrorist, someone who our own State Department lists as it relates to the continuance of harboring terrorists, someone who our State Department and Commerce Department lists in terms of drug trafficking, so that on two accounts we find he continues drug trafficking, we find he continues—and I am talking about Hafez Assad, the leader of Syria—he continues to harbor terrorists—on two fundamental accounts he has failed.

As it relates to his present record, there are some who say, well, he is changing. I would say the leopard does not change his spots, and Assad has not changed. There are 4,500 Syrian Jews who are held prisoners, who are used as pawns, who seek to emigrate out, but who are not allowed to leave.

Why would we want to see the Syrian flag carried by an American in this tribute to the coalition victory when indeed Syria and Assad flies in the face of everything that victory was about? That victory was about overcoming evil, about freeing a country, about seeing to it those who would use their force will not be permitted to do that because they are stronger or have better arms.

That victory was a noble one. That victory was achieved at the cost of many lives. Yes, there were fewer casualties than people thought, but there was American blood spilled.

How is it that we would pay honor and tribute to a nation that is ruled by someone who is responsible for hundreds and hundreds and hundreds of American deaths; whose terrorist activities have led to the killing of American marines in Lebanon; whose terrorists activities have led to the deaths of innocent people on Pan Am 103 by the harboring of these various terrorists groups, and they continue to do so; who at the highest levels of his government is deeply involved in drug trafficking and providing protection for those drug traffickers?

How is it now that we would humiliate the American public—and I say

that with all sense of recognizing the seriousness of this statement—that we would humble the United States of America by allowing the Syrian barbarian flag—because that is what it represents when Hafez Assad, the dictator, is in charge—to come parading down Constitution Avenue?

I take strong exception to it, and for that reason I have introduced this amendment. I wish we could find a better vehicle because I feel very strongly that we may not get a true test as it relates to what the sentiment of this great body is. This great body should be repulsed by the idea that in any way we would give any respect whatsoever to Syria, to what it stands for, and particularly the man who runs that country, that brutal dictator, Hafez Assad.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS. Mr. President, I want to deal openly with my distinguished colleague, for whom I have the greatest respect. Senator D'AMATO and I have become good friends here in the U.S. Senate. He came to me last evening. We checked on both sides of the aisle. There were objections on the Democratic side because I said I cannot allow this particular amendment on this bill. It is in the context of trying to develop a discipline.

I know it might not appear this way to the Chair, but I am beginning to see light. I believe I have a bunch of Westmorelands around me. We have had light at the end of the tunnel for 3 days around here. But we do have two amendments worked out with Senator METZENBAUM; one with Senator SIMON. They are being checked now on the other side of the aisle, and momentarily we will agree on those amendments.

But in accordance with what I conferred and related to my good colleague, I said I am not going to break this discipline. We have it going here now, and we are not going to start a debate on this matter, although I have the highest respect for him.

So I move to table the amendment, and I ask for the yeas and nays.

Mr. D'AMATO. I wonder if my colleague will withhold his motion to table just for a moment.

Mr. HOLLINGS. I withhold just for a moment.

Mr. D'AMATO. I suggest the absence of a quorum.

Mr. HOLLINGS. If we are going to get everybody here to talk, that is what I am trying to forestall, the talking.

Mr. D'AMATO. It is not for that purpose.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I have conferred with my colleague from New York, the author of this particular amendment. The concern of the Senator from South Carolina was that we would not get into an extended debate, because this could be an issue and it could be well debated. That is why I was prepared to move to table.

It does not look like it will develop in that fashion. Senators are now being notified that we will have an up or down vote here at 1 o'clock, I think that is the understanding, without any request being made.

Mr. President, I ask unanimous consent that we give the Senator from New York an up or down vote on his amendment at 1 o'clock, and that no second-degree amendments be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, I wish to thank my good friend, the distinguished Senator from South Carolina, for the manner in which he has really afforded us an opportunity to be heard on this issue.

I publicly thank him for what he attempted to do last night, and what he has done today.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FOWLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FOWLER. I thank the Chair.

Mr. GRASSLEY. Mr. President, as an original cosponsor, I rise in strong support of Senate amendment 284.

June 8 is the day that our Nation gives its heartfelt "thank you" to men and women who so courageously served in Operation Desert Storm. The celebration will be the largest parade held in decades.

There is no room in our celebration for Syria, a country on our lists of terrorists and drug traffickers.

In fact, Syria's contribution to Desert Storm included: The invasion of Lebanon—and the de facto annexation of it; and the receipt of a billion dollars, with which they used to purchase weapons.

More Americans have died at the hands of Syrian-sponsored terrorism than died in all of Desert Shield and Storm. Here are some more facts about Syria:

Evidence indicates Syrian complicity in the terrorist attack on the Marine barracks in 1983.

Today, the perpetrator of Pan Am 103 safely and freely finds shelter in Syria.

Twenty percent of the heroin found in the United States comes from Syria and Syrian-controlled Lebanon.

Neither Syrian flags, nor officials, nor troops, should be a part of our victory celebration.

On Saturday, we will salute our troops—and we will salute all Americans who have given and sacrificed for our country. The memory of the victims of terrorism, who were killed because they were Americans, must not be marred.

Mr. PELL. Mr. President, I cannot support the amendment of my colleague from New York [Mr. D'AMATO], and from Arizona [Mr. DECONCINI]. I agree that President Assad and his government have committed serious human rights abuses, most notably in the slaughter of the opposition in the city of Hama, and I am gravely concerned by past, and possibly ongoing, Syrian support for international terrorism.

However, we are not honoring the Government of Syria in the parade Saturday. If we were in the business of honoring governments, quite frankly I would have reservations about including the flags from some other countries. For example, neither Saudi Arabia, nor for that matter Kuwait, have had a sterling human rights record.

We are honoring the men and women who fought as part of the allied coalition to defeat Iraqi aggression. Syrian soldiers were part of that coalition and many fought courageously in that effort. Some also died.

This amendment may make us feel good but it will accomplish nothing. Indeed, it could be counterproductive. Our Secretary of State is engaged in sensitive negotiations which include Syria. This could further reduce the likelihood of any progress. I would not be necessarily opposed to an anti-Assad amendment that accomplished some greater objective: For example, an amendment linking our relations with Syria to progress on human rights, the peace process, or terrorism.

This amendment will accomplish none of these things. It is merely a gratuitous insult. We were not too proud to fight shoulder to shoulder with the Syrian soldiers. We should not now be ungracious.

Mr. LEVIN. Mr. President, Syria should not be invited to participate in the Washington Victory Parade, which will take place this weekend. Syria's support of international terrorism, its occupation of Lebanon, and its unremitting hostility to Israel are too much at odds with our national interests and our sense of morality for it to be officially part of this victory celebration.

I am voting for the D'Amato amendment to the extent that it sends this signal regarding official Syrian participation. However, I am troubled by the very broad language of the amendment, which if binding could infringe on the first amendment rights of peaceful spectators to the parade who might, for example, hold up a Syrian flag. If the language of the amendment were binding and still as broad as is contained in the current amendment, I would have voted against it for that reason.

The Washington Victory Parade is not only a celebration of the successful completion of Operation Desert Storm, but also a celebration of our Nation's democratic values. We should honor those values in the process of honoring those who fought for them.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Colorado [Mr. WIRTH] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The PRESIDING OFFICER (Mr. KERREY). Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 92, nays 6, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—92

Adams	Ford	Mack
Akaka	Fowler	Metzenbaum
Baucus	Garn	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bond	Gorton	Murkowski
Boren	Graham	Nickles
Bradley	Gramm	Nunn
Breaux	Grassley	Packwood
Brown	Harkin	Pressler
Bryan	Hatch	Reid
Bumpers	Hatfield	Riegle
Burdick	Heflin	Robb
Burns	Helms	Rockefeller
Byrd	Hollings	Roth
Coats	Inouye	Rudman
Cochran	Johnston	Sanford
Cohen	Kassebaum	Sarbanes
Conrad	Kasten	Sasser
Craig	Kennedy	Seymour
Cranston	Kerrey	Shelby
D'Amato	Kerry	Simpson
Danforth	Kohl	Smith
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dixon	Levin	Symms
Dodd	Lieberman	Thurmond
Dole	Lott	Wallop
Domenici	Lugar	Warner
Durenberger	McCain	Wofford
Exon	McConnell	

NAYS—6

Bingaman	Jeffords	Simon
Chafee	Pell	Wellstone

NOT VOTING—2

Pryor	Wirth
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So the amendment (No. 284) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REGARDING PRESSLER AMENDMENT TO S. 173

Mr. DOLE. Mr. President, I would like to take a moment to congratulate my colleague from South Dakota, Senator PRESSLER, on what he was able to achieve last night on his amendment to S. 173.

That amendment, adopted unanimously, represents the culmination of difficult negotiations on a subject that most of us find pretty complex. Senator PRESSLER's staff worked with Commerce Committee staff, representatives of the U.S. Telephone Association, and my own staff in attempting to reach an agreement that would preserve the rights of rural telephone customers without hamstringing innovation by the Bell Cos. Not an easy task, but the result produced by the Senator's efforts come about as close as I think we can get. Needless to say, I am very pleased to be a cosponsor of his amendment.

Those of us, like Senator PRESSLER and myself, who are from rural States are keenly aware of the vital role played by the rural independent telephone companies and cooperatives. They are the lifeline of rural America to the information age; without them, universal service would be an impossibility.

This amendment ensures that, if S. 173 becomes law, rural customers will have access at reasonable rates to the newest telecommunications and information products and services. It gives the rural companies a seat at the table in planning network development; provides for access, at nondiscriminatory prices, to software and hardware technology; and gives a local telephone company the right to sue in Federal court to remedy violations of these rights.

Mr. President, those of us who support S. 173 do so because we believe that it will help take us into the future of telecommunications. But the future belongs to all Americans. This amendment will help assure that. Thank you Mr. President.

Mr. ADAMS. Mr. President, as an original cosponsor of S. 173, the Telecommunication Equipment Research and Manufacturing Competition Act of 1991, I would like to explain what drew me to this legislation and why I believe we should support this bill.

The legislation before us addresses a sector critical to U.S. competitiveness in the global economy: information systems and telecommunications technology. All of us are concerned about the threat our industries face from foreign government subsidies to their telecommunications and other industries. Such practices give our foreign competitors an unfair advantage in third country markets and distort

competition in our own open, domestic market.

S. 173 is an important step in the development of a computer-based technology, which has already revolutionized domestic and international markets. In an era of rapid technological advancement and an increasingly global economy, we cannot afford to delegate more than we already have of one of the most promising segments of our economy, the manufacture of telecommunications equipment, to factories abroad.

This legislation holds great importance for workers in the telecommunications equipment industry, where the Commerce Department has projected a slight decline in employment over the next 5 years. The provisions of S. 173 should help stem this decline, and will hopefully reverse it.

The findings in the committee report on S. 173 should be a call-to-arms. The report notes:

A large, worldwide market share is becoming increasingly important to the development of new technologies because of the heavy research and development costs that are necessary to develop state-of-the-art technology. Unless the United States takes a more active role in permitting its companies to compete fully in these international markets, the United States faces the possibility that it will be shut out of the world market altogether.

Similarly, a report by the United States Commerce Department found that, "Comparison of various measures of technology innovation and productivity in the telecommunication industry suggest a general trend of declining United States competitiveness relative to certain of its major trading partners, particularly Japan."

Lifting the manufacturing restriction will help United States compete in several ways. First, the Bell Cos. would have the incentive to increase their spending on research and development. There's little incentive today because of the manufacturing restriction.

Second, the Bell Cos. have a vast reservoir of knowledge about telecommunication networks and the telecommunications marketplace. Today, that experience is a vastly under-used resource. Not only are the Bell Cos. prohibited from competing in the manufacturing area, but they are seriously limited in their ability to collaborate with independent manufacturers.

Third, this legislation would allow the Bell Cos. not only to collaborate with other manufacturers, but to invest in them as well. Currently, entrepreneurs and small, startup companies cannot go to the Bell Cos. for funding because of the MFJ—the modified final judgment—restriction. Where do the small startup companies go? Some of them, unfortunately, have no choice but to turn to foreign-based investors.

Especially in the last decade, we have seen our ideas and inventions, such as VCR's, exploited by manufacturers

aboard. The pattern of foreign companies applying technology we have developed to manufacture new products is expanding in the telecommunications field. The bill before us today will help stop this trend by allowing American companies to do what they do best—invent, market, and produce. Without this legislation, our large and growing domestic market will be exploited increasingly by foreign manufacturers.

S. 173 will assure that we maintain a strong national economic base in the information and telecommunications manufacturing sector. It will promote our technological know-how. It will help our industry create the jobs and products to keep the United States in the forefront of this key advanced technology sector. I urge my colleagues to join in supporting this bill.

Mr. HOLLINGS. Mr. President, momentarily the distinguished Senator from Alabama will address the Senate relative to the bill.

We have been working out two amendments—one by the distinguished Senator from Ohio [Mr. METZENBAUM] and one by the Senator from Illinois [Mr. SIMON]. I am afraid I will have to move to table one of the Metzenbaum amendments.

But I want colleagues to know we will bring this thing to a head here shortly. I hope we can get rid of it momentarily.

If there are other amendments, domestic content or otherwise, we will have to deal with them if they come. But that is where we are right now.

Mr. President, I yield the floor.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SHELBY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I rise today in support of S. 173, the Telecommunications Research and Manufacturing Act of 1991.

I would like to commend my distinguished colleague, Senator HOLLINGS, for his leadership on this issue both in the 101st and 102nd sessions of Congress. I am a cosponsor of S. 173. This is a bipartisan bill and I believe that it will be the foundation for the much-needed revival of American competitiveness in the telecommunications industry.

Regional Bell Operating Cos. [RBOC's] have been operating under the restraints of modified final judgment [MFJ], the consent degree that broke up the Bell System, since 1982.

The AT&T breakup resolved years of controversy over how the company exercised its Government-sanctioned telephone service monopoly. As a result of the MFJ consent decree, the seven regional Bell Operating Cos. are allowed to offer local telephone services, but are prohibited from manufacturing telecommunications equipment and offering long distance and information services.

At the time, the Justice Department reasoned that ratepayers and Bell's competitors would be negatively impacted by the RBOC's control over local telephone service. It was the Department's contention that to avoid these perceived potential abuses, Bell Operating Cos. must be kept out of competitive markets.

While barring baby Bells from these activities was supposed to avoid monopolies similar to that of AT&T, what in fact has resulted is a monopoly of the Federal court system over U.S. telecommunications policy. S. 173 would reestablish the role of Congress in determining our Nation's telecommunications policies.

The MFJ has denied the United States the benefits of a competitive market. Since the consent decree resulting in the divestiture of AT&T, U.S. competitiveness has suffered tremendously.

For example: Over \$3 billion in U.S. telecommunications assets are now owned by non-U.S. interests. This figure is up from about \$200 million in 1985.

More than 70 U.S. telecommunications and high-technology companies are currently under Japanese and European ownership.

In 1980, 58 percent of worldwide telecommunications patents were issued to the United States. That figure dropped to 46 percent in 1989. Meanwhile, the Japanese share of these patents rose from 18 to 33 percent.

Members of this body often urge their constituents to "buy American." However, we would do well to remember that each time one of us uses or buys a telephone, it was manufactured overseas. All telephone sets and a third of all telephone processing equipment are manufactured overseas.

It is no wonder that the U.S. balance of trade in telecommunications is on a downward spiral. Department of Commerce estimates reveal that this deficit could amount to as much as \$7 billion by 1995, if we continue our current policy with regard to Bell Operating Cos.

Bell operating companies control more than half of this country's telecommunications assets. Yet, through the MFJ, these firms, with almost \$200 billion in assets, have been stifled and the United States has denied itself a tremendous technological resource by restricting Bell Operating Cos. from participating in technologies that are

transforming the world economy. This legislation will bring the United States back to the cutting edge in the telecommunications industry.

Mr. President, I think that the facts clearly show that foreign competitors, many with the backing of their governments, have taken the lead and are benefiting from the United States' restrictive telecommunications policy. Countries like Japan, France, and Germany are now in positions to overtake the U.S. telecommunications industry, which historically was a leader in the development and availability of telecommunication technology. By removing manufacturing restrictions and permitting Bell Cos. access to the market, S. 173 sets the stage to bring the U.S. telecommunications industry back to a position of technological leadership and competitiveness.

Consumers will greatly benefit from the passage of S. 173. By removing the restrictions on Bell Operating Cos., we open the door for U.S. citizens to enjoy telecommunications products and services already in use by citizens and businesses of other countries.

U.S. telecommunications companies continue to reduce their manufacturing operations. However, S. 173 presents us with the opportunity to bring some stability to the industry and begin the recovery of many of the over 60,000 U.S. manufacturing jobs lost with the implementation of the court decree.

The need for and benefits of competition to revive the U.S. telecommunications industry cannot be ignored. However, I share concerns that competition be fair. S. 173 contains a number of safeguards against anticompetitive actions with respect to RBOC's manufacturing activities.

The legislation prohibits the cross-subsidization of manufacturing by local telephone service and requires RBOC's to purchase equipment only from their manufacturing affiliates at the open market price. Bell Cos. must manufacture out of affiliates that are separate from the telephone company and are required to disclose information about their network to all manufacturers immediately upon making that information available to their manufacturing affiliates.

Also, the Federal Communications Commission [FCC] now has in place stronger regulations to protect against cross-subsidization, discrimination against other telephone companies, and preferential treatment to Bell Cos. in the sales of equipment by their manufacturing affiliates.

The effort to lift the manufacturing ban on Bell Cos. is supported by the FCC and the Departments of Justice and Commerce. Furthermore, in reviewing the history of the consent decree, it is my understanding that all parties involved in the divestiture settlement, including AT&T, agreed that

the MFJ restrictions should be removed as soon as it was determined by the Department of Justice that they are no longer necessary to protect competition. However, for reasons I do not understand, there are still those who oppose S. 173.

Mr. President, I agree with Senator HOLLINGS that removing manufacturing restrictions on Bell Operating Cos. is fundamental to the issue of American competitiveness. We must allow Bells to compete, otherwise the United States will be the runt in a world that telecommunications technology is transforming into a global community.

We cannot let that happen.

Mr. President, I yield.

Mr. DECONCINI. Mr. President, I rise in support of S. 173, and commend my distinguished colleague from South Carolina for his leadership in this area and so many others affecting our Nation's telecommunications policy. However, I would like to receive his assistance in clarifying the legislation's intent, as reflected in the report language.

I am particularly interested in assuring that the needs of education are addressed in our work on S. 173. We are all concerned about our Nation's education system, and want to offer our support to professional educators in the difficult and important work that they do.

As my distinguished colleague is aware, schools and other educational institutions would receive great benefit from expanded telecommunications services. If the Bells offer the proper equipment and services, students will have access to electronic research sources from around the world, and educators will be able to improve teaching strategies through communications with their professional peers. Specialized courses will be offered in the home as well as rural and other communities.

In light of this potential, I would hope that the Bell Cos. will devote attention and resources directly to education.

The report encourages the "BOC's * * * to focus their resources on developing access solutions to the public network for all people. * * *"

Mr. Chairman, do I understand the report correctly to be referring to public institutions, especially schools, along with "all people?"

Mr. HOLLINGS. I appreciate the comments of my colleague from Arizona. He is in fact correct, and the intent of our committee is to assure that the needs of education and other public institutions are addressed by the public telephone network.

We intend the legislation to encourage the Regional Bell Cos. to focus resources to develop access solutions, equipment, and services for use by schools and other education institutions. In order to accomplish this, it is

our firm expectation that the Regional Bell Operating Cos. will increase their investment in research and development for the public network, and for education services in particular.

Our plans are for the Commerce Committee to exercise continuing oversight of S. 173, in order to evaluate progress made towards these goals.

Mr. DECONCINI. I thank my colleague from South Carolina for his clarification. I am now confident of the bill's intent. I think that educators and others will be pleased to know that this excellent legislation will provide appropriate incentives for the Bell Cos. to serve our Nation's educational infrastructure.

I note that the Senate Commerce Committee report accompanying S. 173 contains on pages 18 and 19 the following language:

In entering the manufacturing market, the BOCs should seek to accommodate the alternate access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech and interpretation of information. The BOCs are encouraged to focus resources on developing access solutions to the public network for people, including those with disabilities.

As I understand S. 173, then, its goal is both to increase our Nation's competitiveness and to encourage the BOC's to apply their new authority to develop access solutions to the public network for people with disabilities. Is my understanding correct, Mr. Chairman?

Mr. HOLLINGS. The Senator is correct. We understand that the public switch telephone network is the primary means of access for the average citizen to basic and enhanced telecommunication services. We believe that the new authority to be granted by S. 173 will be used by the BOC's to engage in product development aimed at improving the network and, therefore, the means of access for people with disabilities and functional limitations.

Mr. DECONCINI. As the Senator from South Carolina is well aware, Congress recently enacted the Americans With Disabilities Act [ADA]. Title IV of that act creates dual-party relay services nationwide by adding a new section 225 to the 1934 Communications Act. New section 225(a)(2) requires the FCC to encourage the use of advanced technology, as appropriate. I would hope that the manufacturing capabilities to be permitted by the BOC's under the pending legislation would be applied not only to implement better and faster relays, but in time, to allow persons with disabilities even better access to telecommunications, perhaps even obviating the need for relays.

Mr. HOLLINGS. That is certainly my hope as well, and I would expect that the Commerce Committee would from time to time conduct oversight of the BOC's to determine the extent to which

they in fact apply their new authority to achieving these goals.

Mr. DECONCINI. Insofar as title IV of the ADA applies to all common carriers, I would hope that the intent of Congress as expressed in the pending legislation and as explained in the committee report quoted above would clearly establish that it is national policy that common carriers make their best efforts to use advanced technologies such as speech synthesis and, as it develops, speech recognition, to make the full range of telecommunications products and services accessible to persons with disabilities.

Mr. HOLLINGS. It is indeed, Senator, and I thank the Senator for making these points. It is these benefits that make enactment of S. 173 important to consumers.

AMENDMENT NO. 285

(Purpose: To increase the penalty for failure to maintain certain records)

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER] proposes an amendment numbered 285.

Mr. PRESSLER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. 4. ADDITIONAL AMENDMENT TO THE COMMUNICATIONS ACT OF 1934.

Section 220(d) of the Communications Act of 1934 (47 U.S.C. 220(d)) is amended by deleting "\$6,000" and inserting in lieu thereof "\$10,000".

Mr. PRESSLER. Mr. President, I want to explain this amendment briefly. The amendment would provide for an increase in the fine for a violation of the Communications Act by any telephone company that fails or refuses to keep accounts, records, and memoranda on the books in the manner prescribed by the Federal Communications Commission.

This amendment is intended to give Federal regulators the additional tool they need to assure that any telephone company will keep the records regulators need to protect the interests of ratepayers.

Also, I think it should be a signal to some of our telephone companies to be more open about some of these matters. I was talking with a reporter from one of the papers, and he said he had made an inquiry about a consent decree violation was sent several boxes of papers, which did not answer the question.

I hope our large companies will be open to Members of Congress and the public when there is a violation of the law, and even when there is not. But

there has come to be a practice of obfuscating the facts with boxes and cartons of papers rather than writing a clear one- or two-page letter or answer. And in the whole regulatory area, I have had the feeling that some telephone companies have been unnecessarily nonresponsive. That is just a general statement.

I hope this amendment sends a signal to those companies and individuals to be more open with inquiries about their business. This amendment provides for a \$4,000 increase in the fine for companies who fail to keep records in the manner prescribed by the FCC. This is a clear signal that Congress is very serious that companies are to do their business in a proper, honest, fair way. My minority views filed in the Commerce Committee report on this legislation further explain my views on this matter.

I ask unanimous consent that my minority views follow my remarks.

Mr. President, I urge the adoption of the amendment.

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

MINORITY VIEWS OF MR. PRESSLER

I share Chairman Hollings' goal to increase American innovation and growth in the telecommunications equipment industry, and applaud his leadership on this key issue. This legislation passed the committee by voice vote last year.

At that time, though, a number of consumer groups, senior citizens, small business organizations, and state regulators voiced concern that, because of the lack of adequate anti-competitive safeguards, some companies may abuse the freedom this legislation would give them. These groups were concerned that a BOC could use its control of the local phone market to gain an unfair advantage when it enters an unregulated line of business. They argued that higher residential telephone rates could result from a BOC's decision to underwrite with ratepayer supported capital and personnel the expenses of launching its unregulated business ventures. These groups were concerned that consumers and competitors could be harmed by having to compete against products subsidized by ratepayer funds. And detection of these practices could be made very difficult by informal agreements and "creative accounting" of huge corporations who could bury ratepayer subsidization in the books, even with the separate subsidiary and other protection devices incorporated in this bill.

These groups and individuals argued that telephone companies are a unique business. My understanding of this aspect of their concern was best summarized by U.S. District Court Judge Harold Greene's comment that:

"To the extent that these companies perceive their new unregulated businesses as more exciting and more profitable than the provision of local telephone service—as they obviously do—it is inevitable that their managerial talents and financial resources will be diverted."

They point out that because telephone companies control the local telephone exchanges and are guaranteed a rate-regulated income, they have access to ratepayer funded capital and possess the market power to use against their competitors in unregulated

lines of businesses. This concern is predicated on the belief that a company could effectively hide prohibited practices through informal agreements, creative accounting, or other methods.

Last year I did not object to this legislation. At that time I was not personally aware of any systematic evidence of violations or of deliberate efforts to undermine efforts to investigate ratepayer impact issues related to this legislation. However, I became concerned when I read subsequent press reports of a DOJ investigation into consent decree violations by US West, which serves my constituents in South Dakota. The investigation led to the assessment of a record \$10 million fine against US West for engaging in anticompetitive behavior, providing information services prohibited by the consent decree, and violating the consent decree's ban on manufacturing telecommunications equipment. Part of the agreement was to drop the investigation of these and other activities under question. Because of the importance the US West case had to my state, and because of its relevance to this legislation, I tried to obtain more information as to how these practices could affect ratepayers in my state.

The nature of US West's record keeping make it impossible for regulators or government officials to prove or disprove with certainty whether violations occurred. A DOJ memorandum filed in Judge Harold Greene's U.S. District Court warned US West that: "[US West's] admitted history of noncompliance will provide a substantial basis for finding that any similar additional conduct is 'willful' and hence actionable as criminal contempt of the decree."

As a practical matter it is clear that a company of this size can frustrate legitimate investigative efforts, as I have recently learned first hand. I hold no great hope that any regulatory agency will have any better luck at receiving definitive answers in the future if US West continues its present practice of apparent stonewalling.

Because the majority of my constituents are US West ratepayers, this case is of particular concern to me. Although DOJ wisely and admirably stipulated that the \$10 million fine should come out of shareholder funds rather than ratepayers, even they acknowledged that the fungibility of money makes it impossible to insulate the consumer from paying the ultimate tab.

In addition to the potential consumer impact of the fine, I raised concerns about the ratepayer impact of US West's actions to the extent that telephone company funds, which are generated by the ratepayers, are being used to develop, market, and operate these theoretically unrelated businesses. During questioning at the Senate hearings, Mr. James Rill, Assistant Attorney General, Anti-trust Division, DOJ, indicated his confidence that US West telephone companies and their employees had engaged in the activities involved in the violation of the consent decree, but had no basis on which to estimate the magnitude of ratepayer impact related to the 13 activities in question. Only US West could answer this question definitively.

I think it is important to ascertain the amount of ratepayer resources directed towards these activities. Not only would such resource diversion put ratepayer service and funds at risk, but it also would put competitors at an unfair disadvantage. And as Judge Greene notes, it can distract them from their primary mission of providing and improving basic telephone service. I contacted DOJ and

the FCC to ascertain background information on this matter, and asked US West to supply information on the extent to which ratepayer funds were used in connection with the development, operations, marketing, etc., related to these activities. Understandably, neither the FCC or the DOJ are able to answer the ratepayer impact question without complete information from US West.

Despite my repeated attempts to obtain answers from US West, they responded by altogether ignoring or redefining the questions as to how much ratepayer funding was used to launch and operate the practices questioned in the DOJ lawsuit. At best their response can be characterized as avoiding the question; at worst it was disingenuous and misleading. For example, US West in an initial response sent to my office five boxes of paper with no organization or information describing the contents. In subsequent letters it misrepresented staff telephone conversations and later simply redefined the question so narrowly as to be—as one consumer advocate put it—"an insult to our intelligence." Further inquiries on basic information as to how much telephone company staff time and resources were invested in developing and marketing the 13 activities questioned by DOJ were answered with "we couldn't provide that type of information." Yet US West went to great pains to provide spontaneously, in writing, exactly how many hours and employees it claims to have devoted to my simple, straightforward request for information. So I find it hard to understand how a business so efficient at record-keeping in one area is so incapable of keeping track of how it spends ratepayers' resources. This uncooperative non-response makes it impossible to determine the ratepayer impact of US West actions, and gives me great concern that an unwilling corporation of this magnitude cannot be monitored sufficiently to protect its ratepayers from the abuses mentioned by consumer groups, seniors, small businesses, and others.

I am beginning to understand the frustration Judge Greene expressed in the earlier stages of this case when he noted that: "US West has been engaged in a systematic and calculated effort to frustrate the Justice Department's legitimate demands for information, frequently by patently frivolous and usually dilatory maneuvers."

I commend the Chairman for his efforts to include safeguards in this legislation in hopes they will prevent actions similar to those US West has undertaken. The US West experience, however, leads me to wonder whether those legislative safeguards can prevent such a huge corporation from using its local monopoly to compete unfairly, and from juggling and confusing its book work so as to make it impossible for any regulatory agency or watchdog group to adequately protect consumers. Virtually every group we contacted regarding this case voiced the unanimous opinion that US West's response not only avoided the question but was carefully crafted to avoid supplying any meaningful information from which to conduct an independent analysis using realistic definitions and relevant data.

The bottom line here is trust and corporate accountability. My experience with most telephone companies would generally lead me to give them the benefit of the doubt, as I have done in the past. I have found the vast majority to be straightforward in their dealings. I still hope US West will be more directly responsive in the future. But my first priority is to my con-

stituents, and they are monopoly bound to US West. My vote against this bill in Committee was based in large part on my disappointment with US West's dilatory tactics and misrepresentations to date. Like Judge Greene I have felt frustrated, in attempts to get straight answers to the questions asked. US West is our largest single telephone company, with monopoly control over most of my State. Its actions have a profound impact on the vast majority of my constituents. I will continue in my attempt to get a straight answer to my inquiry. Pending the outcome of that process, I will reserve judgment with respect to future votes on this legislation. I agree with Senator Hollings desire to move this technology forward. But we must take care to protect consumers, seniors, and small businesses in the process. I hope we can do so. But for the time being, I must reluctantly voice my opposition to this legislation based on this particular case which affects my State so profoundly.

Mr. HOLLINGS. The amendment has been cleared on this side, Mr. President.

The PRESIDING OFFICER. Is there further debate on the amendment?

The question is on agreeing to the amendment.

The amendment (No. 285) was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 286

(Purpose: To require independent annual audits of Bell Telephone Co., and to require the Federal Communications Commission to review and analyze such audits and report its findings to Congress)

Mr. SIMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON] proposes an amendment numbered 286.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, between lines 2 and 3, insert the following new subsection:

"(k)(1) A Bell Telephone Company that manufactures or provides telecommunications equipment or manufactures customer premises equipment through an affiliate shall obtain and pay for an annual audit conducted by an independent auditor selected by and working at the direction of the State Commission of each State in which such Company provides local exchange service, to determine whether such Company has complied with this section and the regulations promulgated under this section, and particularly whether the Company has complied with the separate accounting requirements under subsection (c)(1).

"(2) The auditor described in paragraph (1) shall submit the results of such audit to the Commission and to the State Commission of each State in which the Company provides telephone exchange service. Any party may submit comments on the final audit report.

"(3) The audit required under paragraph (1) shall be conducted in accordance with procedures established by regulation by the State Commission of the State in which such Company provides local exchange service, including requirements that—

"(A) the independent auditors performing such audits are rotated to ensure their independence; and

"(B) each audit submitted to the Commission and to the State Commission is certified by the auditor responsible for conducting the audit.

"(4) The Commission shall periodically review and analyze the audits submitted to it under this subsection, and shall provide to the Congress every 2 years—

"(A) a report of its findings on the compliance of the Bell Telephone Companies with this section and the regulations promulgated hereunder, and

"(B) an analysis of the impact of such regulations on the affordability of local telephone exchange service.

"(5) For purposes of conducting audits and reviews under this subsection, an independent auditor, the Commission, and the State Commission shall have access to the financial accounts and records of each Bell Telephone Company and those of its affiliates (including affiliates described in paragraphs (6) and (7) of subsection (c)) necessary to verify transactions conducted with such Bell Telephone Company that are relevant to the specific activities permitted under this section and that are necessary to the state's regulation of telephone rates. Each State Commission shall implement appropriate processes to ensure the protection of any proprietary information submitted to it under this section.

Mr. SIMON. Mr. President, I am pleased to say we have modified the language in this amendment a little as originally drafted, and I believe it is acceptable to all sides.

This amendment calls for an audit by the State regulatory bodies to see that we are complying with the law and that there be a report of the FCC to Congress. It is a protection for consumers. It is a way of making sure the law is being complied with.

I know of no opposition, and I hope the amendment will be accepted.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Illinois for this improvement to the bill. What you have in this amendment, in essence, is clear intent of the Congress that the Bell Cos. should be audited. This is quite obvious in light of the track record that brought about the modification of final judgment in 1984.

The Federal Communications Commission tried to audit the monolith AT&T, and by the time we would catch up with an audit and get an order, it would be obsolete or unable to be enforced. And we got into an antitrust case which resulted in the breakup of

AT&T by the court itself in the modification final judgment.

In this light, 20 percent of the Bell Cos.' business is interstate business and 80 percent is intrastate. The FCC can audit only the interstate business and the states can only audit the intrastate business.

The Senator from Illinois says let us clarify that the States shall conduct audits and have access to the books and records of the telephone company itself and have access to the affiliates themselves, who do business with the Bell Telephone Co. This will ensure it will be a true, comprehensive, effective audit.

So it has been cleared on this side, and I thank my distinguished colleague for his offering it, and I will support the amendment.

Mr. SIMON. I thank the distinguished Senator from South Carolina. Let me add that Senator DECONCINI is a cosponsor of this amendment. I should have added that.

Mr. HOLLINGS. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (No. 286) was agreed to.

Mr. SIMON. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, the senior Senator from Ohio is presently approaching the floor. I think we have two amendments worked out with the Senator. We will clear those on both sides of the aisle now, and I think they are to be cleared. It will save us a good bit of time. They are worthy amendments.

The Senator from Ohio is here. After these amendments, the Senator from Pennsylvania [Mr. SPECTER] will want to be heard on the bill. There could be a couple other amendments. I will be conferring with the distinguished Senator from Ohio on that, to see whether we have something we can accept.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 287

(Purpose: To add a provision on the application of the antitrust laws)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 287.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following new section:
SEC. 4. APPLICATION OF ANTITRUST LAWS.

Nothing in this Act shall be deemed to alter the application of federal and state antitrust laws as interpreted by the respective court.

Mr. METZENBAUM. Mr. President, it is my understanding that this amendment is acceptable to both managers of the bill. It is very simple. It spells out specifically that, "Nothing in the Act shall be deemed to alter the application of Federal and State antitrust laws as interpreted by the respective courts." It is my understanding it is acceptable to the managers and, if so, we can proceed.

Mr. HOLLINGS. Mr. President, the amendment has been cleared on both sides of the aisle, and we would be delighted to accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 287) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 288

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 288.

On page 11, line 3, strike "equipment," and insert in lieu thereof "equipment, consistent with subsection (e)(2)."

Mr. METZENBAUM. Mr. President, there is some question as to whether one portion of the bill was limiting the application of another portion of the bill having to do with the subsidization of manufacturing affiliates, and this clarifies that. I am quite sure the

amendment is acceptable to the managers of the bill.

Mr. HOLLINGS. Mr. President, the distinguished Senator is correct. On the previous page, subsection 2 forbids the cross-subsidization by a manufacturing affiliate with the Bell Co. This amendment reiterates exactly that prohibition, which is the intent. The distinguished Senator wanted to make it absolutely clear. We accept the amendment. It has been cleared.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 288) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 289

(Purpose: To provide the Federal Communications Commission and State utility commissions with access to information concerning transactions between a Bell Telephone Company and its manufacturing affiliates)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 289.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 3, strike lines 14 through 24 and insert the following:

"(1)(A) such manufacturing affiliate shall maintain books, records, and accounts separate from its affiliated Bell Telephone Company, that identify all transactions between the manufacturing affiliate and its affiliated Bell Telephone Company.

"(B) the Commission and the State Commissions that exercise regulatory authority over any Bell Telephone Company affiliated with such manufacturing affiliate, shall have access to the books, records, and accounts required to be prepared under subparagraph (A), and

"(C) such manufacturing affiliate shall, even if it is not a publicly held corporation, prepare financial statements which are in compliance with Federal financial reporting

requirements for publicly held corporations, and file such statements with the Commission and the State Commissions that exercise regulatory over any Bell Telephone Company affiliate with such manufacturing affiliate, and make such statements available for public inspection;

Mr. METZENBAUM. Mr. President, this is a significant amendment. It has to do with State access to the records of the Baby Bells. It is designed to provide both the FCC and the State utility commissions with access to the books and records of a Bell manufacturing affiliate.

Absent this amendment, the State regulators would not have that authority and of course it is applicable only to the State regulators having that authority within their respective jurisdictions.

The access is essential so regulators can assure a proper allocation of costs between the Bell Telephone Cos. and their manufacturing affiliates. I am frank to say that I have my doubts about whether regulators can ever come close to preventing all cross subsidies. But at the very least, this amendment will help them in that direction because both the FCC and State regulators would have access to the books and records that would help them accomplish that task.

It is all this amendment is designed to do. It is all it will do. It is my understanding the amendment is acceptable to the managers of the bill.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. The amendment of the distinguished Senator from Ohio is well taken. There are no hidden balls, or tricks, or otherwise. The intent of the Senator from Ohio is the same as that of the Senator from South Carolina, that we do have audits and we have them as we stated in the Simon amendment, both at the Federal and State level. You cannot get a valid audit unless you have access to the books. I thought it was a given. The distinguished Senator from Ohio wants to make sure of it and we have worked this amendment out. It has been cleared on both sides. I am glad to support the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

So the amendment (No. 289) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, the Senator from Ohio does not intend to offer any additional amendments. I considered doing so. I very strongly support the Inouye amendment. Senator INOUE saw fit to withdraw it, and understandably so. I am not in favor of this bill. I think our amendments make

it a better bill than it was, but I still have concerns about the Baby Bells getting into the manufacturing business.

I am concerned it will have a negative impact upon the consumers of this country and will increase their costs. I am concerned that, in a sense, we are going back and undoing the restrictions that we had originally placed on AT&T through the courts requiring the breakup. Only now each of the Baby Bells is a multibillion-dollar corporation on its own and they want to get into the manufacturing business. I do not think that will help the consumer of this country.

I have further concerns about the domestic content provisions, and whether or not there will be jobs protected here in this country. I know I am in disagreement with my colleague from South Carolina on this point.

On the 40-percent provision contained in the bill, I think it is drafted in such a manner it will be very difficult to provide any assurances that there will not be more product manufactured overseas than domestically. But I think—I know the House of Representatives intends to give serious and full consideration to this legislation.

I can count. I know my colleague from South Carolina has substantial support in this body. I am hopeful there will be further considerable improvement made in the House when it gets to that body. I will not vote for this bill. I do not think it is good legislation but I do not intend to delay its coming to a vote for final passage on the floor of the Senate and then hopefully we will see it come back in a more improved form from the conference committee.

I want to express thanks for the cooperation and courtesy accorded me by the Senate from South Carolina. We happen to be in disagreement on the general thrust of this bill but he certainly always conducts himself in a gentlemanly way and it has been a privilege to work with him.

Mr. HOLLINGS. It has been my pleasure to work with the Senator from Ohio. I think we have saved a good bit of time. I think we have done it in a deliberate fashion. I think the staff of the Senator from Ohio and our own staff the committee. I am sorry he cannot support the bill but I really think it is because of any political persuasion on my part that I have the votes. I think the bill has the votes. I really do think this is a consumers' bill.

There is no question in my mind we are looking at a problem. We have tried, under the so-called manufacturing restriction and, with the approach, while we have a multiplicity of all kinds of designs and developments, it has all been foreign, to the injury of our own United States of America.

We have seen this happen now in basic industries such as textiles where you have to put in a bill to guarantee the foreign manufacturer the majority of the business. No one does that out of goodness of his heart, but that is how desperate we have become with steel, with textiles, and electronics; you can go down the list, hand tools, machine tools, and otherwise.

So, I think we really are looking out for consumers, and if I did not feel that strongly about it—I am not looking out for the Bell Cos., they are richer than the Senator from Ohio and the Senator from South Carolina. They are more than capable of taking care of themselves and they are publicly regulated entities and they are doing extremely well.

My problem is they are doing extremely well in downtown London, and in downtown Budapest, and in downtown Wellington, New Zealand, and in Mexico City, and Buenos Aires, and not in Charleston, SC. I am trying to bring them home.

On the audit amendment adopted earlier with the Senator from Illinois, it is important that we protect the proprietary information of the Bell Cos.' manufacturing affiliates.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, the three amendments I have offered which have been accepted by the Senator from South Carolina will improve the bill and provide consumers with a greater measure of protection against potential monopoly abuses. The language in section 227(f) of the bill, which suggests that ratepayer resources could be used to finance a Bell manufacturing affiliate's product development activity, has been amended to clarify that it is not intended to permit cross subsidy. Section 227(c)(1) has been amended to provide that each State regulatory commission has access to the books and records of a Bell manufacturing company affiliated with a Bell telephone company within its jurisdiction. State regulators must have access to the manufacturing company's books and records in order to help prevent harm to ratepayers.

Finally, the bill has been amended to make it clear that the Bells remain fully subject to the antitrust laws. The Bells, the sponsors of the legislation and the Justice Department all agree that this legislation does not grant the Bells any exemption under the antitrust laws. Stephen Shapiro, the Bells' antitrust lawyer, testified before my Antitrust Subcommittee that:

Relief from the manufacturing restriction does not, of course, imply any immunity from regulation or judicial supervision. . . . The Bell Cos. would be subject to the full range of civil and criminal remedies should they engage in anticompetitive practices.

This amendment merely codifies that understanding.

While these amendments have improved the bill, I still cannot support it. The question posed by this bill is whether or not the seven regional telephone monopolies known as the Baby Bells, whose combined annual revenues amount to over \$70 billion, ought to be allowed to manufacture the equipment which is used in their local telephone networks.

While this may be a complicated issue, it is of critical importance to anyone who pays a telephone bill every month. The cost and quality of the switching and transmission equipment used in the local telephone network has a direct and significant impact upon the telephone rates paid by consumers.

The Baby Bells currently are forbidden from making telephone network equipment because history has demonstrated that consumers get hurt whenever the local phone monopolies can make the equipment which is used in their telephone networks. The harm occurs because the phone companies can simply buy equipment from themselves at inflated prices and shift excess costs into consumers. History has shown that it is almost impossible for regulators to prevent such monopoly abuses.

But the bill on the floor today asks us to forget history. We are asked to forget the fact that on four different occasions in this century—1913, 1925, 1949, and 1974—the Bell Cos. abuse of their local telephone monopolies has prompted serious antitrust challenges from the Government. We are asked to forget the fact that in each instance, the monopoly power over local telephone service was used to hurt consumers and stifle competition in related markets. And we are asked to forget the fact that regulation has rarely been able to control such monopoly abuses.

The central premise of this bill is that the best thing the Senate can do for both consumers and competitors in the telecommunications business is to allow seven regional monopolies to get into the business of making telephone network equipment.

I don't share that view, Mr. President. I think the Baby Bells are doing just fine right now. These are companies that average about \$10 billion apiece in annual revenues; and they are guaranteed at least a 11-14 percent return on their local phone business, which is still their major business. In other words, the only parties that are certain to benefit from this legislation are multibillion-dollar monopolies that are guaranteed an annual profit.

What about consumers. That's why every major consumer group in the country, all the State utility consumer advocates, and the AARP, all oppose this legislation.

Mr. President, this bill should be judged according to a simple standard: Based upon our understanding of history, monopoly behavior, and the effectiveness of regulatory oversight in the telephone industry, is this bill likely to help or hurt both consumers and competition?

I think the answer is that it will hurt both consumers and competition. And I want to outline for the Senate the basis for my conclusion.

At the outset, let me explain the key principle which I believe should guide analysis of this bill. Legislation and policy involving telephone network equipment should encourage the Bell Telephone Cos. to buy the highest quality equipment at the lowest possible price. The reason for this is simple: Ratepayers—that is, consumers—ultimately pay the costs of the network equipment purchased by the local phone companies. If those companies are purchasing the best possible equipment at the lowest possible price, then telephone rates should not be artificially high and competition should be protected. But if public policy provides the local telephone monopolies with the opportunity to purchase equipment at inflated prices, then both consumers and competition will be hurt.

That's why the phone company was broken up in the first place. When AT&T provided both long-distance and local phone service to nearly the entire Nation, it purchased virtually all of the equipment used in the phone network from its equipment manufacturing subsidiary, Western Electric. In the antitrust case that led to divestiture, the Government showed that AT&T's local telephone subsidiaries bought from Western Electric, even when competing manufacturers made better quality equipment at a lower price. The evidence also showed that AT&T's local phone companies provided Western Electric with preferential access to key information about the equipment needs of the local exchange networks. In addition, Judge Greene concluded that AT&T's manufacturing affiliate was being improperly subsidized by the Bell System's telephone ratepayers.

That kind of self-dealing and cross-subsidization hurt both consumers and competition. Regulators were powerless to control such monopoly abuses. Separating the local phone monopolies from long-distance and manufacturing proved to be the only effective means of preventing further harm to consumers and competition. That's what Judge Greene did in 1982. And that is what this bill is trying to undo.

The bottom line is that the phone company was broken up because, in Judge Greene's words:

A combination of vertical integration and rate-of-return regulation has tended to generate decisions by the operating companies to purchase equipment produced by Western Electric that is more expensive or of lesser

quality than that manufactured by the general trade.

Let's be clear. If we adopt the bill before us today, we will reinstate the same combination of vertical integration and local service regulation that led to antitrust abuses in the telephone business.

Mr. President, I have not been happy with some of the after-effects of divestiture. In some critical ways, consumers are worse off: Local rates have risen, phone bills are confusing and customer service has suffered. Meanwhile, the Baby Bells have created dozens of new subsidiaries for ventures into unregulated markets. Judge Greene has stated that this diversification "is bound to diminish their management's interest in and attention to the local telephone business." He also has suggested that the postdivestiture rise in local phone rates may be partly due to "the diversion of ratepayers' moneys to finance the Bells' ambitions to become full-fledged players in conglomerate America."

Regardless of what caused the rise in local phone rates, those increases have not been good for consumers. On the other hand, divestiture has provided some benefits: Long distance rates have fallen, thousands of small businesses have entered the equipment market, and many new products have been introduced.

While divestiture has brought about many changes, one critical fact remains the same: Local telephone service is still a monopoly. Consumers and small businesses make all their calls through one local phone company. Long-distance carriers like AT&T, MCI, and SPRINT still rely on the local network for the initiation and completion of almost all long-distance calls. And big business relies on the local phone network to transport information which is critical to domestic and foreign commerce.

In short, the local telephone monopoly is still the critical factor for the average American. It is true that there are seven regional monopolies providing local telephone service, instead of only one national monopoly. But the incentive and ability to leverage that monopoly power has not necessarily diminished, simply because there are now seven regional monopolies, rather than just one national monopoly.

Indeed, since divestiture, the Bells have shown themselves to be capable of leveraging their monopolies in harmful ways. In February, U.S. West agreed to pay \$10 million for 4 violations of the consent decree; another 9 violations were dropped. Last year, NYNEX paid a \$1.4 million fine after it was found to have inflated the purchase price of office equipment and supplies which it bought from one of its unregulated subsidiaries. The excess costs were passed onto NYNEX's telephone ratepayers. The overcharges in that case totaled

\$118 million. Last year, Bell Atlantic agreed to pay \$42 million to settle charges that it engaged in deceptive marketing practices designed to make Pennsylvania ratepayers buy more services than they wanted or needed. And the Ohio consumers counsel, along with other Midwest consumer advocates, reported that Ameritech improperly charged ratepayers for millions of dollars in lobbying, advertising, and promotional expenses. So, Mr. President, the Baby Bells have used their monopoly power to hurt both consumers and competition. My concern is that this legislation will give them more opportunities to do so.

Mr. President, let's look at the practical impact of this bill on the real world. If the Bells are allowed to make the equipment which is used in their phone networks, they are going to buy most or all of their equipment from themselves. That's not just my view, Mr. President. It is a view shared by the Department of Justice, Judge Greene, the D.C. Circuit Court of Appeals and antitrust experts from across the spectrum. Let me read to you an excerpt from last year's decision on the consent decree by the D.C. Circuit Court of Appeals.

The Department of Justice makes the significant concession that any Bell Operating Co. that chooses to manufacture central office switches, either unilaterally or through a joint venture, will buy all (or nearly all) of its requirements from the affiliated producer—thereby foreclosing a certain portion of the market, regardless of whether or not there are economies to be gained from such integration.

So the Justice Department, which supports this bill, concedes that there will be considerable self-dealing if the Bells are allowed into the manufacturing of equipment. And of course they would have to make that concession. Any practical person would recognize that if you have a choice between buying your equipment from yourself and buying them from someone else, you buy from yourself. You do that because you have got to maximize profits for your company and your shareholders.

While the Justice Department recognizes that there will be self-dealing, they are less concerned about the consequences of such conduct, and believe that self-dealing abuses can be effectively policed. Their view is not shared by other antitrust experts around the country. Prof. Phillip Areeda of Harvard, who is perhaps the leading antitrust expert in the country, has written about the consequences of self-dealing. He has stated that:

Each Bell monopoly is likely to purchase its own equipment rather than better or cheaper equipment made by others. A regulated monopoly has powerful incentives to purchase from itself, even if better and cheaper equipment is available elsewhere, and regulatory safeguards are likely to be ineffective to prevent it. * * * It follows that society would not receive the benefits of the lowest price or the most advanced and reli-

able equipment. Hence, consumers would be exploited through higher prices and worse equipment * * *. Costs are likely to be higher, quality and innovation lower, and prices higher. The root cause is self-dealing with little regard for price or quality. Self-dealing provides a guaranteed market that dulls competitive pressures toward innovation, high quality, low costs and prices.

Robert Bork, whose views on anti-trust in general and vertical integration in particular are almost totally different from mine, agrees that allowing the Bells into manufacturing "would injure both competition in the markets the Bells enter and the ratepayers in the telephone service markets over which the bells have monopoly control." Judge Bork has written that the injuries would ensue because the Bells—

Simply would claim that their affiliated manufacturers made products superior to those of other manufacturers, regardless of their actual quality, and would refuse to purchase anything else. Although the equipment might cost more, they could pass the expense onto ratepayers.

Mr. President, the concern about self-dealing abuses arises because it is exactly what has happened in the past whenever one company has been both an equipment manufacturer and a monopoly provider of phone service.

Prior to divestiture, the Bell Operating Cos. bought virtually all of their equipment from Western Electric, even when, as Judge Greene put it, "A general trade product was cheaper or of better quality * * *." Similarly Bell Operating Co. purchasing officials were encouraged—

To wait until a Western [Electric] product comparable to the desired general trade equipment was available, and they were required to provide detailed justification for general trade purchases which were not necessary for the purchase of Western equipment.

GTE, which has local phone monopolies scattered around the Nation, also engaged in self-dealing abuses when it manufactured telephone equipment. The Bells submitted testimony to a hearing held by my Antitrust Subcommittee in which they argued that Congress should look at how GTE behaved when it was involved in equipment manufacturing. But the fact is that GTE did engage in anticompetitive and anticonsumer self-dealing when they were in the equipment business. In fact, they were found guilty of violating the antitrust laws.

The judge in the GTE case stated that—

GTE has actually used its vertical structure to irrevocably foreclose its full market share by taking every means to exclude any chance, howsoever small, of any portion of it being served by competitor manufacturers no matter how superior their products, services or prices.

The judge also stated that:

GTE's conduct in its in-house dealings manifests an objective to maximize its profits.

The judge went on to state that:

The single most alarming aspect of GTE's vertical integration and resultant in-house dealing is the use of its monopoly leverage in the telephone operating market to foreclose competition in the telecommunications equipment industry. GTE has betrayed its public trust * * *.

If the Bells believe that GTE's conduct provides guidance as to how S. 173 will affect the manufacturing market, then Senators ought to ask themselves whether it is a good idea to pass this legislation.

The NYNEX procurement scandal, which was finally blown open last year, demonstrates that the Baby Bells are just as inclined to self-deal as was GTE and the old AT&T. In that case, NYNEX established a purchasing subsidiary—Material Enterprises Co.—known as MECO, which was set up to buy office equipment and supplies and perform other purchasing and service functions for the NYNEX operating companies. NYNEX corporate policy dictated that the local phone companies should use MECO as often as possible, even though it meant paying inflated prices for the supplies and services that MECO provided. As I mentioned earlier, the overcharges in that case amounted to \$118 million.

In each of the examples I have cited—NYNEX, GTE, and AT&T—there were internal company policies and rules which encouraged self-dealing by the local phone companies, even if it meant that consumers would be paying higher phone rates. It is extremely difficult for regulators, no matter how conscientious, to police internal corporate policies, in order to prevent the adoption, either formally or informally, of rules and policies designed to encourage self-dealing.

Now there are some who claim that the NYNEX scandal shows that regulators are capable of policing self-dealing abuses. But the fact is that the NYNEX scandal was not uncovered by regulators, but came to light only after news reports first appeared in the Boston Globe. The news reports were based on information provided by a whistleblower who was subsequently fired by NYNEX. Robert Abrams, the New York attorney general, stated that NYNEX officials "resisted us every inch of the way" while his office was trying to gather information about the procurement scandal. And Peter Bradford, the chairman of the New York Public Service Commission—the State regulatory agency which has made a valiant effort to grapple with this matter—testified before my Antitrust Subcommittee that no one should take comfort over the fact that NYNEX ultimately was caught. Chairman Bradford stated:

I think you could never hope to fully police the kinds of difficulties that arise when you link a competitive enterprise of the size and scale of manufacturing in the telecommunications industry with a monopoly bottleneck group of customers. Until either competition

erodes that monopoly or sufficient safeguards are in place to really assure the independence of the operating company decisionmaker—safeguards that are not in this legislation—I don't think any regulator, in good conscience could tell you that this was a policeable marketplace.

So, Mr. President, experience tells us that if you link manufacturing with monopoly phone service, you will see self-dealing abuses, and the regulators will have difficulty preventing the problem.

The danger for consumers is that self-dealing will lead to higher phone rates. Every major consumer group in the country opposes this bill because of their concerns that if the Bells buy equipment from themselves, rates will go up.

Rates can rise in one of two ways. First, the Bells can simply buy from themselves at inflated prices and pass the costs on to their ratepayers. Because a switch is a highly complicated piece of equipment—and can be customized to meet the particular needs of an operating company—it is difficult for regulators to determine whether the Bells will have paid too much.

Alternatively, the Bells can force ratepayers to bear an excessive share of the costs associated with their manufacturing business. Each Baby Bell is a diversified holding company, with both regulated and unregulated businesses. The holding company incurs substantial joint costs, and it has powerful incentives to saddle ratepayers with an excess share of those costs. As more costs are loaded onto the rate base, phone bills rise in order to ensure that the operating companies receive their guaranteed rate of return. Regulators are supposed to disallow excessive cost-shifting onto the rate base. Unfortunately, they have never been able to track costs accurately. The last time the GAO looked at the FCC's ability to control cross-subsidy—back in 1987—it concluded that the Commission could not do the job. The GAO found that:

The level of oversight FCC is prepared to provide will not provide telephone ratepayers or competitors positive assurance that FCC cost allocation rules and procedures are properly controlling cross-subsidy.

The holding company structure of the Baby Bells makes the task of tracking costs that much harder. For example, a staff report by the California Public Utilities Commission states that:

The operations and methods of Pacific Telesis bring to life the worst nightmares of regulators. There appears to be no advantage to the holding company structure except to the unregulated businesses of Pacific Telesis, which are cross-subsidized at every turn by Pacific Bell.

The bottom line is that consumers risk having to pay higher phone rates if the Bells are allowed into manufacturing.

Now what about the impact on the marketplace? Judge Greene believes that all of the Baby Bells will engage in self-dealing, thereby foreclosing competition in up to 70 percent of the equipment manufacturing market. The Justice Department has estimated that 5 to 15 percent of the competition in the telecommunications equipment manufacturing market will be foreclosed. The D.C. Circuit Court of Appeals, noting these differing estimates, stated that "there seems to be no dispute that some substantial portion of the equipment market will be foreclosed."

Reduced competition raises the threat of higher prices and lower quality goods. The threat of foreclosure also would have an adverse impact on non-Bell purchasers of telecommunications equipment—about 30 percent of the market. The loss of independent suppliers would hurt non-Bell purchasers of telecommunications equipment because the Bells, with a guaranteed market to supply, would not be subject to the same competitive pressures as are independent suppliers.

So look what we have, Mr. President: If this bill passes most of the Bell sector of the network equipment market will be foreclosed by self-dealing. Meanwhile, the non-Bell sector of the market—in which companies like MCI, American Express, and others purchase telecommunications equipment—will be hurt because the market is likely to be dominated by self-dealing monopolies, which could raise prices and reduce competition.

Besides simply buying from themselves at inflated prices or saddling ratepayers with excessive costs, there are other methods by which the Bells could threaten competition and hurt consumers. They could design their phone networks in a manner that would, in the words of Judge Bork, "make their systems incompatible with equipment made by other manufacturers."

The Bells could inhibit competition by providing their manufacturing affiliates with advance notice of upcoming equipment needs or changes in the design of the local exchange network. This head start would give them a critical advantage over other equipment manufacturers. Again, this is not a hypothetical concern, but was one of the factors in the Government's original antitrust suit against AT&T. Judge Greene noted that prior to the decree, Western Electric was frequently granted:

Premature and otherwise preferential access to necessary technical data, compatibility standards, and other information about the operating companies' needs and requirements and the evolving characteristics of the local exchange. The delays encountered in these respects by Western Electric's competitors frequently made it difficult, if not impossible for them to compete for operating company business.

Now Mr. President, there are safeguards in S. 173 which are designed to prevent the Bells from engaging in anticompetitive and anticonsumer behavior. But these safeguards are not strong enough to ensure that consumers will be protected.

For example, a provision in S. 173 which requires the FCC to issue regulations to prevent the Bells from giving their manufacturing affiliates preferential access to information about changes in network design and equipment needs of the Bell Operating Cos. It's a well-intentioned provision. But the fact is that there is no practical way to enforce it. Think about what would happen if a phone company engineer, either accidentally or intentionally, discloses information about future equipment needs to the manufacturing subsidiary. Is he going to immediately tell the phone company that they have got to drop everything and run down to the FCC to file that information? Mr. President, an FCC regulation is simply not going to prevent personnel from the operating companies from discussing future equipment needs with employees from the manufacturing affiliates.

Finally, Mr. President, let me just say a word about the domestic content provision contained in the bill. It is a domestic content provision in name only. The provision places no limits on the ability of the Bell Co. to use intellectual property created outside the United States. So under the bill, the Bells could conceivably do much, if not all of their research and design activities overseas.

The heart of the provision is a requirement that the Bells must use American-made parts in all the equipment which they manufacture. But there is an exception to this provision which practically swallows the rule. If the Bells cannot find the components here in the United States at a reasonable price, they can use foreign parts.

Now the bill does say that the cost of the foreign-made components may not exceed 40 percent of the revenue generated from the sale of equipment. But componentry costs almost never exceed 40 percent of the cost of most network equipment products, let alone their sales revenue. So the Bells could use all foreign-made parts and still meet the 40 percent test that is in the bill.

The bill does say that the componentry percentage figure must be adjusted yearly to correspond to the average for the entire industry. But that doesn't guarantee the use of more American-made components, because equipment sales by foreign firms will be included in the calculation. Indeed, the inclusion of sales by foreign firm might even raise the ceiling, since their products will be made entirely with foreign parts.

Moreover, the bill says that the Commission shall adjust the percentage fig-

ure after consulting with the Secretary of Commerce. It is my understanding that both the Commission and the Secretary of Commerce do not support the domestic content provision. If they are inclined to relax the application of this provision, this language would seem to give them ample leeway to do so. So as a practical matter, this provision is not going to limit the Bells' use of foreign-made parts.

Mr. President, the bottom line on S. 173 is this: The benefits are at best speculative and, at worst, illusory. Meanwhile, the risks to consumers and competition are too great. Some of that risk can be alleviated if the bill is amended, but in my judgment, this legislation should not go forward. Accordingly, I will note "no."

Mr. President, I commend the Senator from South Carolina's staff and my own staff. It was not an easy negotiation. They have been involved for several days. They have been very cooperative. My own staff has been extremely involved, knowing full well what the situation was here on the floor, trying to do what this Senator wanted done. And the staff of the Senator from South Carolina was certainly trying to do what their Senator wanted done. I think all of them have acquitted themselves admirably and I am grateful the Senate has such able young people on our staffs and working for us.

Mr. President, having said that, I have nothing further to say.

Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who seeks recognition? Are there further amendments?

Mr. DANFORTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SEYMOUR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. LIEBERMAN). Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. SEYMOUR. I thank the Chair.

(The remarks of Mr. SEYMOUR pertaining to the introduction of S. 1225 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SEYMOUR. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I want to clarify one point that is currently left somewhat unclear in the committee report regarding Bellcore, the Bell Co.'s joint research center, when the committee reported S. 173 it was the intention of the committee not to change the legal status of Bellcore in any way. Bellcore will have the same authority to work with any manufacturer, including Bell Co. manufacturing affiliates, after the bill is passed as Bellcore has today.

To the extent that Bellcore talks with manufacturers today, for instance, it may continue to talk to manufacturers, including the newly created Bell Co.'s manufacturing affiliates, after this bill is passed. This bill, however, grants no new authority to Bellcore.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. I ask unanimous consent that I might proceed for up to 10 minutes as though in morning business.

The PRESIDING OFFICER. Hearing no objection, that will be the order.

Mr. DURENBERGER. I thank the Chair.

NATIONAL HEALTH CARE REFORM

Mr. DURENBERGER. Mr. President, let me first thank the managers of this bill for the opportunity to take this time to congratulate my colleagues in this body, especially those from Maine, Massachusetts, and West Virginia—Democratic Senators MITCHELL, KENNEDY, and ROCKEFELLER—on the occasion of the introduction of their landmark legislation on health care reform.

Regardless of the shortcomings of this particular proposal—and I believe there are several—this event today is a very major milestone on the road to urgently needed health care reform in America. It literally is a first.

Today, we have on the table a serious proposal for the national reform of health care which is as close to comprehensive as anything we have seen. For want of a better alternative, this bill sets the agenda for the Congress. It begins the long and difficult process of health care reform.

Because we all tend to focus on the day-to-day challenges around here, we often cannot take in the longer view of

legislation. For our colleague, Senator KENNEDY, this is not a 1-day event. It is yet another step in a 30-year effort to bring access to health care to all Americans. This is not an issue to him; it is a passion, and I commend him for that.

I also want to commend the other key players in this proposal who are, relative to our colleagues from Massachusetts, new kids on the block. It has been my privilege to have served with both GEORGE MITCHELL and JAY ROCKEFELLER on the Medicare Subcommittee of the Senate Finance Committee as long as they have been in the Senate. GEORGE and JAY epitomize Senators of the modern era. They are both good listeners and serious thinkers, and they have an ability to push through the complexities of the issues that we face to reach far-reaching solutions.

I commend them for that effort and the efforts they have made over the last several years to understand and master the health field and for much good policy which they now lay before us. JAY ROCKEFELLER, I must say, also made physician payment reform a reality and made the Pepper Commission work.

Democrats and Republicans in the Congress have been working on changes in the way America pays for health care since I arrived here in 1979 to meet the specter of something called hospital cost containment. There can be no question that America must change the way we produce, the way we well, and the way we buy medical services.

Just as health is a basic issue to every person, it is a fundamental issue for every business, every institution, and every level of Government in America. Like a person with very high blood pressure, each institution of our society today is threatened with an explosive increase in medical costs. This year American health expenditures will be \$750 billion. By the turn of the century—only 8½ years from now—that amount will have tripled, to over \$2 trillion. Can employers afford three times their current health care costs? Can Government? Can individuals and families? Of course not.

We have 31 million Americans who have no health insurance at all, with millions more soon to join the ranks because of cost increases. We have major sectors of our society—in rural and urban areas—grossly underserved. Change is urgently needed.

I commend my colleagues for laying this proposal on the table.

As I look over the proposal, I see a number of very necessary reforms which have been discussed in the Finance Committee and in the Pepper Commission. The bill is a great improvement on the Pepper Commission final report because it begins to address a major gap in the document—cost containment.

I wish to thank the sponsors for including a number of proposals which I have just put forward over the last several years, and I am especially pleased to see a small business insurance reform component which I have been working on since March of last year and on which I have introduced S. 700, the American Health Security Act.

But, Mr. President, before I sound any more like a cosponsor of this proposal, which I am not, there are several flaws which will cause this bill to fall short of its own ambitious goals. This afternoon I will mention just four.

First, introducing a bill without any financing to it is like wrapping up an empty box and putting it under the Christmas tree. It is designed to disappoint. One of the lessons we were supposed to have learned from the 1980's is that government should not promise for what it cannot pay, or is unwilling to pay.

Unfortunately, this bill falls into that trap. The bill is quite explicit about what we will do for the American people and silent on how they will pay for it. It proposes \$6 to \$8 billion in Medicaid changes. From where is that money going to come? It proposes a payroll tax on businesses that do not choose to provide insurance. How big will that be—10 percent, 15, 20? This legislation gives no answers. The failure of the sponsors to agree upon a financing mechanism even among themselves does belie the so-called comprehensive nature of the bill.

Second, by relying on employer mandates to solve the uninsured problem, the bill prescribes a treatment that has already failed clinical trials in the State of Massachusetts. There is a major problem of the working uninsured—people who have jobs but cannot get insurance in the workplace. But the problem is not that their employers—mostly small businesses—will not provide insurance; it is simply that their employers cannot.

Finding and keeping affordable insurance in the current cost spiral has been nearly impossible, and to add a mandate to buy insurance in this situation is simply to mandate bankruptcies.

The bill requires employers to either provide a health plan for their employees or pay into a State insurance fund; in other words, "play or pay." The eventual result will be employers abandoning their responsibility to insure workers and dumping them into a huge State system. In other words, we will get a Canadian system by the installment plan.

But the greatest unfairness in this mandate is it treats all employers and all businesses as though they were the same; it ignores differences which are crucial to how these employers make their health care decisions, even the decision to play or pay.

There are differences between employers located in urban and those in

rural areas, different kinds of businesses—manufacturers, service industry—the kind of business that can pass on these costs on goods and services and those that cannot. There are differences between the coastal areas of this country and its heartland. To say these disparities do not exist guarantees bad policy outcomes.

The third flaw in this bill is that it leaves totally unreformed \$100 billion a year in Federal health spending on the tax side of the ledger. There is a very large hole in the Nation's health bucket that simply must be plugged if we are going to get the kind of efficiency we need in this system. Every year, we hand out \$100 billion in tax benefits—or the taxpayers do—for health expenditures, and the American people get no better system for it.

We subsidize the average lawyer in this city about \$2,000 a year for his health insurance, a tax subsidy paid for by farmers in Minnesota who do not get that kind of subsidy and have to pay twice as much for their premiums without the benefit of a deduction.

Fourth, I am sure the sponsors would also agree that even passage of their bill today would not nearly finish the job of health reform. We still have to deal with Medicare restructuring and optional services for long-term care. We have to deal with the medical arms race in this country which is raising costs by 11, 12 percent a year. We have to deal with restoring individual responsibility and changing the wasteful way in which health care is currently delivered in this country. This is the real key to cost containment in America today, changing the way people access health care and changing the way medicine is practiced.

I would suggest that if every health professional in America practiced as part of a Mayo Clinic we would double quality assurance in America, and I know we would cut the costs by at least a third.

The majority leader, Senator MITCHELL, in his statement said this is a "comprehensive bill to reform the Nation's health system to provide access to affordable health care for all Americans."

But without the details of the financing, without a sustainable solution to the uninsured problem, without a tax component or reform in other major areas, this bill will have trouble living up to that reputation.

Mr. President, the process of health reform will be a long and difficult one. Changing how 13 percent of the GNP in this country operates when it is operating in a drug company over here and in a small town clinic over there, is a huge challenge. But we have to start some place. And some place is the bill our colleagues, Senators KENNEDY, MITCHELL, and ROCKEFELLER, have put before us.

I commend them for their leadership and for the correct choices they have made, and I look forward to working with them in the areas—and there are many—where we will have disagreements.

This will be a long journey—10 years' worth of work perhaps. But we cannot get there unless we get started.

Credit belongs to those Senators today. Because of their efforts, we are finally underway.

Mr. President, I suggest the absence of a quorum.

I yield the floor.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The Senate continued with the consideration of the bill.

Mr. KERREY. Mr. President, I rise to state my support for S. 173, and in particular I want to call my colleagues' attention to what I think is an extraordinary accomplishment on the part of the distinguished senior Senator from South Carolina, who has fought this battle long and hard. I am very grateful he has been willing to do it.

There has been a considerable amount of opposition, persuasive arguments on the other side, and I suspect we are rather close now to passing this piece of legislation.

I have had a great deal of interest in telecommunications for some time. I was chairman of the National Governors Association's Task Force on Telecommunications Policy and, as a consequence of that, we took some regulatory action while I was Governor. And the object of the deregulation action was to try to encourage the local phone companies to invest more in communications technology.

The jury is still out as to whether or not that will occur.

I am pleased with some of the action that has occurred, and not so pleased with some others.

Mr. President, I believe this is an appropriate legislative response to an inappropriate judicial situation. Since Federal District Judge Harold Greene's modified final judgment on the breakup of AT&T went into effect in 1984, the RBOC's have been barred from manufacturing telecommunications equipment. The RBOC's created in that divestiture, and as a part of that divestiture agreement and the consent decree, as a consequence were not allowed to get into the business of manufacturing telecommunications equipment.

This edict on the part of Judge Greene—in fact, a consent decree signed between the U.S. Government and AT&T—was targeted toward legitimate ends. That end is to protect the consumer from unduly high phone bills and shielding other telecommunications firms from unfair competition.

I emphasize this is a legitimate regulatory objective. These are still companies with highly monopolistic characteristics particularly deserving of regulation.

The result has been one of unelected judicial officials now doing more than perhaps any elected official to shape America's telecommunications policy. And the result has been a restriction of the RBOC's that is broader than needed to protect wallets of American consumers and the competitive interests of American manufacturers.

I believe the sponsor of the bill, as I have indicated earlier, the distinguished Senator from South Carolina [Mr. HOLLINGS], has done a tremendous job, an admirable job in crafting this legislation in a way that balances the various interests, the various conflicting interests.

It erects quite concrete barriers to prevent the RBOC's from using their regional monopolies over the phone service to cross-subsidize their manufacturing operations, and to that end I believe the amendments offered by the distinguished Senator from Ohio improve the extent to which we will be able to monitor and prevent that cross-subsidization.

Further, the legislation takes steps to ensure the RBOC's will reenter the manufacturing competition on a playing field that will remain level. It includes measures that will enhance America's position in global trade.

For these reasons I plan to vote in favor of this bill. But for other reasons I will vote for the bill with some regret. What I regret is simply this: America's elected leadership, in particular the administration, is doing so little to set and achieve a bold and broad-reaching telecommunications vision for our Nation's future.

All of us in political life, any who have been in business, understand automatically the power of modern telecommunications.

There can be no doubt that the nature of our telecommunications system in the next century will shape America's destiny as powerfully as our rail, water, and highway systems have done over the past two centuries. If we took the right steps today, we could begin to revolutionize every aspect of our lives: The way we educate our children, the way we obtain our health care, and the way we do our jobs. I have seen some of those possibilities demonstrated already in some of the Nebraska schools.

Mr. President, it is very exciting. One portrait of what we can achieve was recently painted by George Gilder in the Harvard Business Review. Mr. President, the article is too long for inclusion in the RECORD, but I recommend it to my colleagues.

Mr. Gilder presents to us a rather exciting proposal. It is one that has a considerable amount of risk attached to it, as well. But the proposal, Mr.

President, says that what is missing in the United States is the infrastructure; not the high-end infrastructure, but the infrastructure that connects the American home and family to that high-speed network that we generally use with long-distance phone systems.

That pared copper line that connects every American home and most of America's businesses with our phone system is the greatest barrier, I believe, not only to our being able to develop a fully integrated information system in our country, but in seeing that marketplace, information marketplace, explode and grow even more rapidly than it has in the 1980's.

What Mr. Gilder proposes is that we are simply not regulating for the right objective; we have not taken into account changing technology and what that technology has done for us. It has given us the opportunity to refashion our laws, not without some risk.

I assume Butler Aviation, both at National and Dulles, is doing a lot of business this week. I assume there is a lot of heavy iron coming in trying to influence our vote. I have seen a considerable amount of evidence of that out in the rotunda. There will be a lot more heavy iron in town if we were, in my judgment, to consider that what Mr. Gilder is saying is, in fact, correct. That is this, Mr. President: What we have done is we have assumed that there is a shortage of airwave space, and that that shortage has created problems for new technologies as they come into the marketplace.

But what Mr. Gilder is saying is there is no shortage of air space. In fact, what we have done is we have lost sight of what the change in technology has done for us. It has done this, Mr. President: It has given us the potential of saying that the lines that we currently regulate and reserve for telephones should be used for video, and the air space that we currently reserve for broadcasts and other, such as cable, that that air space should be reserved for voice communication, for telephone.

It is a tremendous underlying assumption, Mr. President. If what Mr. Gilder is proposing is true, then we need to do much more than simply pass this piece of legislation. We are going to need to provide controversy in the industry out there that will be enormous. If what Mr. Gilder is saying about the potential economic growth as a consequence of this change is correct, it will be worth the battle.

Today, I believe we are doing little to imagine and create a telecommunications future that serves the public's interest, a system that is intentional rather than accidental.

I must call my colleagues' attention to the fine work that has been done by the distinguished Senator from South Carolina. I have heard him talk about

the need to challenge our regulatory environment and describe our future.

I have heard the distinguished Senator from Tennessee, at length, describe what we as policymakers need to consider, if we are going to draft our laws correctly.

In the Sunday New York Times, there was an article about the Chairman of the Federal Communications Commission, Alfred Sikes, and his views were expressed in this article.

I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. KERREY. Chairman Sikes' statements in this article reveal an understanding on this issue that is deep, rare, and admirable. They indicate that he is visualizing a way to transform how we use telecommunications in America, and then using regulatory policy to achieve that vision. That is the right way to use regulatory policy.

Today, unfortunately, we are too often regulating backward. We set rules for some piece of the telecommunications market, and we determine how those rules are going to work, without first deciding what ends we want those miracles of electronics to serve.

Mr. Sikes seems to have an admirably broad vision, but Mr. Sikes is an appointed official. An appointed official can only do so much to educate and lead the public toward an overall set of goals.

So I find myself asking, Mr. President, what and where is the vision of President Bush who appointed Mr. Sikes? Recently, we witnessed how much the President can achieve when he focuses the Nation's sights on a long-term view.

When Congress was discussing and deliberating whether to give the administration fast-track authority in our trade negotiations, the President aggressively argued that we must look at the longrun benefits of free trade. He painted a broad and persuasive picture of the benefits that would ultimately flow to our Nation if we pressed our trading partners for lower barriers.

This is precisely the kind of executive leadership our Nation needs on telecommunications. We need leadership to mobilize public opinion around the very large investments that will be necessary to link each of America's homes and businesses to a digital network, leadership that will transform the way Americans think about the possibilities of telecommunications; so that they see it as an electronic door to stimulating opportunities, not just as an electric babysitter for bored children.

Mr. President, I must point out, as I am sure the distinguished occupant of the chair knows, and all of us in poli-

tics know, that television has tremendous power. We talk often about its power in electing representatives, not only to this body, but to State bodies as well.

Mr. President, this most powerful of technology tools, perhaps the most powerful of the 20th century, is being applied in such a tremendously good fashion in the marketplace and by the marketplace.

Mr. President, I would rather my 14- and 16-year-old children not watch television. That is how good a job they are doing. I find the nature of mass media today to be such that I would prefer that my own children not be exposed to it.

Something is wrong and, again, I urge my colleagues to have a look at Mr. Gilder's article. It appears in this month's Harvard Business Review.

Mr. Gilder describes what is possible. He says, "A mass medium is inherently coarse and vulgar." I certainly agree with that. "It has to deny the uniqueness of human beings, their brains, and appeal to their glands and propagate a culture that degrades rather than inspires."

Mr. President, of all the things I believe we have before us with telecommunication, I believe we have the possibility—if we see what it can do for us and are willing to fight the kind of battles that the distinguished Senator from South Carolina is fighting with S. 173, if we are willing to fight those kinds of battles, we can give our children something other than what they currently have. And rather than worrying about what happens when they turn on the television set, we can be excited about what happens when they come into contact with the work station in our homes.

I will vote for S. 173. I applaud the work of the distinguished Senator from South Carolina.

I yield the floor.

EXHIBIT 1

[From the New York Times, June 2, 1991]

PURSUING AL SIKES' GRAND AGENDA

(By Edmund L. Andrews)

WASHINGTON.—By any measure, Alfred C. Sikes has a bold blueprint, and he is in a hurry to put it in place.

As chairman of the Federal Communications Commission, he sees a world in which people could use satellites and high-speed fiber-optic communication lines to take college courses at home, have television sets double as multimedia computer work stations, use communication networks to transmit the contents of an entire library in seconds and track down a person anywhere on the globe to deliver the data.

To speed these developments, the 51-year-old Mr. Sikes has embraced a sweeping agenda to overhaul communications policy in the United States and in the process put companies on equal footing with those in Europe and Japan. He wants to free up space on the crowded airwaves for advanced new services, from pocket-sized radio telephones to interactive television and satellite messaging. He is also pressing to end the practice of assign-

ing valuable licenses through lotteries, a practice he said has allowed speculators to earn huge profits by simply reselling licenses, and is pushing for authority to award licenses through auctions. He is also bent on spurring competition by knocking down regulatory barriers that now segregate services into isolated fiefdoms for telephones, cellular service, cable television and broadcasting. He is pressing for legislation to lift key restrictions on the Bell telephone companies while forcing them to open their networks to new rivals.

"For decades, the United States has been the world's Gulliver," he remarked recently in his corner office overlooking downtown Washington. "We assumed we were better. Now, it's quite clear the international competition is fierce. There is hardly an area in which we are competitively engaged in which we are not in a fight for our lives."

But some experts contend that Mr. Sikes's blueprint is itself in danger of being tied up in Lilliputian knots. Democrats in Congress are resisting moves to relax telecommunications rules in several areas; state regulators and corporate opponents have already won court decisions that have stalled F.C.C. moves to ease regulations on both American Telephone and Telegraph and the Bell companies.

Closer to home, the agency's five-member commission faces an onslaught from special-interest groups and is itself driven by dissension and turf battles.

VOTED DOWN ON RERUNS

The weight of all these obstacles was brought into stark relief in April, when Mr. Sikes suddenly found himself outmaneuvered and outvoted by three commission members on the hotly contested issue of lifting rules that bar television networks from owning rerun rights to programs. Mr. Sikes had argued fervently that the restrictions were outdated, but commissioners Andrew C. Barrett, Sherrie P. Marshall and Ervin S. Duggan pushed through a measure that retained many restrictions and even added new ones.

It was a blow to Mr. Sikes and raised questions about his ability to coax the commission into a policy-making consensus. "We have an F.C.C. subject to a lot of internal disagreement and therefore subject to a lot of disparate lobbying at a time when we really need a coherent policy," said Allen Hammond, director of the Communications Media Center at New York Law School. "Simply looking at decisions as a way to appease one interest group or another is not going to work."

Others are more sanguine. "I think this issue was unusual," said Richard Wiley, a lawyer and former F.C.C. chairman. "I think Al will be successful."

The commission faces daunting political pressures brought about in part by rapid advances in technology and growing competition. Cable television companies want to use their networks to carry telephone calls and data. Mobile radio systems for car and truck fleets are being adapted with new digital technology to compete with cellular telephones. Local telephone companies are losing business as corporate customers rely more heavily on private satellite networks and alternative carriers that offer low-cost fiber-optic circuits.

But any attempts to change the rules provokes intense opposition. Radio stations, for example, are fighting proposals by several new companies that want to use digital technology to broadcast high-fidelity music over satellite. Long-distance carriers like MCI

Communications and US Sprint are trying to block moves that would liberalize pricing for A.T.&T. And A.T.&T. is fighting legislation, supported by Mr. Sikes, that would allow the regional Bell companies to manufacture equipment.

"Today's communications laws and industry lobbyists have combined to form the equivalent of their own Army Corps of Engineers," Mr. Sikes said in a recent speech. "Much like the corps' penchant for damming free-flowing streams, today's communications lobbies too often lock a stream of ideas and innovations."

More than most of his predecessors, Mr. Sikes brought with him an unusually detailed game plan when he assumed office 22 months ago. He has served from 1986 to 1989 as head of the Commerce Department's National Telecommunications and Information Administration, which sets communications policy for the executive branch. While there, Mr. Sikes produced a massive analysis of trends and policy prescriptions that guides much of his agenda today.

Like many other Republicans, Mr. Sikes is a strong advocate of eliminating regulations whenever possible. But he has not taken an entirely laissez-faire approach, showing a willingness instead to use government force to pry open markets for new competitors. Last month, for example, the F.C.C. proposed forcing local telephone companies to let new competing local carriers plug directly into their networks. In effect, the rivals would have the right to set up operations at telephone company switching stations, a remarkably intrusive act.

Indeed, Mr. Sikes seems to be more of a moderate than his two predecessors, who pursued deregulation with almost fanatical zeal. In March, for example, the F.C.C. proposed tough new rules to combat fraud and deceit by companies that provide information services over "900" telephone numbers. And next month, the commission is expected to adopt rules that give local governments somewhat more authority to roll back prices of cable television.

THE BIG INITIATIVES

The Missouri Republican has already pushed through a number of important initiatives, including more flexible pricing rules for both A.T.&T. and the Bell companies. The commission has also moved to push down the arbitrarily high rates that foreign telephone companies charge for connecting international calls. And Mr. Sikes won approval for one of his pet issues, giving a "pioneer's preference" in the licensing process to companies that introduce important new technologies.

In a city of prickly political egos, Mr. Sikes practices an earnest courtliness and seems uncomfortable with soaring rhetoric, glad-handing and back-office intrigue. When confronted with the certainty of defeat, as he was on the issue of rerun rights, he seemed content to quietly stick to his guns. "It just isn't true that I've been humiliated," he remarked at one point. "Humiliation is when you've been forced to compromise on your principles, and I haven't done that."

This quiet profile has helped him smooth relations with Congressional Democrats, who still seethe at the memory of what they consider were heavy-handed predecessors, Mark Fowler and Dennis R. Patrick.

Mr. Sikes will need the Democrats' support in untangling the snarl of issues. The biggest and most complex is finding space in the crowded radio spectrum for services based on new technologies. Assigning frequencies to

them will squeeze out existing users. Yet at least a dozen new services are now pending before the commission, and more are on the way.

Congress now appears likely to approve legislation that would shift a significant chunk of the spectrum from government to commercial use, which the F.C.C. could then allocate to some of these new technologies. In addition, however, Mr. Sikes is trying to create an extra "spectrum reserve" by identifying commercial uses that can be crammed into smaller channels or be shifted to wirebased transmission systems.

Even if it got that far, the F.C.C. would still face the contentious question of which new technologies to endorse and how to award the licenses. Mr. Sikes and the Bush Administration want to auction licenses through competitive bidding, which they contend is simpler and more rational than either lotteries or the traditional comparative hearings. But Democrats are pushing hard for comparative hearings, arguing that auctions will favor large corporations over smaller innovative companies.

WHAT'S AHEAD

Separately, Mr. Sikes is now pressing at least a half-dozen other initiatives. Among them:

Relaxing and perhaps repealing rules limiting the number of radio and television stations a single company can own. Currently, a company can own no more than 12 AM stations, 12 FM stations and 12 television stations. Last month, the F.C.C. formally proposed relaxing the rules for radio, and it is expected to ask for opinions about television in a month or two.

Mr. Sikes contends that broadcasters are under growing pressure from cable television, direct-broadcast satellites and other technologies, and need as much flexibility as possible. But there are rumblings, particularly from Representative John Dingell, Democrat of Michigan and chairman of the powerful House Energy and Commerce Committee.

Streamlining rate-setting rules for A.T.&T. long-distance services. A.T.&T., a "dominant carrier," must obtain Federal approval for all its prices and its rates must apply equally to all customers. That has made it difficult to compete against MCI and Sprint in offering low prices for complex packages of services tailored to large corporations. MCI and Sprint have won support in fighting A.T.&T. from Mr. Dingell and others.

Selecting a broadcast standard for high-definition television. The F.C.C. is overseeing tests of six rival systems and says it will pick a winner by mid-1993.

To avoid making conventional television sets obsolete, Mr. Sikes insisted that competitors produce a system capable of transmitting over ordinary television channels. Some experts complained initially that true high-definition television consumed so much radiowave frequency "bandwidth" that it could only be broadcast by satellites. But several of the six systems to be tested this year and next say they can transmit programs entirely in digital code over a standard television channel. These systems could easily evolve into interactive computers once high-capacity fiber-optic lines reach individual homes early in the next century.

Deciding on technical standards for wireless "personal communication networks"—extremely lightweight, low-powered telephones that relay signals through small radio towers, like those used in cellular telephone systems, located close to each other.

Forty-six companies have received experimental licenses in the last year, including several cable television companies that hope to use their networks to link the radio antennas into a system reaching as many locations as today's telephone companies. No decision is expected for several years, however.

Deciding on technical standards for digital radio. Several companies have proposed systems that would transmit music with the sound quality of compact discs. The National Association of Broadcasters has endorsed a system developed in Europe that transmits over ordinary radio frequencies. But several small companies have asked to transmit programming nationwide by satellite.

Opinions differ on whether Mr. Sikes can muster support both in Congress and among his fellow commissioners to forge clear policies. His commissioners have privately complained that the chairman treats them like employees and that he presents imminent actions as faits accomplis. "That's a canard," he responds testily, arguing that the agency's top staff is usually available to brief commissioners about issues.

PROBLEMS WITH POWER

The tensions stem in part from various power struggles between Mr. Sikes and the other commissioners. Mr. Sikes competed for the chairman's post against Ms. Marshall, who worked for James A. Baker when he was Treasury Secretary and who coordinated President Bush's unsuccessful effort to name former Senator John Tower as Secretary of Defense.

Some industry experts contend that Mr. Sike's hand will grow stronger next year when Ms. Marshall's term expires. Mr. Sikes points out that he has been forced to dissent on only one issue since taking office. "I think he's going to do quite well," said Mr. Wiley, F.C.C. chairman until 1977.

Added Mr. Patrick, Mr. Wiley's successor: "Part of the problem here is that the process of decision-making in a democratic institution is a very messy and inherently controversial process. It's not always obvious what to do."

Mr. HOLLINGS. Mr. President, I thank my colleague from Nebraska for his very generous comments. I want to emphasize to all Senators that his is one of the more meaningful statements in this entire debate, and his comments are right on the mark.

It is not surprising since the distinguished Senator, as has been noted, chaired the Governors Conference on the Telecommunications Task Force. He has kept up and led the way in the U.S. Senate.

We appreciate very much his support, and we value very much his suggestions. I too am concerned about what we see on television and ensuring that the communications industry is competitive.

We thank the Senator for his comments and his support.

The PRESIDING OFFICER. The Senator from Utah, Mr. HATCH.

Mr. HATCH. Mr. President, I ask unanimous consent that my remarks be considered as in morning business.

The PRESIDING OFFICER. Without objection, it so ordered.

HEALTH CARE

Mr. HATCH. Mr. President, I have been interested that the majority leader is talking in terms of a Democrat health care plan for America. And from what I understand about the plan, I would like to just say a few words about it because I think it is very important that this debate begin.

I believe that health care is one of the two or three top issues in the minds of everybody in our country today. There is no question we are in trouble. Health care costs are rising at an annual 12.5 percent of the gross national product rate. That is too fast and too much. Compared to any other country in the world, we spend more per capita than any country in the world. Something has to be done. I do not think this administration or anybody else can stand back and say we want to do it in a leisurely pace. Health care costs are going to 18 percent unless we find some way of containing the escalation of those costs.

Having said all that and having also indicated that I am pleased that the majority leader and my fellow colleagues on the other side are willing to do something in this area, I am pleased that they will file a bill that will begin the debate and will begin discussion and will cause people to sit down and consider these very delicate and important, complex matters.

Having said all that, I would like to say a few things about the bill itself that I have been led to believe is to be filed by my friends on the other side.

One thing that I have great difficulty with is employer mandates. As I understand it, the Democrats' bill would have an employer mandate because if an employer did not provide health insurance that employer would have to pay an 8 percent payroll tax into a public program.

The thing that bothers me about that is there is too much of that attitude in this body. The typical Democratic Party solution is the always-make-somebody-else-pay-for-it or always-make-somebody-else-do-it approach. Spend somebody else's money. This will cost at least \$30 billion. And whose money? It has to be the American workers. You can say we will just have American business pay for it. Ultimately that is taken out of the hide of the workers of America.

Our employer-based health insurance system is a historical accident that is in part responsible for our current health care mess. As health care costs have increased, many employers have found they cannot offer health care benefits and stay in business. Most employers offer health insurance, if they can afford it.

Mandates on employers limit both employers' and employees' flexibility, damper their creativity, and, in the case of health insurance, may threaten their very survival. It is particularly

disconcerting that the pay-or-play mandate will fall hardest on employers who offer entry-level jobs—the very jobs that we need in this country to enhance family and societal stability in high-risk situations. Often those entry-level jobs are part-time or a second job or spousal employment. These kinds of employees often choose not to be covered by health insurance. The Democrat approach, or pay-or-play, will provide them something that they may not need or may not want, in fact probably will not want, and perhaps at the expense of having no job at all.

It is clear that many of these employers are on a thin margin. An 8-percent increase in their taxes—essentially applied to their gross receipts, since their expenses are heavily payroll and they have no profit—could drive them out of business. As small employers fail, so does most of our job creation capacity. Everybody knows that the largest part of small business' expense happens to be with payroll. If you have a tax of 8 percent of payroll, you are disproportionately hitting small business where it hurts.

In reality, this pay-or-play approach is a mandate on the backs of American workers. What they get is a loss of jobs, loss of flexibility, and loss of wages. Before we mandate new expenses on the backs of American workers, we better get health care costs under control.

I would like to spend a minute or two on the national expenditure targets. The Mitchell plan sets "voluntary spending targets" for health care spending. If spending exceeds a specified amount, certain rate regulations are likely to go into place. This is rate regulation pure and simple. It is also a gutless Federal Government approach to rationing from the worst possible position—centrally, "on high."

Hospital costs in rate-regulated States have increased faster than the national average and much faster than in nonregulated States. Medicare physician expenditure targets, the RBRVS, have led to increased costs because of volume phenomena. All this has led to more proposed regulation.

Rate regulation ignores the only proven way to control costs, and that is the market. Rate regulation tends to freeze inequities as they currently exist, and there are plenty of them. Current inequities include no access to health care for over 30 million of our citizens, while many of them overconsume, driving up costs. Who is to say how much we should spend on health care? That should depend on individual freedom of choice as long as market incentives are not distorted. Expenditure targets would ration care from on-high while leaving horrible distortion in our centrally planned health care system if that is what we opt to go for under this particular plan.

Why cannot my colleagues who are sponsoring this bill learn a lesson from Eastern Europe and the Soviet Union? Regulation does not work. Unencumbering the market does work. And the approach of those who are filing this bill is once again more encumbrances. I wonder if my democratic colleagues have ever wondered why no innovations in health care have emerged from socialist countries.

I have problems with mandated benefit packages. The Mitchell plan would either define a set benefit plan or have a Federal board do it. Thus my colleagues who are sponsors of this bill seem to accept that over 700 State mandated benefits have contributed to our current problems. But they again insist on mandating highly specific benefit packages, which will be very costly for employers and employees. They will have to pay for this while giving little or no flexibility to employees. What is the difference between State and Federal mandates?

Mandated benefits increase cost, decrease insurer flexibility to custom tailor insurance packages, and remove individual freedom of choice. As a nation of individuals, we thrive on our diversity. One-size-fits-all solutions are inappropriate for us; most important, they will not improve our collective health, but they will increase our costs.

Let us let the market define benefit packages which individuals, exercising free choice, can choose among. Let us give them the choice. Let us not have government bureaucrats or ourselves define those packages. The market will work to provide appropriate benefits at a minimum cost if we let it. I do not know one American who cannot tell me what he or she needs when it comes to health care.

Now, this pay-or-play system bothers me a great deal. As usual, those who support this type of approach cannot pay for the program, except on the backs of employers and American workers. They will not constrain the overconsumption which results from overinsurance. They will not make individuals responsible for their own health care choices. They prefer to build inefficient bureaucratic regulatory mechanisms which always, in every case, increase costs.

They contend that a single payor claims system will save money. They tried that as a public program in Massachusetts. Administrative costs were 30 percent. They created the mess in Massachusetts. Why cannot they learn from it?

Let me just say this. I have said some fairly crusty things about the Mitchell plan, or the plan of our friends on the other side of the aisle. But I also want to say that they have done the country a service in filing something because there are some good things in their plan. Based upon what I know

about the Democrat plan I would say this: The Democrats have adopted several of the ideas that Senator KENNEDY and I have been working on for years. We have been talking about them for years. We put them in various bills, and so forth. They now seem to admit that the liability crisis exists in settings other than the community health centers. We can work together on medical liability reform, and I commend my colleagues and particularly Senators MITCHELL and KENNEDY, and others on the other side, who have acknowledged this and who agree that this is something that just has to happen. It has to happen.

We agree that new initiatives in statewide quality assurance activities are essential. I think that is a good point in their program.

We can work together to establish and publish standardized cost and quality data for each provider on a State-by-State basis.

We agree that State-mandated benefit laws and restrictions on managed care must be preempted.

We can come to an agreement on the reform of the small group health insurance market.

We can work together, as we have in the past, to develop practice standards based on excellent medical outcomes research.

We will continue to work toward expansion of Medicaid, including increased eligibility and improved reimbursement schedules.

We can jointly develop increased emphasis on preventive health approaches. I think all of those are important.

The fundamental disorder in our current health care system is high costs, which are getting higher every minute. Inflation in health care has been 2 to 3 times the basic inflation rate almost four times, as a matter of fact, last year. And, in some sectors of the industry, health insurance premiums, for instance, costs have increased 20 percent over the last year.

Increased costs have many derivatives. Access to the system is limited. Wise preventive approaches are squeezed out. Health manpower is distorted in terms of specialties chosen and geographic distribution of practice location. Care is often delayed until a time when outcome has worsened and costs are higher. Underfunded public programs increase their cost-shifting to other payers, further driving up costs.

We cannot increase access until we control costs.

The most important mechanism for controlling costs is to make individuals more responsible for their own health care, including their health care spending. All sectors of the health industry—employers, insurers, providers, professionals—must take responsibility for restraining costs. And, the govern-

ment must make sure that there are proper incentives for cost constraint by all of these sectors, and do its part in funding safety-net programs.

My proposal would:

No. 1, require publication of quality measures and costs of health care by specific unit of service, for all providers and professionals in each State. A prudent consumer cannot make informed shopping decisions if they do not have information about quality and cost. I reject a utility or rate regulation model, because they do not work.

No. 2, provide grants to and expand programs in medical outcome research in order to catalyze development of medical practice guidelines. Practice patterns vary substantially often even within a small geographic area. Practice patterns are often professional whims, not proven effective mechanisms. With research data driven practice standards, reimbursement would be limited to only appropriate care and not to individual whim.

No. 3, cap the existing deductibility of employer provided health insurance costs at probably around \$3,000, which would generate \$21 billion in savings to the taxpayers and \$3,600 would generate \$16 billion. Overconsumption of unneeded care is encouraged by the perception that health care is prepared and free. Capping the deduction would make individuals more aware of and responsible for their own health care costs.

No. 4, we would pass a very similar medical liability reform bill, but it would have more teeth than what the approach is going to be in the Mitchell proposal.

No. 5, preemption of State-mandated benefits laws and of State restrictions on managed care. States would define a basic health insurance premium amount within which insurers could compete by defining various benefit packages.

Let the insurers do it and let the people buy what they need. Do not have mandated State mandates that literally no State legislator can fight against.

The State-defined amount would limit State tax deductibility; regardless of a State's defined amount, Federal deductibility would be limited.

No. 6, encourage development of consolidated claims management and claims payment mechanisms on a State or regional basis. Current administrative costs of our pluralistic system may approximate 30 percent of all health insurance costs. This could be substantially reduced by consolidation, saving perhaps as much as \$60 billion per year. Consolidation does not mean rate regulation or an all payers system.

No. 7, small group health insurance market reform is essential. Make health insurance a guaranteed issue for

all employees and employers, regardless of size, and moderate the currently outrageous costs for small employers.

No. 8, develop new provider and professional cost containment and quality assurance mechanisms within States through grants to States.

No. 9, increased emphasis on prevention. Individual responsibility plus employer incentives to offer work place health education and maintenance activities, I think, is essential.

The above cost containment-restraint-rollback mechanisms should be allowed to work for 10 years. If universal access has not been achieved after all the reforms the industry has requested have been in effect for 10 years, a penalty will be assessed on all sectors of the industry to provide funding for a public program for the uninsured.

The Federal Government must also do its part. Everyone must share the pain. The Federal programs must stop passing their costs onto the States with Medicaid, onto providers through inadequate reimbursement levels, and onto the private sector through cost shifting. We will federalize Medicaid and refocus it on poor women and children by decanting responsibility for the elderly to Medicare and for the disabled to a new Federal program. The new Medicaid Program will increase to at least 115 percent of poverty, and improve reimbursement rates to Medicare levels.

The costs of federalized Medicaid can be met through the \$20 billion savings from the tax cap on employer deductibility and through the savings from medical liability reform.

The States must also do their part. Each State will be required to design and fund a catastrophic insurance program, individualized for the uniqueness of each State. Having responsibility for catastrophic coverage fall to the States will keep resource allocation decisions, that is, rationing, properly decentralized. It will also require regional cost-demographic distortions be dealt with at the local level and not cost shifted to a national level. Utah should not have to help Massachusetts pay for its excesses, nor should Massachusetts have to help Utah pay for its excesses, although I do not think there are many excesses in the State of Utah.

Mr. President, these are just broad outlines but, nevertheless, outlines that we have been working on for years and outlines that I think would help to bring us to an affordable national health system that would really work.

I have the same problems with the mandates and the other things that I have discussed regarding the Mitchell plan, but again I want to commend the majority leader for having the guts to file a plan and to get this particular issue started and to bring it into the public debate and to see what we can do, hopefully, ultimately to have a bipartisan approach to this subject.

I also want to pay particular tribute to my friend, JOHN CHAFEE, on our side, who has worked long and hard to try and come up with various approaches that will work from a bipartisan national health approach. I hope that before it is all said and done we will be able to do that.

Mr. President, I yield the floor.

(Mr. WELLSTONE assumed the chair.)

Mr. HOLLINGS. Mr. President, it is my understanding that my distinguished colleague from Rhode Island would like to address the Senate respecting health care and we will yield, as if in morning business, for 10 minutes.

My problem, Mr. President, is I do not want word to go out that we are going into other matters. We went into China lectures yesterday, the civil rights lectures, the health care lectures. Now we have said we should not have a flag by the Bell Operating Cos. of Syria or, at least, the Bell Operating Cos. should not operate in Syria.

The truth of the matter is that we have completed all amendments. I heard there was a head count going on preparatory to an amendment. I heard that at 12 noon and it has taken 3 hours to get that head count and we still do not have our amendment. The best way to get a head count is to present the amendment, if they will present the amendment. Otherwise, we are going to be moving toward third reading. We are not going to sit here all afternoon listening to lectures on matters unrelated to this bill.

The Senate has terribly important business. I know the Senator from Rhode Island has some important comments to make, but the Senator from Pennsylvania has been waiting to debate on the bill.

Mr. CHAFEE. Mr. President, first of all I want to thank the distinguished manager of the bill for giving me this time.

Before I start, I thank the distinguished Senator from Utah, who made some very cogent comments on the Democratic proposals, for some suggestions that he has, and that, also, I have. We have been working together on this.

Also, I thank the distinguished senior Senator from Pennsylvania for allowing me to interrupt him at this time.

THE DEMOCRATIC PROPOSAL ON HEALTH-CARE REFORM

Mr. CHAFEE. Mr. President, today a group of Democratic Senators is introducing a bill to expand access to health insurance to all Americans. I applaud their efforts in this area, and believe some of their proposals represent a strong step forward. However, I also have concerns about the direction they

have taken, and would like to address some of the details of the proposal.

Before I do that, I would like to express some general thoughts. I strongly believe that we must significantly improve our health care system in the United States. Our costs are spiraling out of control, our health status—especially among children—is not improving, and too many Americans are without access to affordable and appropriate health care. As a veteran in this area, however, I know that it is much easier to make that statement than it is to gather a large enough consensus to solve the problem. Throughout the 1970's and 1980's, calls for comprehensive health care reform came in cycles. We all had proposals which we felt would solve the problem. Leaders dug their heels in and insisted that they had the best approach. We got nowhere.

We are now in another such cycle. If history is a teacher, surely we can learn from our mistakes.

We have another chance now, and I hope we will not let it slip through our fingers for political reasons. Many Republicans in the Senate agree, and in July of last year formed a Republican Health Care Task Force to study this issue. I have the privilege to be chairman of this task force. There are 32 members. Many of us have been working to pull together proposals that we believe have a chance of becoming law. In this process, many of us have had to compromise our desire to attack the whole system in one fell swoop. We are developing a package which we believe will move us significantly forward, even though it may not solve all of our problems.

Many areas of our Nation are experiencing severe recessions. We are facing a tremendous Federal deficit. Mandated employer coverage of health insurance will be vigorously opposed by small business. Neither Federal and State governments nor businesses are prepared to significantly increase health care spending.

Yet, a number of Members of Congress and interest groups insist that the time has come to enact a national health plan which would guarantee that everyone has health care insurance coverage. The bill my Democratic colleagues have introduced may promise health insurance to all Americans, but it does not have much of a chance of passage. No such proposal will pass without the support of some Republicans and a majority of Democrats in Congress and without the Bush administration's support. Neither are prepared to endorse such a plan. There is no broad support for this approach, inside or outside the beltway. Small business, and even some larger businesses will not support this proposal. Yet, we have momentum for change, and I believe that we should take advantage of it.

It is critical that we move forward on health care reform in the next 18 months. There are Americans who are at risk because they do not have access to health care services. I hope that the Democrats will not allow the temptation of using this as a campaign issue to take priority over passing something that will at least move us closer to a goal we all share—ensuring that all Americans have access to health care services.

The Democrats have addressed the growth of health care costs through encouraging managed care plans, preempting health benefits currently mandated by the States, encouraging the use of single claim forms to lower administrative costs, and reforming the insurance market's treatment of small business. We have discussed all of these ideas on a bipartisan basis for the past 18 months, and I am glad to see them party to this package.

They also have at least acknowledged that solving our health care access problem can not be accomplished solely through health insurance expansion. They have adopted an idea I have promoted—to significantly expand community health centers which provide needed care in medically underserved areas.

What about the other provisions included in the proposal?

Clearly the "pay or play" component of this proposal is a rerun of the Pepper commission recommendations. I have strong concerns about the ability of employers to comply with the requirement that they offer health insurance to all full-time employees or pay a very large surtax. Until we make significant reforms in the insurance market for small business and institute real cost containment measures—and they are proven effective—there is no guarantee that health insurance costs will be lowered enough to be affordable to all small businesses.

I question whether in our current economic situation it is wise to impose significant costs—either through insurance premiums or a payroll tax of 8 percent—on our business community. Can we really afford to take the risk that those small businesses which are operating on the margin now will be forced out of business? After all, businesses with less than 100 employees employ 46 percent of American workers.

It also concerns me that one of the most critical health care costs—medical liability—is not adequately addressed in this proposal. The proposal would provide grants to States to experiment with alternatives to our tort system. While grants could be a small useful component to medical liability reform, simply throwing grant dollars to a State will do little to encourage development of alternative dispute resolution systems and urge plaintiffs and defendants to use them. The cost of

medical liability—including premiums and defensive medicine—accounts for about \$12 to \$14 billion per year.

The proposal also includes an entirely new public program. However, there is a requirement that all individuals be covered, and the States will be required to pay a significant share of the cost. Unless they significantly increase Federal matching funds to States, a costly proposition, this could be a real problem for the many States which are already facing severe budget problems.

Now, it is easy to criticize a proposal. My response to critics is generally, Do you have any better ideas? In this case the answer is "yes," I think some of us do.

As I mentioned earlier, in the Republican Health Care Task Force our goal has been to pull together a proposal that may not offer all things to all people, but that is reasonable and has a chance of getting beyond the rhetorical stage—in other words, policy over politics.

We are looking at ways to encourage employers to provide health insurance coverage to their employees. This could be done by making insurance more affordable to small businesses. We are discussing providing incentives for small businesses to form purchasing groups so they can gain market strength to negotiate more effectively with insurance companies.

We are looking at reforms in insurance market practices which make it difficult for small employers to provide coverage to their employees. Such practices include underwriting and rate setting policies, which exclude high-risk individuals or groups.

We are discussing development of a model benefits package, which could be used to allow employers to offer lower-cost benefit packages. In order to do this, we would have to preempt State mandated benefits which can significantly increase the cost of health care insurance. These mandates range from in-vitro fertilization to treatment for hair loss.

If we are going to control costs within our system, we must examine current Federal expenditures on health care. When we think of health care entitlement programs, we think of Medicare and Medicaid. There is, however, another significant Federal health care entitlement program. I am referring to the treatment of health care benefits under the Tax Code. This loss of revenue to the Federal Treasury amounts to almost \$40 billion annually, and is the third largest Federal expenditure on health care, behind Medicare and Medicaid.

Under current law, all employer contributions to an employee health insurance plan are excluded from the employee's taxable income. An individual who does not receive employer-based insurance not only will pay more for

insurance because he is purchasing it outside of a group, but also will pay for it with after-tax dollars. Thus, we are subsidizing health care for a significant number of upper- and middle-income individuals. Workers in businesses that do not provide insurance, usually low-wage workers in the service industry or seasonal workers, do not receive this subsidy.

We are examining the placement of a cap on the deductibility of very generous employer provided plan, given that so many in our society have no health care whatsoever.

We are looking at expanding the deductibility of health costs to those who purchase insurance outside of an employer group, as well as to those who are self-employed. Another method of expanding access to both insurance and services is through the use of credits for low-income families and small businesses which is a proposal we are examining.

We are also considering changes which will help control the spiraling cost of health care, such as preempting State laws which create obstacles to managed care arrangements. Another issue we will address through significant reform is medical liability. Health care providers are paying outrageous premiums, and are practicing defensive medicine to ensure they have the ability to defend against a negligence suit.

We are also looking at increasing the availability of health care services for low-income individuals who do not have access to employer-based coverage. I and a number of my Republican colleagues have introduced legislation which will increase access to critical health care services for individuals living in medically underserved areas. All too often, we as policymakers forget that just giving someone a Medicaid card, or private insurance for that matter, does not necessarily guarantee access to health care.

In both rural and inner-city areas there are shortages of qualified medical personnel. In addition, there are shortages of health professionals who will accept Medicaid patients. Community health centers are one solution to our health care delivery problems. They provide cost-efficient high quality primary and preventive care services to the uninsured, as well as persons with Medicare, Medicaid, or private coverage. We are looking at a significant increase in the funding available to these centers.

We are also considering proposals to give States increased ability to enact statewide health care reforms. This could help us to determine what strategies we should pursue on a Federal level. Only through experimentation such as this can we best determine how to address most effectively, deficiencies in our health care system.

I will be the first to admit that these proposals will not solve all our prob-

lems. I would like to go further. It is easy to support providing health insurance coverage for all Americans. It is easy to say that we should create a new public program for all uninsured individuals. It is easy to point to Canada, West Germany, and Sweden and say, "If they can do it, so can we."

Simply put, we have neither the support nor the resources to enact such proposals. The harsh reality is that there is no consensus on what radical reform should include, and how it should be paid for. The Democrats can't agree, and neither can the Republicans. The business community cannot agree, nor can consumer groups, nor can health care providers.

We can make significant strides toward what may one day be a radical change in our health care system—not by revolution, but by evolution.

It is my hope that once the bill is introduced, the Democrats will go back to the drawing board with us and try to develop an approach to this critical problem that really can be enacted. Clearly, nothing will pass that does not have the support of business, conservative Democrats, Republicans, and the President.

Mr. SPECTER. Mr. President, I have been waiting on the floor to address the pending legislation, Senate bill 173, but before doing so, I will take just a moment to congratulate my distinguished colleague from Rhode Island, Senator CHAFEE, for his outstanding work as chairman of the Republican Task Force on Health Care. I similarly compliment the Democratic Members who have offered health care legislation. It is an extraordinarily complex problem. As I traveled my State extensively, it is an issue I hear raised as much if not more than any other.

With some \$660 billion or 12 percent of the gross national product being allocated to health care, we still find millions of Americans not covered. It is an issue which has to be addressed. We have to find a policy that we can pay for.

As Senator CHAFEE noted, I have been working with him on the task force, and it is an issue which must command considerable attention by the Congress of the United States and by the administration.

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, as I have noted, I have been on the floor for a good part of the afternoon to speak about the pending legislation.

At the outset, I compliment the distinguished Senator from South Carolina [Mr. HOLLINGS] and the ranking Republican on the Commerce Committee, Senator DANFORTH, as well as

other members of the committee. I note the very substantial majority of the committee who are supporting this bill. I note also the very cogent dissenting views of Senator INOUE and the cogent dissenting views of Senator PRESSLER.

The issue has a very profound impact on the Nation and a special impact on Pennsylvania where there are thousands, really tens of thousands employed by both Bell and by AT&T whose jobs may be on the line by this legislation.

I have visited the AT&T facilities in Allentown, Reading, and the Bell facilities in Philadelphia and I have had extensive discussions with the management of both companies and also with the employees on this issue.

The Judiciary Committee on which I serve had a cross-reference hearing, taking jurisdiction from the Commerce Committee, which has primary jurisdiction, and I participated in that lengthy hearing and participated in the questioning of both AT&T witnesses and Bell witnesses and asked a series of questions as to what the effect of this bill would be in view of the contradictory claims by both of the principal parties.

Both claimed that their positions were pro-consumer; both claimed that their positions would increase competitiveness; both claimed that their positions would have a significant impact on the international trade deficit; both claimed that their positions would yield more jobs.

I then asked for statistical data, hard evidence, on those questions and got very little in a concrete way to shed light and to make a factual determination as to which side was correct.

What I have seen, Mr. President, is that the conclusions are speculative as to what the impact will be whether you maintain the current prohibition on the regional Bells for manufacturing equipment or not.

In the course of the past several days, I have had extensive meetings with representatives on both sides of this legislation; yesterday, with representatives of the regional Bells. I also met with representatives of AT&T and talked with them again today.

After considering the matter at very substantial length, my conclusion is that Congress should not disturb the judgment of the U.S. District Court for the District of Columbia which has been affirmed by the Court of Appeals for the District of Columbia and where certiorari has been denied by the Supreme Court of the United States which leaves, in effect, the district court's opinion.

Mr. President, I have been asked by AT&T to offer an amendment which might provide a compromise, and I had discussed the substance of that amendment with representatives of the regional Bells and had concluded that it

was not going to work out to something that would be agreed to.

I ultimately decided not to offer the amendment. A similar amendment was offered by Senator INOUE of Hawaii, but I decided not to because the complexities of the amendment led me to the same conclusion I had about the underlying bill, and, that is, that the status quo was represented by what Judge Greene had to say was the most persuasive line of reasoning and incorporation of evidence we had seen.

Senator SIMON, who is on the Judiciary Committee, a committee on which I serve, wrote to Judge Greene dated May 21, 1991, and asked Judge Greene for his views on Senate bill 173. Judge Greene then replied by a letter dated May 29, 1991.

Mr. President, I ask unanimous consent that Senator SIMON's letter and Judge Greene's letter appear at the conclusion of my statement today so that those who will review the CONGRESSIONAL RECORD will see the full context of Judge Greene's views.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1).

Mr. SPECTER. Mr. President, Judge Greene starts by raising a question as to the restrictions of the canons of ethics, judicial ethics, and then states that he is going to not comment directly on S. 173 but give his summary of what he has decided in the case which amounts to about the same thing. And, obviously, I am not going to get involved in any discussion about the propriety of what Judge Greene has had to say. But it is on the record. I think it is worthy of our consideration today. Certainly, that is, at least, my view.

Judge Greene noted that his opinion was affirmed by the D.C. Circuit Court and that the Supreme Court of the United States let that decision stand by denying certiorari which I should say, parenthetically, does not mean that the Supreme Court necessarily agrees with the circuit court but that they decided not to disturb the views.

Judge Greene then takes up the question of cross-subsidization which is a very important issue as to whether if you allow Bell to manufacture equipment that is going to have the practical effect of having Bell allocate some cost to the ratepayers on telephone service which really ought to be for the equipment produced. That is not done when you have AT&T or other manufacturers make the equipment and sell it to Bell and then Bell charges only for the service which is rendered.

This is what Judge Greene had to say about this subject on page 2 of his letter to Senator SIMON. He noted that in the prior practice before there was a breakup of AT&T that:

*** the companies subsidized the prices of equipment with revenues from their regulated monopoly services. The court further

concluded that, largely because of size, power, and complexity of the Bell System, regulation by federal and state bodies had consistently been, and would in the future be, ineffective.

Judge Greene then noted:

*** these Regional Companies have the same abilities and incentives for anti-competitive conduct that they had possessed prior to the break-up.

Judge Greene then took up the subject of a relationship of the regional company's entry into the manufacturing market and the antitrust laws and dealt with the question of self-dealing, which is a very important question, and said, in part, at page 3:

*** if the manufacturing restriction were removed, "each of the Regional Companies would satisfy all or nearly all of its equipment needs from its own manufacturing affiliate."

He then noted in a footnote the court of appeals' agreement with his opinion on this subject with the following language which appears at page 3 of Judge Greene's letter to Senator SIMON:

When the 1987 opinion reached the court of appeals, that tribunal agreed that "the possibility of self-dealing bias in the telecommunications equipment markets poses dangers to competition that do not exist in the other markets—

He goes on to say:

if combined with cross-subsidization, would appear to allow the [Regional Companies], in effect, to raise prices (and therefore exercise a form of market power) in the foreclosed sectors of the equipment market by disguising inflated equipment prices as costs in the local exchange markets ***.

The court of appeals goes on to comment that there is nowhere an explanation "why any significant amount of cross-subsidization that, in practical terms, enables"—again referring to the regional companies—"to charge higher prices for the equipment it produces would not be akin to an exercise of market power that would impede competition in the telecommunications market."

I am very concerned, Mr. President, after noting Judge Greene's comments about this cross-subsidy and the increased prices to the consumer and the finding which is upheld by the court of appeals in a context where there is much greater analysis and deliberation than is possible, I think, in our legislative context, at least possible for this Senator. Because of the length of the letter, I am not going to read some portions I had intended to read, Mr. President, but I would like to focus on page 5 of Judge Greene's letter to Senator SIMON where under the category of "Effect on Competition," Judge Greene points out that:

Regarding the practical effect of a removal of the manufacturing restriction, the court concluded that such a removal would be counterproductive for a "flourishing, broad-based, innovative industry would be cut back to become one dominated by a small number of muscle-bound giants ***."

The Department of Justice, while supporting the Regional Companies' request for relief, acknowledged that "removal of the restriction will be followed by the displacement of many of the competitors, postulating that increasing concentration in the equipment markets is inevitable."

Judge Greene went on to say:

The court characterized this Justice Department review as contemplating with "remarkable equanimity for an antitrust enforcement agency, the ready destruction of many high-quality firms providing high-quality goods that have emerged since divestiture, and that are performing important service to the economy."

The basic thrust by the proponents of S. 173 has been that competition will release innovation. But at least the findings of Judge Greene, affirmed by the court of appeals, are precisely to the contrary.

Judge Greene then took up the important subject of "Effect On Innovation" and made the following observations:

With respect to the question of innovation of the telecommunications equipment markets, the court noted that since the breakup of the Bell System *** there has been a flowering of research, development, innovation, introduction of new products, and quality assurance; new firms have entered the market; prices of equipment have declined dramatically *** and competition flourishes in a market that had seen relatively little of it before. The equipment market now consists of six or eight very large firms, 100 to 200 medium-sized firms, and hundreds of still smaller, vigorous, and inventive firms.

If the restriction were removed, there would be a serious risk of return to conditions of anticompetitive activity, concentration of the telecommunications equipment market in few hands, monopolistic pricing, and a relatively sluggish pace of innovation.

Mr. President, I find that conclusion very strong and thus I think this bill would be very anticompetitive if Judge Greene is correct. Again, his analysis is much more extensive. He has sat on this case since 1979. Again, his conclusions have been affirmed by the circuit court of appeals.

Very briefly, Mr. President, because of the passage of time—and other colleagues are on the floor—under the heading "Foreign Domination of the Industry," Judge Greene wrote:

In that respect the court cited a report of the National Telecommunications and Information Administration of the Department of Commerce, which noted that "the most plausible scenario in at least one telecommunications market is that, in the event of a removal of the decree restriction on manufacturing, the Regional Companies will join forces with mammoth manufacturing empires, most likely foreign, and that this will pose a substantial risk of destruction of the U.S. central office equipment manufacturing industry."

Mr. President, it may be that conclusion would be tempered by the "Buy American" provisions, but the innovative construction or development of conglomerations or joint ventures is

something that cannot be anticipated by any legislation in its fullest extent.

Judge Greene concluded by saying:

In summary, it was on the basis of the considerations discussed above and at greater length in the 1987 opinion itself that the court concluded that removal of the manufacturing restriction could be expected to be followed by (1) a recurrence of the anti-competitive conduct of the local Operating Companies operating under the aegis of the Regional Companies; (2) the displacement of most independent manufacturers of telecommunications equipment; (3) a marked reduction in competition in the market and hence a sharp reversal of recent trends which have witnessed decreases in price; (4) a slowdown in product innovation; and (5) domination of the domestic market by large foreign suppliers.

In the absence, Mr. President, of countervailing evidence and a judgment to the contrary, my own view is that significant weight ought to be attached to Judge Greene's opinion.

What we have in essence here is a breakup of AT&T and the Bell Systems, and the judge made a determination about what was fair as between the Bell Cos. and AT&T and the court made a determination about what would produce competition, what would be helpful to the consumers, and what would be fair and just under the antitrust laws. His conclusions were taken on appeal and were affirmed by the appellate court and let stand by the Supreme Court of the United States.

In my judgment, that is the greatest weight to be followed on the legislative judgment here today.

Mr. President, I had passed on these concerns to Bell Atlantic, which is a constituent of mine in Pennsylvania. They get my checks for telephone bills both in Pennsylvania and the District of Columbia. As a matter of fairness, I want to make a part of the RECORD the response by Mr. Robert A. Levetown, vice chairman of the Bell Atlantic. I met with him yesterday, as well as Mr. Raymond Smith, the president of the Bell Atlantic, whose office is in Philadelphia.

Mr. Levetown makes the point in a letter and in certain extracts from Judge Greene's speeches that Judge Greene himself acknowledges it is a matter for the Congress. Mr. Levetown points out:

Yesterday you raised the issue of the appropriateness of Congress intervening to alter the rules of the telecommunications industry that are now controlled by a judicial decree.

Mr. President, I ask unanimous consent that Mr. Levetown's full letter be made a part of the RECORD following my presentation.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SPECTER. It is not precisely accurate that I raised a question of appropriateness of Congress to intervene. Congress has full authority to make a

change in what the court has done here. The laws are the laws of the Congress. We have the full authority to modify what Judge Greene has done. We have the full authority to modify any statute as long as it conforms to the Constitution of the United States. We can repeal the antitrust laws if we choose to do so.

My point is on the basis of the record I see, considering the exhaustive and able work of the Commerce Committee, that the bulk of the evidence, the weight of the evidence, and the weight of the judgment I think lies with what Judge Greene has concluded and the appellate courts have upheld.

Mr. President, I ask unanimous consent that an extract of Judge Greene's speech at the Brookings Institution, dated December 4, 1985, an extract of Judge Green's speech at Hastings College of Law, dated April 17, 1987, and an extract of Judge Green's speech to CFA dated October 23, 1986, regarding the so-called Dole bill, all be included in the RECORD at the conclusion of my presentation.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. SPECTER. Mr. President, without reading them, the essence of what Judge Greene had to say is that it is up to the Congress. Judge Greene has exercised the authority which he has in the absence of any legislation.

When I take a look at this entire record, it is my view the Congress should not disturb the conclusions which the courts have made considering the underlying evidentiary base, the facts, and considering the conclusions.

This is obviously not an easy matter. I know that in expressing my opposition to Senate bill 173 there will be many disappointed constituents. Representing a State like Pennsylvania, Mr. President, if you take up questions like abortion, for example, there are 6 million of my 12 million constituents lined up on one side, and 6 million on the other. The vote immediately makes 6 million enemies, and 6 million who agree with my position. Customarily, they say, well what alternative does the Senator have? He just did what was appropriate.

I do not have 6 million constituents on each side of this issue. But there are perhaps as many as 22,000 Bell employees on one side, and as many as 15,000 AT&T employees on the other side, and many others. It is not an easy matter. I criticized the desputes my two sons had. Occasionally, you have to get involved.

Obviously, this matter is coming up for a vote. But as I have outlined, I have considered it at great length, visited the facilities from both sides, and talked to the officials right up until early this afternoon.

As I look at this record in very substantial detail I conclude that the decree ought not be altered; that the Bell Co. have adequate recourse to go back to Judge Greene, that the prohibition against manufacturing will end under his decree at a time when there is competition with the Bell Operating Systems; and that that is the preferable course.

I thank the Chair. I yield the floor.

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 21, 1991.

Judge HAROLD H. GREENE,
U.S. Courthouse, Washington, DC.

DEAR JUDGE GREENE: As I am sure you know, Congress is now considering legislation, S. 173, to remove the manufacturing restrictions on the Regional Bell Operating Companies. Today the Antitrust, Monopolies and Business Rights Subcommittee on which I serve held a hearing on this and the full Senate may consider this legislation shortly. Given your obvious expertise in this subject, I would very much appreciate knowing your views on S. 173. I have enclosed a copy of the bill and the Committee report for your convenience. I appreciate your assistance on this matter.

My best wishes.

Cordially,

PAUL SIMON,
U.S. Senator.

U.S. DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA,
Washington, DC, May 29, 1991.

Hon. PAUL SIMON,
United States Senate, Committee on the Judiciary,
Washington, DC.

DEAR SENATOR SIMON, Thank you for your letter of May 21, 1991, which requests my views on S. 173, a bill to remove the manufacturing restrictions on the Regional Bell Companies. While it is not at all clear that the Canons of Judicial Ethics prohibit me from expressing my opinion on the desirability of the enactment of S. 173, I have concluded that, in view of the possibility of further litigation on the manufacturing restriction paralleling in some respects the issues presently before the United States Senate, commenting on the bill could create the appearance of impropriety. In order to avoid any question in that regard, I have decided not to comment directly on S. 173. I have also concluded, however, that there is no reason why, in response to a request from a member of the Antitrust, Monopolies and Business Rights Subcommittee of the Committee on the Judiciary of the United States Senate, I could not render assistance to the Subcommittee by calling your attention to pertinent parts of published opinions in my court on the subject under the Subcommittee's consideration. I am accordingly doing so in this letter.

On September 10, 1987, I issued an opinion in the AT&T Antitrust case which deals in significant part with the restriction imposed on the Regional Companies with respect to the manufacture of telecommunications products and customer premises equipment. That opinion is reported as *United States v. Western Electric Co.*, 673 F. Supp. 525 (D.D.C. 1987), and insofar as the manufacturing restriction is concerned, the rulings of my court were affirmed by the Court of Appeals for the District of Columbia Circuit on April 3, 1990. *United States v. Western Electric Co.* 900

F.2d 283 (D.C. Cir. 1990), certiorari denied, — U.S. — (1990).

For your convenience, I am pleased herewith to summarize some of the principal points of the 1987 ruling on the manufacturing restriction, under five headings, as follows: (1) history and background of the adoption of the restriction; (2) relationship between the antitrust laws and Regional Company entry into the manufacturing market; (3) effect of such an entry upon the telecommunications manufacturing industry; (4) effect of such an entry upon product innovation and the availability to the public of new products at reasonable prices; and (5) effect of the removal of the restriction upon the domestic manufacturing industry.

1. HISTORY AND BACKGROUND

The restriction on manufacturing was incorporated in the consent decree which ended the AT&T lawsuit on the basis of evidence adduced in the course of an eleven-month trial in this court indicating that the Bell System had "improperly monopolized the market for telecommunications equipment, in that its local Operating Companies purchased such equipment primarily from Western Electric Company, the System's manufacturing affiliate, and 'engaged in systematic efforts to disadvantage outside suppliers.'" 673 F. Supp. at 552.

The court found upon consideration of the evidence that the local Operating Companies, which accounted for over eighty percent of the nation's central office switching and transmission equipment purchases, had engaged in three general types of anticompetitive conduct: first, the companies purchased Western Electric equipment even when these products were more expensive or of lesser quality than alternative goods available from independent vendors; second, the companies discriminated in the dissemination of information and design by granting Western Electric premature and otherwise preferential access to technical data, compatibility standards, and other necessary information; and third, the companies subsidized the prices of equipment with revenues from their regulated monopoly services. The court further concluded that, largely because of the size, power, and complexity of the Bell System, regulation by federal and state bodies had consistently been, and would in the future be, ineffective. 673 F. Supp. at 530-31, 554, 569-71. As a result of divestiture, control over the twenty-two local Operating Companies transferred to the seven Regional Companies; and these Regional Companies have the same abilities and incentives for anticompetitive conduct that they had possessed prior to the break-up.

It was basically for these reasons that the court determined in 1982 that the Department of Justice's proposal for the adoption of the manufacturing restriction on the Regional Companies was justified under the antitrust laws and was in the public interest. The restriction was accordingly included in the court's approval of the consent decree submitted by the parties to the litigation.

2. RELATIONSHIP OF A REGIONAL COMPANY ENTRY INTO THE MANUFACTURING MARKET AND THE ANTITRUST LAWS

In 1987, three years after the manufacturing restriction had become effective, the Regional Companies, with the support of the Department of Justice, requested that the restriction be removed. However, in its opinion issued that year, the court concluded, following a detailed examination of the issue, that there was no basis for such a re-

moval, and that, to the contrary, under the antitrust laws and the court decree, the restriction had to be maintained. Even the Department of Justice acknowledged, and this court found, that if the manufacturing restriction were removed, "each of the Regional Companies would satisfy all or nearly all of its equipment needs from its own manufacturing affiliate." 673 F. Supp. at 556.¹ The court also found on the basis of the evidence that other serious antitrust concerns would be raised by an entry of the Regional Companies into the equipment markets, both as a result of leveraging of the regulated monopolies into a related but unregulated market, and because of the unquestionable dominance of the Regional Companies in their particular regions. 673 F. Supp. at 556-57.

The court further concluded, based on evidence from a number of experts, including experts proffered by the Department of Justice, that the Regional Companies retained the same "bottlenecks" they had controlled when they were still part of the Bell System. More specifically, the evidence demonstrated that, to reach the ultimate telephone subscribers, over ninety-nine percent of all telephone traffic had to pass through the Regional Companies' local switches and circuits at some point in its journey, and that possession of these pressure points gave the companies an unsurpassed opportunity for anticompetitive action. Here, too, the Department of Justice conceded that "only one-tenth of one percent of [long distance] traffic volume, generated by one customer out of one million, is carried through non-Regional Company facilities to reach a [long distance] carrier * * * [and that] only twenty-four customers in the United States * * * managed to deliver their interexchange traffic directly to their interexchange carriers, bypassing the Regional Companies." 673 F. Supp. at 540.

Based upon this factual background, the 1987 opinion noted that the local bottleneck monopolies retained by the Regional Companies following the AT&T divestiture were a central feature of their domination of the market for telecommunications products and customer premises equipment, and it further concluded that the incentive and ability to act anticompetitively had not been significantly altered by the division of the Bell System into seven Regional Companies, by Federal Communications Commission regulation, or by any other factor. 673 F. Supp. at 552.

On the question of the efficacy of FCC regulation to prevent anticompetitive activities by the Regional Companies, the court cited the opinions of a number of experts, including the chiefs of the FCC's own Common Carrier Bureau, who reported on the futility of such regulation then or in the future, in view

¹ When the 1987 opinion reached the Court of Appeals, that tribunal agreed that "the possibility of self-dealing bias in the telecommunications equipment markets poses dangers to competition that do not exist in the other markets the [Regional Companies] seek to enter. . . . [Foreclosure by these companies of a large portion of the equipment markets], if combined with cross-subsidization, would appear to allow the [Regional Companies], in effect, to raise prices (and therefore exercise a form of market power) in the foreclosed sectors of the equipment market by disguising inflated equipment prices as costs in the local exchange market * * * [The Department of Justice and the Regional Companies] nowhere explain * * * why any significant amount of cross-subsidization that, in practical terms, enables the [Regional Companies] to charge higher prices for the equipment it produces would not be akin to an exercise of market power that would impede competition in the telecommunications market." 900 F.2d at 303.

of the size and complexity of the Regional Companies and their ability to combat regulatory efforts with funds extracted from the ratepayers. 673 F. Supp. at 531.

3. EFFECT ON COMPETITION

Regarding the practical effect of a removal of the manufacturing restriction, the court concluded that such a removal would be counterproductive, for a "flourishing, broad-based, innovative industry would be cut back to become one dominated by a small number of muscle-bound giants * * *." The Department of Justice, while supporting the Regional Companies' request for relief, acknowledged that "removal of the restriction will be followed by the displacement of many of the competitors, postulating that increasing concentration in the equipment markets is inevitable." 673 F. Supp. at 561. The court characterized this Justice Department view as contemplating with "remarkable equanimity for an antitrust enforcement agency, the ready destruction of many high-quality firms providing high quality goods that have emerged since divestiture, and that are performing important service to the economy." 673 F. Supp. at 561.

4. EFFECT ON INNOVATION

With respect to the question of innovation in the telecommunications equipment markets, the court noted that since the break-up of the Bell system—

"* * * there has been a flowering of research, development, innovation, introduction of new products, and quality assurance: new firms have entered the market; prices of equipment have declined dramatically * * * and competition flourishes in a market that had seen relatively little of it before. The equipment market now consists of six or eight very large firms, one to two hundred medium-sized firms, and hundreds of still smaller, vigorous, and inventive firms * * *."

"If the restriction were removed, there would be a serious risk of return to conditions of anticompetitive activity, concentration of the telecommunications equipment market in few hands, monopolistic pricing, and a relatively sluggish pace of innovation. According to a distinguished outside observer, the Regional Companies would then become 'central vigorous players in the equipment market, buying many of the smaller [firms], integrating services and equipment sales, and developing into seven smaller versions of what once was AT&T.'" 673 F. Supp. at 560 (footnotes omitted).

The court went on to point out with regard to innovation more specifically of direct use to consumers, that, while prior to the advent and pressure of competition in the telecommunications manufacturing markets, in 1984 relatively little innovation of use to consumers had emerged. This was so notwithstanding the presence within the Bell System of the excellent and prestigious Bell Laboratories research arm. However, subsequent to the emergence of competition in 1984

"* * * there [were in 1987] on the market at reasonable prices such by now commonplace features as residential telephones that are able to memorize dozens or hundreds of different phone numbers; telephones that repeat the last number called until it is no longer busy; cellular phones for business and emergency use; cordless phones; instruments that can be instructed by voice (e.g., in an automobile) to call a certain individual, of face, or number; and many others.

"Parallel with the development of equipment that provides greater accessibility to the telephone user, devices are being pro-

duced and marketed that, in a sense, operate in the opposite direction: some of them display the caller's number before the receiver has been lifted; others provide a distinctive ring when a call is received from a number previously designated as worthy of priority consideration; still others automatically block calls from persons with whom the phone's owner does not wish to speak. For the first time since the invention of the telephone, these devices are returning control to the instrument's owner from every salesman, unwelcome relative, or even crackpot who may decide to call at any hour of the day or night.

"It is surely not a coincidence that these features, and many more, have become available since the Bell monopoly was ended by divestiture and competition began to reign in the telecommunications marketplace." 673 F. Supp. at 601 n.330.

5. FOREIGN DOMINATION OF THE INDUSTRY

The court also considered and discussed the effect of a removal of the manufacturing restriction on the international competitiveness of the American telecommunications industry and the employment opportunities of American workers. In that respect, the court cited a report of the National Telecommunications and Information Administration of the Department of Commerce (NTIA), which noted that "the most plausible scenario in at least one telecommunications market is that, in the event of a removal of the decree restriction on manufacturing, the Regional Companies will join forces with mammoth manufacturing empires, most likely foreign, and that this will pose a substantial risk of destruction of the United States central office equipment manufacturing industry." NTIA Trade Report at 125-26. 673 F. Supp. at 561-62 (footnotes omitted). And the court continued on this topic:

"These predictions are plausible. [A survey by the government's expert] has found that affiliations between central office switch manufacturers and telephone service companies have tended to develop around the world wherever structural restraints are absent * * * This is not surprising. Manufacturers have strong incentives to seek market share "guarantees" in the form of an affiliation with large exchange service providers such as the Regional Companies; and these companies, in turn are attracted by the acquisition of expertise and, more importantly, the minimization of risk embodied in partnerships with huge manufacturers with ample capital.

"Because of their size, capital, and assured source of income from the ratepayer-supported telephone affiliates of the Regional Companies, these international giants will have the market power to adjust price almost at will to achieve market share, to the inevitable detriment of independent domestic producers. In short, the effect of the Justice Department's scenario is likely to be the displacement of small, efficient American firms by a few huge syndicates composed of foreign company and Regional Company components whose survival and domination in this environment will have been achieved by factors unrelated to efficiency or quality of performance." 673 F. Supp. at 562.

In summary, it was on the basis of the considerations discussed above and at greater length in the 1987 opinion itself (a copy of which is attached hereto) that the court concluded that removal of the manufacturing restriction could be expected to be followed by (1) a recurrence of the anticompetitive conduct of the local Operating Companies operating under the aegis of the Regional

Companies; (2) the displacement of most independent manufacturers of telecommunications equipment; (3) a marked reduction in competition in the market and hence a sharp reversal of recent trends which have witnessed decreases in price; (4) a slowdown in product innovation; and (5) domination of the domestic market by large foreign suppliers. In view of these conclusions the court declared that no justification existed for removing the antitrust decree's restriction on manufacturing.

Finally, I wish to advise you that no evidence has come to my attention in the last three and one-half years that would cast doubt on the findings and conclusions stated in the September 10, 1987 opinion or call for their repudiation.

I hope that this summary has been helpful to you and the Subcommittee.

Very truly yours,

HAROLD H. GREENE.

EXHIBIT 2

BELL ATLANTIC CORP.,
Arlington, VA, June 5, 1991.

HON. ARLEN SPECTER,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SPECTER: yesterday, you raised the issue of the appropriateness of Congress intervening to alter the rules for the telecommunications industry that are now controlled by a judicial decree.

Congress, of course, often changes the results reached by judicial decision. The current civil rights legislation is an example of a current effort in that direction.

But, more to the point, Judge Greene himself has often said that he does not relish the central role he has come to play in the telecommunications industry—that was a role for Congress—but Congress refused to act!

In short, Judge Greene has claimed that the antitrust case was thrust upon him by Congressional inaction and that he continues to have to umpire this industry because Congress cannot reach a consensus on policy.

Excerpts to this effect from a few of Judge Greene's speeches are attached.

Thank you, by the way, for making yourself available yesterday for the discussion of this important matter with Ray Smith and me.

With best regards,

BOB LEVETOWN,
Vice Chairman.

EXHIBIT 3

EXCERPTS OF SPEECHES

GREENE SPEECH, BROOKINGS INSTITUTION,
DECEMBER 4, 1985

In addition to their legitimate role in constitutional adjudication, the principal obligation of the federal courts is to interpret and enforce statutes enacted by the Congress. The Congress sometimes enacts laws which are less than precise, and on occasion it fails to address difficult and controversial problems, particularly those which are at the margins of public laws, preferring to leave them to later adjudication by the courts. And finally, of course, political currents and cross-currents sometimes make it impossible for the Congress to act.

The AT&T case may be an example of such a situation. How did it come about, it is often asked, that a single member of the judiciary has come to wield so great an influence on telecommunications, a basic American industry? Wouldn't it have been more consistent with American constitutional and political traditions if the basic policy decisions had been made by the Congress?

I agree with these critics. As a matter of constitutional theory, an undertaking as driven by policy as the restructuring of the nation's telecommunications industry would most appropriately have been directed by the political branches, not the courts. Yet when we look at the problem closely we find that it is these branches which, by action or inaction, have thrust the courts into their present role.

GREENE SPEECH, HASTINGS COLLEGE OF LAW,
APRIL 17, 1987

Second, there has been a great deal of comment, in the media and otherwise, about the incongruity of a restructuring of the nation's telecommunications industry by the decree of a single federal judge, and the suggestion is quite often made that so important a decision should have been reserved to the Congress. In theory, these critics are certainly correct; national policy is most appropriately made by the elected representative of the people. But the Congress, in spite of much debate and committee consideration, was unable to agree on what should be done either about AT&T or about the industry of which it is a part.

That failure of course does not vest a court with jurisdiction where none otherwise exists. But the fact is that a lawsuit, brought by the Attorney General on behalf of the United States, was already pending in court under a law of unimpeachable validity enacted by the Congress and never repealed. Indeed, considerable pressures were brought to bear on the Department of Justice to dismiss the suit, and President Reagan himself presided over at least one conference where this course of action was discussed. But to no avail; the action was resolutely pursued by the government's lawyers.

GREENE SPEECH TO CFA, OCTOBER 23, 1986, REGARDING THE "DOLE BILL" WHICH WOULD HAVE TRANSFERRED JURISDICTION OVER THE MFJ TO THE FCC

As you know, congressional committees have considered legislative proposals to transfer jurisdiction over the interpretation and enforcement of the AT&T decree from the courts to the Federal Communications Commission. In a democratic society, it is quite properly the elected legislature that lays down policy; telecommunications policy is no exception; and congressional consideration of this subject is therefore to be warmly welcomed. During the period when bills to carry out transfer proposals were pending in Congress, I did not comment at all on this subject. Obviously I will still not speak in any way to the legality of such proposals, nor would I even now comment on the details of the bills that were pending in the last Congress. However, having become somewhat acquainted with telecommunications during the last few years, I want to share with you my views on the general subject of a transfer of jurisdiction.

My feelings on such a transfer are mixed. Considering only my own interests and convenience, I would greatly welcome being relieved of this work. The task of interpreting and enforcing the decree usually does not require a great deal of novel or complicated legal reasoning and writing, and much of it is technical without being intellectually challenging.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

CALLER ID

Mr. KOHL. Mr. President, today we are considering an issue of great impor-

tance to the telecommunications industry—allowing the RBOC's to manufacture equipment. But I would like to discuss for a moment another telecommunications issue, Caller ID.

As some of you may know, Caller ID is the technology that allows a telephone call recipient to see the phone number of an incoming call on a small display screen attached to the telephone. Caller ID is spreading rapidly—it is being offered in Maryland, Virginia, and the District of Columbia, and there are plans to expand it to many more States.

In my mind, Caller ID is a welcome development. It can help us screen our calls and ultimately enhance our privacy.

But in what form should it spread? Should there be forced Caller ID, in which a phone company requires our phone numbers to be displayed every time we make a call—even if we have an unlisted number? Or should there be voluntary Caller ID, in which consumers decide when it's appropriate to give out their numbers? Since a call recipient can easily obtain the caller's address with his or her phone number, mandatory disclosure means revealing where you live—whether or not you want someone else to know.

Forced Caller ID violates our fundamental right to privacy. Do we not have the right to call a crisis hotline, or a Senator's office, or even the IRS to ask for help without saying who we are? And why should the phone company compel us to identify ourselves when we call a business for information? Such disclosure does not even seem logical: After all, if a stranger came up to you on the street and asked you for your home phone number, would you give it to him? Of course not.

There are even times when forced Caller ID is dangerous. Undercover officers sometimes call drug dealers from precincts to arrange buys. If a target recognizes where the call came from, it could scuttle the bust—or, worse, result in the death of an agent. Battered women often taken refuge with friends but call home to check on things. They should not be compelled to tell their abusing husbands where they are staying.

We know of other dangerous situations, but the point is this: Phone companies cannot determine when it is safe to reveal our numbers and addresses. There are just too many variables the phone company cannot foresee.

The answer is to allow consumers to retain their freedom of choice. Let them dial a few digits on the phone when they want to make private calls. With this per-call blocking option, people can display their numbers when calling friends and family—and they can keep their numbers confidential when they need to do so.

A growing number of phone companies have recognized the importance of protecting a caller's right to privacy. But I introduced the Telephone Privacy Act of 1991 in order to ensure that all telephone customers retain this crucial freedom of choice.

My bill is simple, effective, and straightforward. It would require phone companies that offer Caller ID to give callers the option of blocking the display of their telephone numbers or any other individually identifying information—without charge. In this way, the bill would balance the privacy interests of both callers and recipients.

The proposal makes sense for several important reasons. First, the new technologies that are available with Caller ID give us the ability to stop harassing phone callers without in any way undermining the privacy of law-abiding citizens: Callers can use Call Trace, Call Return, and Call Block to foil their assailants. For example, Call Trace lets the victim of a harassing phone call automatically send the number of the harasser to the authorities after hanging up—merely by dialing a three-digit code.

Though a few telephone companies would like to promote Caller ID as a way of reducing obscene phone calls, this approach is ultimately deceptive. Simply put, these new technologies work even if a caller uses blocking. So it turns out that we have the ability to protect victims and privacy at the same time.

Second, before we go any further with Caller ID, we have got to make sure that it is legal. Last summer, a Pennsylvania court ruled that Caller ID violates that State's constitution and its wiretap statute—which is almost identical to the Federal version. My proposal would resolve the ambiguities in our Federal laws, ensure the legality of Caller ID, and establish a uniform national privacy policy in this area.

There is one more reason to pass this legislation—blocking already exists for the wealthy. A new 900 service allows people to make private calls for a few dollars a minute. That is wrong. Blocking is a matter of equity as well as privacy: I believe phone companies should make it available to everyone—rich and poor.

The widespread support for this proposal underscores its commonsense approach. All around the country telephone companies are opting for blocking, or State PUC's are requiring it. And here in Washington a consensus is developing that Caller ID with blocking strikes the proper balance between telephone callers and recipients alike.

Mr. President, I had originally considered offering this legislation as an amendment to S. 173. However, since my measure will soon be marked up by the Judiciary Committee, I have decided to allow it to come to the floor in

the normal course of business. When that happens, I hope my colleagues will join consumer advocates, privacy experts, and law enforcement groups in enacting this legislation and making privacy protection a reality for all Americans.

Thank you, Mr. President.
The PRESIDING OFFICER. Who seeks recognition?

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

AMENDMENT NO. 290

(Purpose: To foster economic growth and strengthen American international competitiveness by striking the domestic content requirement)

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 290.

Mr. GRAMM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, beginning with line 10, strike out all through line 17 on page 7.

Mr. GRAMM. Mr. President, I am willing to agree to a time limit. I have discussed it briefly with the distinguished chairman of the committee. Perhaps I could yield to him and let him propound a time agreement which will be 15 minutes on each side, at the end of which the distinguished chairman will move to table the amendment.

Mr. HOLLINGS. Very good. I appreciate the Senator from Texas agreeing to a time agreement. There will be no second-degree amendments and the understanding is we will move to table the amendment at that time and have the yeas and nays. Will that be all right?

Mr. GRAMM. That will be all right.

UNANIMOUS-CONSENT AGREEMENT

Mr. HOLLINGS. I ask unanimous consent, Mr. President, there be 30 minutes equally divided on the Gramm amendment and controlled on the Gramm amendment; that no amendments be in order to the amendment, or to the language proposed to be stricken; that when all time is used or yielded back, the motion to table be made by the Senator from South Caro-

lina. If that unanimous-consent request is agreed to, then I will ask for the yeas and nays on that motion.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

Mr. HOLLINGS. I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

This is a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS. I thank my colleague.

Mr. GRAMM. Mr. President, the amendment I have offered is a very simple and straightforward amendment. It reaches to the very heart of American trade policy. The questions it addresses are: Can we promote American interests by trying to build walls around America, by trying to force American companies, against their will, to buy American products and in the process, by Government mandate, dictate how private industry is to be run? Should we enact Federal mandates that lower American efficiency and lower American competitiveness, or can we better promote American interests by trying to become more competitive?

Mr. President, I do not think we have to have a long debate on this subject. I think we are roughly divided along philosophical and partisan lines on this issue.

I might also say, Mr. President, that it is with great sadness that I recognize the majority of the votes on this issue often fall on the side which is not enlightened, at least as I would define it, in terms of what is best for America's interest.

Here is basically the problem, Mr. President. What this bill says is that the Regional Bell Companies will be allowed to manufacture telecommunications equipment but will not be allowed to engage in any joint ventures with other such companies. They will be limited in terms of the final value of the product they put on the market. No more than 40 percent of that value can be of foreign content.

Mr. President, all of us want American products to entail American content. The question is, however, whether or not we want to take an action that flies in the face of everything that for two decades we have tried to get other countries to stop doing.

Our Trade Representative today is involved in the process of trying to get other countries to stop exactly the kind of action we are about to vote to impose here in America. We have spent 20 years trying to assault and beat back domestic content provisions in other countries. We have tried to open markets to American products and, quite frankly, in my opinion, we have picked the wrong area to try to play this protectionist game.

I remind my colleagues that the United States has made great progress in telecommunications. Proof of our progress is that in 1988 we had a trade deficit in telecommunications equipment of \$2.61 billion. Since then we have become substantially more competitive. Our exports have grown very rapidly and, as a result, we are now approaching a balance of trade where in 1990 we had only \$790 million of deficit.

Also, Mr. President, the area where we are very competitive, where we had a trade surplus of \$1.28 billion in 1990, is the high-technology end of the business: Network and transmission equipment.

Now, Mr. President, at the very time that we are seeing our market penetration abroad growing by 25 percent a year, when we are seeing imports grow by only 2 percent a year, when we have closed the trade gap, and when in the high-technology end of the business we now have a \$1.28 billion surplus, why do we want to pick this industry to say we want domestic content. Therefore, by implication we are saying to our trading partners that since we are practicing domestic content, we would expect you to do it too.

Mr. President, this provision is the worst sort of legislation because it is a deal cut by business and labor, basically, to the exclusion of the interests of the working men and women of America, to the consumers of America, and to broadly defined American interests.

This agreement is clearly in violation of what we are trying to achieve in our trade negotiations. It is an agreement that could violate the GATT. It is moving the Nation in the wrong direction.

What I have proposed is simply that we strike this provision and move on the underlying bill, which deals with trying to allow more competitors to manufacture telecommunications equipment.

Further, Mr. President, this provision is not going to foster the adoption of this bill. The President has said in the clearest possible terms that if this domestic content provision, which clearly is in opposition to everything we are trying to do in the world on the trade issue, is part of this bill, he is going to veto this bill.

So I say to those who want to see this bill adopted, let us strip out this measure which does not belong in this bill, which is a totally anticompetitive provision, which represents a peculiar action by Government that tells a private industry what it can and cannot do in terms of trying to be competitive, and let us pass a bill which the President can sign.

Mr. President, the issue is very clear. Domestic content is a seductive kind of proposal.

The problem is, this proposal would not work. We cannot build a wall

around America. We are the world's largest exporter. Every time we try to get into this protectionist mode, we encourage other countries to keep their markets closed and to refuse to open those markets to America's products. You cannot have it both ways. We cannot be the fundamental force in the world in trying to promote more trade openness and at the same time expand protectionist measures here in our own country.

Mr. President, I know that this bill has long-term escape clauses. I know it requires the Federal Communications Commission and the Department of Commerce to analyze foreign content in the telecommunications industry, and over a period of time make adjustments in the domestic content requirement. But the bottom line is this provision could violate the GATT. It flies in the face of everything we are trying to do on trade policy. It is protectionism, pure and simple.

I urge my colleagues to support this amendment and avoid a Presidential veto. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, the Senator is so enlightened he is blinded. The fact is that he is just running at one little provision of the bill. The entire bill is intended to bring about competitiveness. His amendment does not address the real world in which we live. We are not in an economics 101 class with the so-called comparative advantage argument of free trade. We are in the real world, where we have been losing our shirts.

In Communications Daily today, June 5, it is reported that AT&T CEO Robert Allen will be in Guadalajara, Mexico, July 24, 1991, to dedicate AT&T's new answering machine plant. Whoopee. There goes another one—thousands of jobs lost.

A communications report of the Finance Committee, I think, reported some 60,000 jobs have been lost since divestiture and the 1984 MFJ decision. This entire bill is intended to promote competitiveness and improve the environment in which we live.

When you come to what they may be trying to do with this free-trade policy, I have been around here 25 years, and we keep going in the wrong direction with this free-trade policy. I have listened to the Tokyo round. Now I am listening to the Uruguay round and the fast track Mexico. I have the OECD report, the Organization of Economic Community Development, and Canada—like all of the countries on this list, has domestic content provisions; France, Germany, Japan, Sweden, United Kingdom, all of them have some form of domestic content provisions going right down the list.

In fact, President Bush, in his letter in March of last year to the Senate ma-

majority leaders and Republican leaders and the chairman and ranking member of the Finance Committee, talking about the directive of EEC, says that the directive mandates nondiscriminatory transport tendering to all producers who are at least 50-percent EEC origin.

That is how we are trying to compete. We have tried to set the example, and set the example for 45 years, even taxing ourselves with the Marshall plan and sending over our technology. Then our nationals became multinationals, and they got together with the bank and the Trilateral Commission, and they fleeced us all. We have lost the industrial backbone of the country.

The exports the Senator talks about are being made up by Siemens, Fujitsu, Northern Telecom, Ericsson—we went down the list which we included in yesterday's RECORD.

We are being invaded like fleas on a dog, just taking over at every turn. That is what they are exporting, and we are losing the jobs. So the entire bill is to, yes, manufacture in the United States of America.

Now, if you want to continue the manufacture beyond the United States of America, throw the bill away. Forget about the bill. It is not a little technical requirement.

This bill is reasonable. What was the reason? The reason was to recognize the fact of life that a lot of these parts you cannot get any longer in the United States. Western Electric makes all of their telephones now in downtown Singapore. We have been there and seen that. Thousands of jobs are gone.

The Senator says that U.S. workers—8½ million people unemployed—will hinder the ability of the Bell Operating Cos. to compete.

And exports means manufactured here. If you want to get manufacturing here, say so. That is what we want; that is why the domestic content provision is here.

If the other countries change then we can change—my theory of competition is if you raise a barrier against a barrier, then you can remove them both. But fleecing, causing a special relationship—look at the example we set. We are not in charge. Our clock is being cleaned every day. It has to stop. Here we have the wealth of the seven Bell Operating Cos. being forced to invest overseas at the same time we are looking in the Budget Committee for investment in this country. And the Bell Cos., like many other companies, cannot manufacture abroad because of the barriers in those countries.

Mr. President, I reserve the remainder of my time. How much time do I have?

The PRESIDING OFFICER. The Senator has 9 minutes, 25 seconds.

Mr. HOLLINGS. I yield to the distinguished ranking member.

Mr. DANFORTH. Mr. President, as always, the Senator from Texas has made a very persuasive case and he sets forth an excellent philosophical argument, one with which I would normally agree. I have told my chairman, Senator HOLLINGS, that as a general principle, I hate the idea of domestic content requirements. I think that is a matter of bad policy and bad trade policy. The problem is trying to match philosophy with the practical realities of the case. Unfortunately, the two clash in this instance.

That clash is recognized by statements made by both the Reagan administration and the Bush administration. In 1987, during the Reagan administration, the Commerce Department said that if the Bell Operating Cos. were to diversify into electronic or digital switch manufacturing, it would almost certainly undertake a joint venture with a foreign-based firm. Then the Commerce Department concluded that such joint venturing would likely cause—these are the words used—“significant harm to American competitive technology and trade positions, and can pose the threat of destroying this country's indigenous central office equipment manufacturing capacity.” That is the language used by the U.S. Department of Commerce during the Reagan administration.

During the Bush administration, the Department of Labor, in a staff study, estimated that 18,000 to 27,000 U.S. jobs could be lost if the manufacturing restriction were lifted, and noted that this number does not include potential adverse effects on employment in research and development functions which might be transferred abroad through Bell Operating Co. joint ventures with foreign manufacturers.

That is the reality.

Mr. President, my hope would be that somehow between now and when this bill is submitted to the President for his action that there could be some way of working out this problem. I think that there is a middle ground, perhaps one that tracks the concepts of the 1988 Trade Act, which conditioned access to our markets on reciprocal access to the markets of the other countries. That kind of approach, to me, is better than a domestic-content approach. But to take the philosophical approach, that I commend Senator GRAMM for. In and of itself, without any way to cushion the blow, that is going to cause a very serious adverse effect on American industry and on American jobs. For that reason, I will support my chairman in voting to table the Gramm amendment.

Mr. GRAMM. Mr. President, I yield 5 minutes to the distinguished Republican leader.

Mr. DOLE. Mr. President, I rise in support of the Gramm amendment, and ask that I be made a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I rise in support of the Gramm amendment to strike the domestic content requirements from S. 173.

Let me first say plainly, Mr. President: I support S. 173. I am fully in favor of increased competition in telephone and other communications technologies—competition that will bring new products, new services at lower prices to consumers. I support freeing up America's telecommunications resources to compete more effectively in the world market.

Some here today may remember when, a number of years ago, this Senator introduced legislation to transfer jurisdiction over the telephone industry from Judge Greene's courtroom to the FCC.

That bill was not intended so much as a criticism of Judge Greene—in my view, an able and hardworking jurist, diligently applying the antitrust law—as an effort to bring the formulation of America's telecommunications policy out of the courts and back where it belongs—in the hands of the agency with expertise, overseen by the Congress.

That bill generated a lot of opposition, Mr. President, opposition from some powerful interests with a large stake in the status quo. So I want to congratulate Senator HOLLINGS on his leadership in getting at least a partial MFJ bill to the floor. I know some of the obstacles Senator DANFORTH and others have faced; believe me, I have been there.

Having said that, however, I find it ironic that this bill, a principal purpose of which is to make our communications industry more competitive, contains highly anticompetitive domestic content restrictions. What the bill gives with one hand, it takes away with the other.

The provisions which would be stricken under the Gramm amendment would:

Single out the Bell's affiliates, imposing restrictions not binding on their competitors;

Undermine current U.S. trade negotiations with the European Community and other trading partners;

Ultimately result in higher prices to consumers.

First, the bill's restrictions on imported components would apply only to the Bell manufacturing affiliates.

Other manufacturers—Northern Telecom of Canada, the various Japanese and European companies, and the dominant American manufacturer, AT&T—can all buy components without restriction from any source, and thus manufacture at the most efficient cost; only the Bells are handcuffed. Does this make sense? Is this fair? Will it save jobs?

Hardly, Mr. President. AT&T now joint ventures with foreign manufac-

turers in 15 countries and imports products into the United States, while here at home it has closed down 6 plants and reduced activity at others. Yet this bill leaves that alone, while hamstringing the Bells from competing on equal terms. At such disadvantage, it is hard to see how the Bells could compete and grow. And growth means jobs.

Second, this portion of the bill would seriously undercut the U.S. position in several market-opening efforts presently being negotiated. The EC and Canada have already threatened to challenge this provision in international tribunals. An adverse finding would result in retaliation against our exports. Our trade negotiators are working to open foreign markets and are presently involved in sensitive negotiations to promote trade agreements and reduce barriers to our imports everywhere—and here we are, Mr. President, sending the opposite signal and inviting the label of protectionist.

The President's advisors say he cannot sign such a bill. I ask unanimous consent to have reprinted in the RECORD a copy of a letter from Secretary Brady, Ambassador Hills, Secretary Mosbacher, and others.

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

THE SECRETARY OF COMMERCE,
Washington, DC, May 30, 1991.

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

DEAR SENATOR DOLE: The Administration wishes to affirm its strong support for legislation that would lift the manufacturing restrictions currently placed on Regional Bell Operating Companies (RBOCs), and we applaud your efforts on behalf of this objective. As the Administration has previously testified, we believe that this objective of S. 173 represents sound economic policy that would promote competition, increase U.S. research and development, and open up additional investment opportunities in telecommunications in the United States. Unfortunately, S. 173 also contains other provisions—in particular, the domestic content and local manufacturing requirements—that would undermine important international trade objectives and detract substantially from the bill's own stated objectives. If these provisions are not removed from S. 173, the President's senior advisers will recommend that he veto the bill.

As you have recognized, the RBOCs represent a very significant U.S. resource that could be applied to the advancement of U.S. telecommunications and related high-technology endeavors. Their assets, in the aggregate, represent a major component of the country's telecommunications base. We believe these resources should be freed to better serve the American public by being permitted to participate in the manufacture of customer premises and telecommunications equipment. Among other benefits, elimination of the manufacturing restriction will help promote increased telecommunications research and development in the United States, which may also have a beneficial effect on related infrastructure development. By enhancing their development of new tech-

nologies, the legislation would also greatly promote the international competitiveness of U.S. industry.

Given our agreement on the many benefits of lifting the manufacturing restrictions, we regret that we are unable to support S. 173 as currently drafted. The Administration opposes on a number of grounds the local content and domestic manufacturing requirements of S. 173.

First, since such requirements serve to discourage certain imports—components in certain cases, finished products in others—they distort trade. Private companies that would otherwise make purchasing decisions on sound economic and technical grounds instead will be forced to procure and produce equipment on the basis of government fiat. In addition, the Bell companies—with their new-found ability to manufacture—may find themselves at a competitive disadvantage vis-a-vis other telecommunications equipment manufacturers, who are not required to adhere to local content and local manufacturing restrictions.

Second, the imposition of local content/manufacturing requirements for the Bell companies creates serious questions for existing U.S. international obligations. The United States' trading partners could raise complaints under the General Agreement on Tariffs and Trade (GATT), the U.S.-Canada Free Trade Agreement, and numerous treaties of Friendship, Commerce, and Navigation. Certain of our trading partners have already made it clear that they would challenge the local content measure in international fora. A GATT finding that the United States had violated its obligations could lead to potentially costly retaliation against U.S. exports. This could put in jeopardy our trade surplus in telecommunications with the EC (in 1990 we exported to the EC \$1.4 billion in telecommunications equipment while we imported from them just \$361 million).

Third, local content/manufacturing requirements would also seriously undermine U.S. positions in ongoing Uruguay Round negotiations, which are intended to open foreign markets to U.S. goods and services. In the GATT Government Procurement Code negotiations, a cornerstone of U.S. negotiating objectives under the 1988 Trade Act, the United States has maintained that private companies, like the RBOCs, procure competitively and thus need not be subject to procedures like those of the Code. The local content/manufacturing provisions would be viewed as inconsistent with this position. If we fail to achieve a positive result in these negotiations, U.S. suppliers of telecommunications equipment and services—including the Bell companies under S. 173—will be shut out of many foreign markets. The EC's government procurement market for telecommunications equipment, with an estimated value of tens of billions of dollars, will remain closed to U.S. providers absent a new GATT agreement.

Local content/manufacturing provisions are also inconsistent with U.S. efforts in the GATT to discipline and eliminate trade-related investment measures (TRIMs). We have placed a high priority in the Uruguay Round on the achievement of discipline in countries' use of TRIMs, such as local content and domestic manufacturing requirements. Approval of such restrictions as part of S. 173 would create serious problems for the TRIMs negotiations.

Fourth, the restrictions contained in S. 173 are more likely to cost U.S. jobs in the telecommunications industry, not save them. Any weakness in the U.S. competitive posi-

tion in telecommunications equipment falls in the low end of the market, such as in the production of inexpensive telephones, where technological advantage is not crucial. The restrictions contained in S. 173 would have little effect on U.S. trade and employment in the low end of the market because the RBOCs are unlikely to concentrate their manufacturing efforts on it.

The strength of the U.S. competitive position in telecommunications equipment lies in the higher end of the market, where technological know-how is decisive, and where the United States had a \$1.3 billion trade surplus in 1990 (in network and transmission equipment). The restrictions contained in S. 173 will hinder the ability of the RBOCs to compete in this part of the market, and may impede their ability to contribute to the ongoing expansion of exports and export-related employment associated with these products.

The Administration also has deep reservations about the bill's flat prohibition on joint ventures among the RBOCs. The RBOCs should be subject to ordinary antitrust principles, which permit procompetitive joint venture arrangements, but prohibit those that would harm competition.

The Administration supports the primary objective of S. 173. Unfortunately, the Administration cannot support the bill with its provisions on local content and domestic manufacturing.

Sincerely,

Nicholas F. Brady, Secretary of the Treasury; Lynn Martin, Secretary of Labor; Lawrence S. Eagleburger, Acting Secretary of State; Robert A. Mosbacher, Secretary of Commerce; Carla A. Hills, U.S. Trade Representative.

Mr. DOLE. Finally, if one thing is clear, it is that import restrictions mean less efficiency, less choice, and less competition for producers. We know who pays the price for that, Mr. President. Consumers do. Less real competition means higher prices for everyone.

So I urge my colleagues to vote with Senator GRAMM to strike this provision. It is not a vote against this bill.

I am not certain. I had intended to vote for the bill. I am not certain what will happen. I do not think we will prevail. I assume Senator HOLLINGS has the votes to table the Gramm amendment, but I want a bill the President can sign. Maybe there is some way, if we do not prevail here. At least by making a record there will be some incentive in the conference, if it reaches a conference, where the conferees, Senator HOLLINGS, Senator DANFORTH, and others, can figure out some middle ground.

But in the interim, Mr. President, I certainly strongly support the amendment by the distinguished Senator from Texas.

Mr. HOLLINGS. Mr. President, this particular request has been cleared with the distinguished minority leader. I ask unanimous consent that upon disposition of the Gramm amendment, the Senate, without any intervening action or debate proceed, to vote on the passage of S. 173.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. I understand my colleague only has 2 minutes left. I have 6?

The PRESIDING OFFICER. The Senator is correct. The Senator has just under 6 minutes.

Mr. HOLLINGS. I yield 2 minutes to the Senator from Colorado, even though he is against it.

Mr. BROWN. Mr. President, let me express my thanks to the distinguished Senator from South Carolina for his kindness, even though I may be misguided on this particular amendment. I appreciate his consideration.

I rise simply to propound a question to the distinguished Senator from South Carolina. The Senator, I thought in a very articulate fashion, pointed out that a number of countries around the world do have what we would call domestic content requirements. The paper that the Senator was referring to indicates that Sweden, West Germany, France, Canada, and a number of the Eastern European countries have similar provisions.

My question to the distinguished Senator would be this: He has indicated concern about elimination of the domestic content provision in circumstances involving countries which maintain domestic content requirements. Would the Senator have a different feeling when dealing with countries that do not have a domestic content provision? In other words, would he be receptive to looking at having the domestic content provision apply only to those countries that have the same kind of treatment accorded our products, but be willing to look at waiving that domestic content provision when we are trying to trade with countries that do not have any domestic content provision of their own?

Mr. HOLLINGS. No. The predominant countries in this particular communications market are the countries from the OECD. They are the principals in telecommunications. And they are the ones that are cleaning our clock, taking our industry away from us. If the picture cleared some years from now, I would look at the real life situation.

I do not want to confuse the point here—the thrust of this bill, entire thrust of this bill is to get manufacturing here back home in the United States.

AT&T closed down or reduced its work force at 33 manufacturing plants since 1984, with a loss of 60,000 jobs. Of course, we have been forbidden under law to allow the Bell Cos. to create any of those manufacturing jobs. That is my problem.

I am not trying to have fair play with anybody right now. I am trying to survive. That is what I am trying to do. We are in an economic war, and I think we are going to have to fight like the

dickens to survive, and that is the guts of this bill. If you want to gut the bill, then you would vote with the Senator from Texas.

Mr. BROWN. I appreciate the distinguished Senator's answer. He is very forthright and an eloquent spokesman for his point of view.

This Senator believes that it is a mistake to impose domestic content provisions on countries that do not have domestic content provisions of their own. If we are fighting for fair trade, it seems to me that the Senator from Texas has a sound point.

I thank the Senator.

Mr. HOLLINGS. I reserve the remainder of my time.

Mr. GRAMM. Mr. President, our dear colleague from South Carolina talks about the Marshall plan, but let me remind my colleagues that the aid provided by the Marshall plan really was a little lighter fluid. It was trade with Western Europe that rebuilt Europe, that helped build the economies of Japan and Korea, that helped create a wealth creation machine worldwide, that tore down the Berlin Wall, and that today has us on the verge of winning the cold war.

Mr. President, I find it amazing that we are here trying to pass a law to make people invest in America, when for the last 10 years America has had more foreign investment than any other country in the world. In fact, foreigners have knocked down our door trying to get here, and often we hear people on this floor denouncing foreigners for wanting to invest in America.

Mr. President, a free society does not prosper by enacting laws that force people to make economic decisions they otherwise would not want to make. If we are going to be competitive, we are going to have to compete. We cannot build a wall around the greatest trading nation in the world.

Finally, if Senators need a non-economic reason to vote for this amendment, it says to Ma Bell, you can invest abroad, you can buy foreign content, you can produce telecommunications equipment, and you can sell it. It says to Regional Bell Cos., you cannot do it. I hope my colleagues remember the equal protection clause under the 14th amendment of the Constitution. The Constitution says that persons—and that includes corporations—must have equal protection under the law.

This provision, in my opinion, is totally unconstitutional. You cannot have some companies treated by one set of rules in a market, and other companies that are treated by another set of rules under Federal statute, without violating the equal protection clause of the Constitution.

So I do not doubt the sincerity of my colleague from South Carolina, but I think he is absolutely wrong on this,

and everything he is saying and doing is counterproductive to what we are trying to achieve.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HOLLINGS. Mr. President, if the Senator was correct about the equal protection clause, then the Bell Cos. have the sorriest constitutional lawyers in the world, because they have been trying to get out. They are the ones that everybody discriminated against, they are the ones that have been required to what? Invest overseas and not invest here.

Let the companies do what they want to do. That is exactly the bill itself. The Bell Cos. want to produce here. They want this domestic content provision. They have agreed to this provision. They understand it is not good business to be doing all this overseas while we have 8½ million unemployed in America. They are public service companies, depending on the public support. As a result, they have a hard time explaining that they cannot even do this right here. It is an artificial thing.

I wish he were right that a domestic content provision was unconstitutional, because then no one would have had domestic content and you would have had a bare bill at this particular time. Protectionism built Europe. They have had domestic content provisions since the word go in Europe. Protectionism built Japan in the Pacific Rim. Before I can sell a textile in downtown Korea, I have to get permission from the textile industry in Korea. You cannot get licensed in Japan. You can go right on down the list.

So they have practiced protectionism. We tried to set the example. We have been the high-wire boys and the little fellows with the Christian ethnic and the Golden rule. That does not wash in the international market. You have to have not fair, but competitive trade. What works are the same domestic practices that, in essence, built this industrial giant, the United States of America.

We are not investing in research and development, Mr. President, because it does not pay to do so. The Bell Cos. cannot manufacture. We are losing out in the industries that are on the cutting edge of technology, and as a result, the consumers of America are losing out on fine advanced services. It does not pay to even produce it here.

That is a sad, terrible situation. The Senator knows his suggestion would gut the bill. The administration has been toying around for a full day on this. They have been taking head counts and bringing all the pressure and everything else in the world on Senators to offer a new kind of restriction. That is a last gasp of trying to kill the bill.

If you are for America, for Joe-Six-Pack in Texas—the Senator has taught

me all about old Joe-Six-Pack down in Texas—then vote for Joe-Six-Pack to have a job, and for building America, so he does not have to go abroad to make a living. I yield the remainder of my time.

I move to table the amendment.

The PRESIDING OFFICER. The question is on the motion to table amendment No. 290 offered by the Senator from Texas.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] and the Senator from Colorado [Mr. WIRTH] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Rhode Island [Mr. CHAFEE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 32, as follows:

[Rollcall Vote No. 88 Leg.]

YEAS—64

Adams	Ford	Metzenbaum
Akaka	Fowler	Mikulski
Baucus	Glenn	Mitchell
Bentsen	Gore	Moynihan
Biden	Gorton	Nunn
Bingaman	Graham	Pell
Boren	Heflin	Reid
Breaux	Helms	Riegle
Bryan	Hollings	Robb
Bumpers	Inouye	Rockefeller
Burdick	Jeffords	Sanford
Burns	Johnston	Sarbanes
Byrd	Kassebaum	Sasser
Cohen	Kasten	Shelby
Conrad	Kennedy	Simon
Cranston	Kerry	Specter
Danforth	Kohl	Stevens
Daschle	Lautenberg	Thurmond
DeConcini	Leahy	Wellstone
Dixon	Levin	Wofford
Dodd	Lieberman	
Exon	Lott	

NAYS—32

Bond	Gramm	Packwood
Bradley	Grassley	Pressler
Brown	Hatch	Roth
Coats	Hatfield	Rudman
Cochran	Kerrey	Seymour
Craig	Lugar	Simpson
D'Amato	Mack	Smith
Dole	McCain	Symms
Domenici	McConnell	Wallop
Durenberger	Murkowski	Warner
Garn	Nickles	

NOT VOTING—4

Chafee	Pryor
Harkin	Wirth

So the motion to lay on the table the amendment (No. 290) was agreed to.

Mr. COCHRAN. Mr. President, I am an original cosponsor of this legislation, and I am hopeful the Senate will approve it.

This bill will remove the restriction on manufacturing by Regional Bell Operating Cos. This manufacturing restriction has allowed much of the industry's intellectual property and manufacturing capacity to be purchased by

overseas competitors who operate under no similar restriction.

Removal of this manufacturing restriction will provide an incentive to the Regional Bell Cos. to increase their spending on research and development. This is essential if American firms are to be competitive in today's rapidly changing communications industries and meet the challenges posed by unrestricted foreign competitors.

I urge the Senate to pass this bill.

Mr. ADAMS. Mr. President, as an original cosponsor of S. 173, the Telecommunication Equipment Research and Manufacturing Competition Act of 1991, I strongly support this bill. I believe the Gramm amendment would totally undermine the purpose of this legislation.

The legislation before us addresses a sector critical to U.S. competitiveness in the global economy: Information systems and telecommunications technology. All of us are concerned about the threat our industries face from foreign government subsidies to their telecommunications and other industries. Those practices give our foreign competitors an unfair advantage in third country markets and distort competition in our own open, domestic market.

We cannot afford to lose more than we already have of one of the most promising segments of our economy, the manufacture of telecommunications equipment.

This legislation is critically important to workers in the telecommunications equipment industry, where the Commerce Department has projected a slight decline in employment over the next 5 years.

The provisions of S. 173 should help stem this decline, and will hopefully reverse it. But we will only see a greater loss of jobs if we go along with the Gramm amendment.

Lifting the manufacturing restriction will help our Nation compete in several ways. First, the Bell Cos. would have the incentive to increase their spending on research and development.

Second, the bill would enable the Bell Cos. to tap into a vast underutilized reservoir of knowledge about telecommunication networks and the telecommunications marketplace.

Third, this legislation would allow the Bell Cos. not only to collaborate with other manufacturers, but to invest in them as well.

Unfortunately, some small startup companies have no choice but to turn to foreign-based investors.

Consider what has occurred in the last decade. We have seen our ideas and inventions, such as VCR's, exploited by manufacturers abroad. The pattern of foreign companies applying technology we have developed to manufacture new products is expanding in the telecommunications field. The bill before

us today will help stop this trend by allowing American companies to do what they do best—invent, market and produce. Without this legislation, our large and growing domestic market will be exploited increasingly by foreign manufacturers.

S. 173 will assure that we maintain a strong national economic base in the information and telecommunications manufacturing sector. It will promote our technological know-how. It will help our industry create the jobs and products to keep the United States in the forefront of this key advanced technology sector.

I urge my colleagues to join in supporting this bill.

Mr. THURMOND. Mr. President, I rise today in support of S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act of 1991. As my distinguished colleagues are aware, this legislation removes the manufacturing restriction imposed on the Bell Operating Co. pursuant to the modified final judgment. That consent agreement was entered into in August 1982 by AT&T and the Department of Justice, and accepted by Judge Harold Greene of the Federal District Court for the District of Columbia, in settlement of an antitrust suit filed by the Department of Justice. The remaining restrictions in the MFJ are not affected by this legislation.

Mr. President, in my view, issues concerning the telecommunications industry are among the most important that the Senate will face in this Congress. These issues affect not only the telecommunications industry itself, but innumerable other industries and services that are dependent on the telecommunications industry for their growth and development. If this legislation does nothing else, it will have forced this distinguished body to focus on how critically important this industry is to our technological development as a nation, and to our ever important competitive position on the international stage.

Having said that, Mr. President, let me make clear that I did not reach my decision to support this legislation easily. There is little doubt that S. 173 raises difficult issues concerning telecommunications policy and our antitrust laws. There is also little doubt that this legislation raises legitimate concerns about the legislature's relationship with the judiciary and whether litigants can, and should, change their forum every time they are faced with unwanted prohibitions.

Mr. President, in 1981, before the breakup of AT&T, I supported proposals to lift some of the regulatory restrictions under which AT&T then operated. At that time, I made clear that my support was premised on the acceptance of certain amendments that addressed legitimate anticompetitive

concerns. My support of S. 173 is likewise premised on antitrust protections.

On balance, Mr. President, I believe that we improve competition in the telecommunications industry if we lift the manufacturing restrictions on the Bell Operating Co. and allow them to compete with the other telecommunications manufacturers. While we must not ignore the legitimate antitrust concerns that are raised because of the monopoly that exists in the local exchanges, I am persuaded that the safeguards that are contained in this legislation should provide adequate protection to those companies that will compete with the BOC's.

Mr. President, it is my view, that no matter which way we proceed on S. 173, there are no guarantees. There are no assurances that S. 173 will work perfectly. However, I believe that the responsible regulatory bodies—the Federal Communications Commission and the various State commissions, as well as the Federal and State antitrust enforcement agencies—will insure that the type of conduct that brought about the MFJ in the first place, will not be repeated. In fact, these agencies and the Bell Operating Cos. themselves, should be duly warned that if anti-competitive conduct rears its head, this Senator will be back before this body with whatever legislation is needed to correct the situation.

The alternative to this legislation, Mr. President, would be retaining the status quo. This also provides no assurances. There is no conclusive proof that if we defeat this legislation we will retain the competitive edge in telecommunications technology that is so important to our industrial standing worldwide. There is also no conclusive proof that consumers will benefit from lower rates and a wider variety of products.

In the end, Mr. President, it comes down to a balancing of interests and protections. In my view, such balancing tips the scales in favor of this legislation, and, therefore, I will support and vote for passage of S. 173.

Mr. BRADLEY. Mr. President, I wish to take this opportunity to correct some erroneous information that may have been communicated in the course of remarks on S. 173 today.

The suggestion made today that AT&T may have sold some portion of Bell Laboratories is completely false. I have been assured by AT&T representatives that no portion of AT&T Bell Labs has been sold to any company, domestic or foreign, and no such sale is contemplated.

More than any other single institution, AT&T Bell Laboratories has helped weave the technological fabric of modern society.

It is the birthplace of the transistor, laser, solar cell, light-emitting diode, digital switching, communications satellite, electrical digital computer, cel-

lular mobile radio, long-distance TV transmission, artificial larynx, sound motion pictures, and stereo recording as well as many major contributions to the telecommunications network. It has more than 22,000 patents, averaging one per day since the company's founding in 1925.

The mission of AT&T Bell Laboratories is to design and develop the information movement and management products, systems, and services needed by AT&T, to provide the technology base for AT&T's future business, to search for new scientific knowledge, and to apply sound R&D techniques to AT&T's manufacturing facilities.

To accomplish this mission, Bell Laboratories currently has some 29,000 employees in 8 States and 9 foreign countries. About 4,000 hold doctoral degrees in 19 disciplines.

At the time the AT&T divestiture occurred, AT&T pledged not to undercut its long tradition of commitment to research at Bell Labs. AT&T has more than lived up to that commitment. Although AT&T overall has had to cut back on the number of people it employs and has undergone considerable reorganization since divestiture, it has increased rather than decreased its researchers and funding at Bell Labs.

At divestiture, on January 1, 1984, AT&T Bell Laboratories employed 19,300 people and had an annual budget of \$1.9 billion. On December 31, 1990, Bell Labs employed 22,200 people directly, and its budget for last year was \$2.9 billion. In addition, another 8,000 people at AT&T were engaged in closely related research work.

Early in 1991, Bell Labs researchers set two world records for the shortest and fastest laser light pulses. The laser generates 350 billion pulses a second, each one shorter than one trillionth of a second. The fastest commercial system today generates 2½ billion pulses a second.

Other Bell Labs scientists have demonstrated the world's first digital optical processor, an experimental machine that carries out information processing with light rather than electricity. The processor is a major advance toward an optical computer that could eventually be one thousand times faster than today's best machines.

Mr. President, I am proud to say that AT&T Bell Laboratories remains a premier research institution in New Jersey, in the United States, and in the world.

Mr. CRAIG. Mr. President, I rise to support S. 173, the Telecommunications Equipment Research and Manufacturing Act of 1991, which will effectively lift the manufacturing restrictions imposed on the seven Regional Bell Operating Cos. created by the AT&T divestiture.

The manufacturing restriction has kept the Bell Cos. from playing a role in the development of technology and

the production of telecommunications equipment. In an era when technology is rapidly evolving, this kind of restriction simply cuts our competitive edge with foreign producers. Maintaining the manufacturing restriction will only push our communications products industry farther behind the rest of the world.

Communications technology has great potential for improving the future of rural States, affecting rural life in a variety of ways, from education to health care delivery. Rural America deserves to enjoy the benefits of these developments.

S. 173 will open up more of these opportunities by allowing some of the experts in the field more flexibility to research, develop, and manufacture these high-technology products. S. 173 will establish a telecommunications policy that will generate new jobs for American workers and new telecommunications products and services for American consumers.

Opponents of this legislation have argued that the bill would allow the Bell Cos. to revert to predivestiture monopolistic practices. It has been asserted that this legislation will allow the Bell Cos. to abuse their telephone franchises, harming competitors and telephone ratepayers by using telephone service revenues to subsidize research and development. Mr. President, S. 173 contains safeguards to prevent this sort of abuse.

The legislation prevents the Bells from manufacturing in affiliation with other Bell Cos. This ensures that the seven Bells are in competition with each other. The bill also requires manufacturing operations to remain separate from the telephone operations to prevent cross subsidization. Minimum requirements constituting separation are outlined in the legislation.

S. 173 also requires that 10 percent of the manufacturing affiliate must be made available on the open market to outside investors. It requires the manufacturing affiliate to sell its equipment to other telephone companies at the same price, without discrimination on terms and conditions.

Mr. President, I have read the Commerce, Science, and Transportation Committee's report on S. 173 very carefully. The safeguards contained in the legislation are clearly outlined in the report.

Mr. President, I can understand the initial concerns and fears some may have with the changes this legislation would make by lifting the manufacturing restrictions imposed on the seven Bell Cos. However, if one looks at the changes that have occurred in the industry, the competitive base that now exists, and the clearly defined safeguards in the legislation, I am sure that these fears would be dispelled. As a cosponsor of S. 173, I hope that my fellow colleagues will read the legisla-

tion and committee report carefully, and support this timely, important legislation.

Mr. PACKWOOD. Mr. President, I rise today to support the goals of S. 173—to promote U.S. competitiveness in global telecommunications markets and to preserve U.S. leadership in developing innovative telecommunications technologies. These are laudable goals, and ones the U.S. Senate should seek to achieve. S. 173 moves us in the right direction.

Mr. President, I come to this debate with a lot of history on this issue. I was chairman of the Commerce Committee when the Senate passed S. 898—a bill which, at the time, was the most comprehensive proposal for change in the communications laws in almost 50 years. Many of the participants in this debate today were active in that discussion.

Ten years have passed, and the telecommunications industry looks substantially different. We considered S. 898 before the divestiture of AT&T. The Bell Operating Cos. did not exist as separate entities. In spite of these changes, many of the issues have not changed.

The basic question is: Should we allow seven of the biggest, most knowledgeable telecommunications companies in the country to manufacture equipment? I believe the answer to that question is yes.

Clearly, we must ensure the Bell Operating Cos. do not use their monopoly power to gain some advantage in the competitive manufacturing arena. We also must ensure the small, rural telephone companies are treated fairly. Finally, and most importantly, we must ensure the consumer, the local ratepayer, does not pay for the entry of the BOC's into manufacturing.

S. 173 contains safeguards to help protect against these abuses. There may be other safeguards that could be added that would not so hamstring the BOC's as to make the bill meaningless. We should consider such safeguards as this bill moves forward through the House and through conference.

Mr. President, although I support the thrust of S. 173, I must raise strong objections to the so-called domestic content provisions. This provision requires that all manufacturing for sale in the United States be performed domestically, and arbitrarily limits the use of non-U.S. components to a certain percent of the sales revenue from the manufactured equipment.

This represents exactly the wrong policy at the wrong time. At a time when U.S. telecommunications exports have been increasing, this provision would invite our foreign trading partners to take retaliatory action and close their doors to U.S.-manufactured goods. At a time when we are trying to negotiate market-opening commitments in the Uruguay round, this pro-

vision, if enacted, would seriously undermine those negotiations.

The provision would not create jobs in the United States. In the long run, it would have the opposite effect, because U.S. companies would be less competitive if they are forced to use components they would not otherwise use. The consumer would suffer as well, in the form of higher prices.

Finally, the domestic content provision would violate existing U.S. international obligations under the GATT and under virtually every other U.S. trade agreement.

Mr. President, in spite of my opposition to the domestic content provision, I plan to support S. 173. It is my hope, however, that as the bill moves through the House and through conference, it will be amended to take care of my concerns about this provision.

Mr. LAUTENBERG. Mr. President, I rise in opposition to S. 173.

Mr. President, let me begin by saying that I support the general goal of this legislation—to preserve America's telecommunications leadership and to promote American jobs. I applaud the distinguished chairman of the Commerce Committee, Senator HOLLINGS, for his commitment to increasing American competitiveness.

The issues before us have often been portrayed as a fight between two large corporate interests—the Regional Bell Operating Cos. on one side, and AT&T on the other. Mr. President, what is at stake is much more than that. The issue is how to assure that America has the best telecommunications system in the world. The issue is how to assure that America keeps its lead in the design, development, and manufacturing of telecommunications equipment and the design, development, and provision of telecommunications services. That leadership means jobs for Americans. That leadership means benefits for our economy as a whole.

The future of our telecommunications industry affects not only the companies in the industry itself, it affects the future of every American company that relies upon our telecommunications system. In the information age, our telecommunications system is as much a part of our infrastructure as our roads, rails, airways, and waterways. Our economic productivity and our competitiveness, depends in significant part on our ability to process, to convey, and to share information efficiently.

The telecommunications industry is an especially important one in my State. The Nation's leading telecommunications research and development facilities, Bell Labs and Bellcore, are located in my State. So are tens of thousands of other employees of AT&T, New Jersey Bell, and other telecommunications manufacturers and service companies.

I agree that we need to promote competition in telecommunications. Competition brings innovation, and innovation brings efficiencies. Innovation means better products, more sales, and more jobs.

On its face, this bill seems to promote competition, by increasing the number of competitors.

However, Mr. President, more competitors does not necessarily mean more competition. Particularly when some of those competitors are monopolies. And that's the nub of the problem.

Almost by definition, monopolies are immune from many of the constraints of a free market. So when they take this immunity and move into a competitive market, real concerns are raised. Concerns about fairness to the monopolies' consumers. Concerns about fairness to the monopolies' competitors, and concerns about maintaining competition in the industry.

These concerns are based largely on the threats of anticompetitive self-dealing, and cross-subsidization.

Of course, the bill does contain provisions that are designed to prevent these abuses. But I am not convinced that these assurances are adequate.

Take, for example, the bill's provisions on self-dealing. The legislation says that a Bell Telephone Co. is supposed to provide unaffiliated manufacturers with comparable opportunities to sell its equipment, and may only purchase at the open market price.

The language is simple and straightforward, Mr. President. But applying it to the real world of business will be extremely difficult.

First, there may be no benchmark—no standard of comparison—by which to determine an open market price. For example, if a manufacturing affiliate sells all of its equipment to its parent, there could be no open market. And without an open market, with a range of similar prices, there can be no open market price.

Compounding matters, manufacturing affiliates will often develop equipment that is customized to fit the unique needs of its parent. So not only will there be no outside sales by which to determine similar prices, there may be no products at all on the market that are similar.

Under these circumstances, it could be virtually impossible for the FCC to determine whether the price paid to an affiliate represents the open market price, or whether the transaction amounts to improper self-dealing.

Mr. President, just for the sake of argument, let us say that the FCC can find similar products with similar prices, and so can ascertain an open market price. It's still going to be extremely difficult for the Commission to adequately police self-dealing abuses.

For one thing, it could take an army of FCC personnel to identify violations and adjudicate complaints. Yet GAO

indicated that the FCC has the resources to fully audit each major telephone company only once every 16 years.

Mr. President, every year, the RBOC's enter into thousands of equipment transactions. Even if a small portion of these were taken to the FCC, the Commission would lack the resources to deal with them. And, given the tight budgetary constraints we now face, I just don't think it's realistic to expect that they'll have substantially greater resources any time soon.

Also, even if it were possible to identify abuses, and even if the Commission is provided with a huge increase in personnel, it's still not clear that the bill provides an adequate remedy to the self-dealing problem. Under the bill, the FCC would act on self-dealing claims only after the fact—that is, after an RBOC has failed to buy a product from a competitor. By the time the competitor brings a claim to the FCC, and a decision is rendered, the competitor and other manufacturers may be out of business.

Mr. President, the point is not lack of faith in the people who run the RBOC's. To the contrary. Speaking at least of the people I know in New Jersey, these are some of the most honorable corporate citizens I know. The problem is with the inadequacy of FCC and State regulation in such a complex, difficult area.

Mr. President, AT&T was broken up not because it was a dishonest company. It was broken up because the structure of the market—namely, AT&T's dominance as a monopoly—created incentives for anticompetitive activity resulting in unfairness to telephone users and to other competitors. And it was widely believed that, without changing the very structure of the company, regulation could not do the job.

I realize that times have changed, and now instead of one giant company we have seven. But so long as the RBOC's can take advantage of their continuing monopoly over local telephone service, many of the same concerns that led to divestiture still apply.

After all, if the RBOC's all bought from themselves, they could choke off competition for 70 percent of the domestic market for high-technology telecommunications equipment. If that happened, R&D at other equipment manufacturers, such as that conducted at Bell Labs in New Jersey, would probably be cut substantially. In fact, if the bill is enacted in its present form, just the risk of a closed market could lead to a significant reduction in R&D among the RBOC's competitors.

The end result could be fewer U.S. jobs, lower quality products for American consumers, and American businesses, and reduced U.S. competitiveness.

Mr. President, it is clear to me that I am in a minority. This bill is going to pass the Senate.

But, it is my hope that it will be improved in the House. It is my hope that if the RBOC's are given legal authority to enter manufacturing, they will do so in a way that preserves open and competitive markets. It is my hope that their operating companies will choose equipment on the basis of what can best serve the needs of their customers.

But, Mr. President, without adequate assurances built into the statute, I feel compelled to vote against the bill.

Mr. DURENBERGER. Mr. President, the proposal which my colleagues and I are considering today, the Telecommunications Equipment Research and Manufacturing Competition Act of 1991, will inaugurate a new era for the telecommunications industry in the United States! Because this industry and the services it provides are such an integral part of business operations and in the lives of consumers, the benefits of this bill will ripple throughout all aspects of American life. In my judgment, S. 173 will expand the services enjoyed by consumers and ensure the leading position for the American telecommunications industry.

Fundamentally, S. 173 is an issue of competitiveness. It is not about undoing the divestiture of AT&T and the antitrust provisions of the modified final judgment. In the course of the court-ordered divestiture, the potential of seven world-class manufacturers has been thoroughly squelched. This should not have been the case. S. 173 will help to realize the stifled potential of the Bell Operating Cos., while preserving the protections established in the modified final judgment.

As important as divestiture and the MFJ is to fairness and competition in the marketplace, we cannot permit the fear of unfair competition to paralyze progress in the U.S. telecommunications industry. While the court's role in the divestiture of AT&T must not be lightly dismissed, we must remember that it was charged to prevent unfair competition, not protection from competition, within this critical industry.

The passage of S. 173 stands to offer a multitude of blessings and benefits for American consumers, for American businesses, and for our national competitiveness in the world marketplace. Permitting the Bell Operating Cos. to conduct research and development, as well as to manufacture telecommunications equipment, will permit the development of new and innovative services and provide a new source of leadership and innovation in the world marketplace.

Of course, unleashing such power is not without risks. Important segments of American society who have a stake in the telecommunications industry—consumers, smaller telephone companies and manufacturers—have legiti-

mate concerns which deserve to be addressed. Adequate safeguards and regulatory authority must be included with this proposal to ensure that consumers do not suffer from increased costs and that smaller manufacturers do not suffer from unfair competition.

The superior resources of the Bell Operating Cos. must be kept in proper check so that S. 173 creates seven more competitors, not just seven mega-manufacturers. Existing producers must not be shut out of the marketplace through widespread self-dealing. They must have the opportunity to work in concert with the operating companies and the new manufacturers of equipment to develop an enhanced and nationally integrated telecommunications system.

Providers of services, including smaller telephone companies and cooperatives, ought to be protected from the risks of uncompetitive pricing and inaccessible, but nonproprietary, design specifications between the Bell Operating Cos. and their new manufacturing entities.

In my judgment, these concerns have been effectively addressed. Thanks to the efforts of Senators HOLLINGS, DANFORTH, AND PRESSLER, I believe the amendment adopted yesterday strikes the balance necessary to safeguard against unfair competition for small telephone companies and small manufacturers. The Pressler amendment ensures that small manufacturers and telephone companies will be able to play a part in the building of this Nation's new telecommunications system. Under this amendment, design specifications must be shared among producers and carriers. Self-dealing protections will guarantee that non-Bell manufacturers will continue to have access to markets. New and enhanced FCC and State regulations will protect against unfair financial relationships between the Bell Operating Cos. and their new manufacturing entities.

I am pleased to support S. 173 and the efforts of my colleagues to ensure that America is the leader of the telecommunications industry from the very beginning of the 21st century.

Mr. LEVIN. Mr. President, the legislation we are considering today is about the future. The future of technology and telecommunications is exciting and great things appear on the horizon that will benefit society if sufficient investments are made in innovation and human resources. By lifting the manufacturing restrictions placed on the Regional Bell Operating Cos. [RBOC's] we seek to bring that future a little closer to the present and to do it in a way that benefits both American workers and consumers.

This bill is a particularly difficult one because we are projecting likelihoods, not certainties. S. 173 will require the RBOC's separate affiliates, if they choose to form them, to manu-

facture in the United States. There is also a provision in this bill that requires the RBOC's manufacturing affiliates to purchase component parts in the United States. There is an exception to that latter rule stating that the affiliate may purchase parts from outside the United States if it has, after making a good faith effort, been unable to obtain equivalent component parts domestically. It is then and only then that the affiliate may purchase up to a certain percentage of foreign parts. This should have a positive impact on the total market share controlled by U.S. firms. This means there should be gain of new jobs, new jobs creating products that should improve our balance of trade and stimulate the domestic economy. It is this potential for new American jobs that is the clearest reason for passing this legislation. We have seen our manufacturing sector erode in recent years as a result of foreign competition often unfair in a number of respects. This legislation will foster the creation of jobs in an area with enormous potential for the future. While it is argued, on the other hand, that dislocation and job losses may occur due to increased competition and the entrance of large manufacturers into a field of generally smaller firms, on balance, I believe it likely that more American jobs will be created in the telecommunication area by this bill than without it.

In addition to the likely benefit in terms of American jobs, with the entry of new, capable manufacturers into the market there is the prospect that consumers of telecommunications products and services could see prices that are reflective of increased competition. If each of the seven RBOC's enter manufacturing there will be the potential for an infusion of expertise and innovation into the marketplace. This legislation authorizes the Federal Communications Commission [FCC] to promulgate regulations to prevent the free market from being distorted by anti-competitive behavior by the RBOC's. If, however, the FCC does not effectively enforce the regulations which S. 173 requires them to promulgate to prevent self-dealing, collusion, and discriminatory pricing, or if competition does not evolve, there exists the possibility that consumers will not see the benefits of increased competition. But, the safeguards in S. 173 should act as a deterrent to any RBOC that might consider engaging in any of these activities.

This legislation offers the real possibility for the stimulation of the creative process in a competitive market by allowing the RBOC's to be involved in the design and development phase of manufacturing. The current language of the modified final judgment and the court's interpretation of it creates obstacles to effective research and development of new telecommunications

products and software. Innovation cannot take place efficiently under these conditions and this results in lost opportunities for jobs and new products. Here are two examples of how S. 173 would improve the chances that our Nation will enter the 21st century with a telecommunications system worthy of one of the most technologically advanced societies in the world, and do it with a positive balance of trade.

Under the current manufacturing ban, manufacturers who would like to produce a product for a telephone network cannot work closely with the RBOC's on the testing of the product within the network in a completely free and open manner. The relationship must proceed in a trail-and-error fashion. The Commerce Committee's report details the inefficient development process in the following way:

If a manufacturer tests a piece of equipment on the BOC network, BOC engineers can tell the manufacturer that the product does not work, but they cannot tell the manufacturer why the product does not work or how to fix it. The manufacturer must return to its own shop and try again, with no idea what the problem is. Such a manufacturer must continue in the "trial-and-error" fashion until the manufacturer discovers the problem or abandons the effort completely.

Without a free exchange of scientific and logistical data between parties seeking to develop new products, creativity is stifled.

A second example of how creativity is stifled by the manufacturing ban is the prohibition on innovation from within the RBOC. Currently, if a researcher or employee of one of the RBOC's has an idea to create a product, which may or may not be commercially attractive to manufacturers, there is no simple and cost-effective method to formulate the specifics so as to bring it to market. For instance, assume one of the RBOC's has an employee who has a proposal for a digital central process unit [CPU] that would reconfigure transmitted frequencies or voices to suit the hearing pattern of the recipient, making it possible to compensate for a specific type of hearing loss or impairment. Such a product or service would allow certain individuals to have greater access to the communications network. The profitability of the product is certainly of interest to the RBOC in question, though its interest may primarily be in stimulating network usage and not necessarily focused on that product's profit margin. But, the RBOC's provision of sufficiently detailed technical specifications to an outside manufacturer in order to make this product would most likely be a violation of the modified final judgment. Under the bill we are considering, the RBOC will be allowed to develop this technology and manufacture this product through its own affiliate, or another contractor. The net result could be making available to consumers a product that might not

otherwise be generated as a result of current production arrangements.

Allowing greater interaction between the RBOC's and manufacturers, whether it be the RBOC's own affiliates or not, is not without possible antitrust implications. This issue was an integral part of the original decision to separate AT&T from its wholly owned manufacturing subsidiary, Western Electric. The fear that the RBOC's will engage in preferential dealing with their individual affiliates to the exclusion of other manufacturers has been aired by several parties. But the bill's safeguards should provide adequate protections against such an event.

Predicting the future accurately is not always easy. But sometimes we need to test the edges of the envelope if we are going to create the future that we want. Removing some restrictions on the RBOC's should help keep the United States at the forefront of the technological changes that have created the new information age. This should create more American jobs, better and lower cost products, and improved quality of life. Should these predictions not come true and the RBOC's do not live up to the intentions they have stated or to the safeguards presented in the bill, Congress will be in a position to reenter the issue and act on the then existing conditions in the public interest.

Mr. LEAHY. Mr. President, technological advancements in our ability to transmit information have been breathtaking in recent years and it is probably safe to say that this is only the beginning. Nor is it only technology that is changing—the structure of the industry itself has undergone a profound transformation since the breakup of AT&T in 1984. That breakup resulted in the development of a vibrantly competitive manufacturing market with thousands of new companies getting into the business. It led as well to healthy competition in long distance and to a burgeoning and competitive market in information services.

The bill before us today, by lifting the manufacturing restriction and allowing the baby Bells, through separate affiliates, to enter manufacturing, will increase that competition.

I have always supported measures to increase our international competitiveness and enhance our technological base. At the same time, I think the dangers of cross-subsidies and self-dealing are very real. The baby Bells will inevitably have an incentive to buy from their own manufacturing subsidiaries to the exclusion of independent competitors. They will also have an incentive to maximize the costs allocated to themselves—since those costs can be passed on to the ratepayers—while minimizing the costs allocated to their manufacturing subsidiaries. The result of such behavior would be to in-

jure consumers and independent competitors alike.

I do believe, however, that these dangers have been diminished by the safeguards built into the bill and those added by the amendments we have adopted in the last 2 days. These safeguards will, among other things, protect rural phone companies, require States to audit the manufacturing affiliates of the regional Bells and guarantee access to their books.

I will be frank in saying that I looked forward to supporting Senator INOUE's amendment, which he withdrew. That amendment would have put reasonable limits on the degree to which the regional Bells can purchase from their own subsidiaries. But I am pleased by Senator HOLLINGS' assurance that he will consider Senator INOUE's ideas on limiting self-dealing when it comes time to conference this bill with the House.

Let me add one other point. Since S. 173 was introduced, many businesses and consumer groups have visited me to express their concern that it would be only the first in a series of bills to overturn all of the line-of-business restrictions placed on the regional Bells by the modified final judgment.

I want to make it very clear that as far as I am concerned, this bill is not the camel's nose under the tent when it comes to long-distance or information services.

I am particularly concerned about the implications of lifting the restriction on information services. Of course, there will be ample time to consider that issue if it ever comes before us. But nothing in my support of this manufacturing bill today should be construed as indicating support for the lifting of any other restriction.

Mr. President, in closing, let me say that, assuming this legislation is enacted into law, I will be watching the development of telecommunications manufacturing with great interest. The regional Bells have made broad representations in supporting this bill. They have assured us that letting them into manufacturing will increase American competitiveness and benefit American consumers. They have promised that they will not engage in cross-subsidization or unfair self-dealing. It is up to the FCC and the Congress to hold them to their word.

Mr. DODD. Mr. President, regretfully, I rise today in opposition to passage of S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act of 1991.

The goals of this measure are admirable and ones that I fully support. Our competitiveness overseas is an issue vital to the health of our economy—and especially in the field of telecommunications which is one of the keys to future growth in this the information age. In this regard, figures showing a trade deficit in tele-

communications equipment are certainly alarming, when our dominance in the industry was unchallenged just a decade ago. We must look closely at current policy which prevents nearly 50 percent of our telecommunications industry from participating in product development and manufacturing and I compliment the chairman and the Commerce Committee for their thoughtful work in this area.

Earlier today, Senator INOUE and I offered an amendment that I believe would have added some important safeguards to this bill and, although our amendment was not adopted, I am hopeful that the specific issues addressed in our amendment will be considered as this bill proceeds. As this bill is however, I am concerned that the safeguards it includes do not go far enough to lessen the opportunities and incentives for the Bell Co. to engage in anticompetitive behavior in these manufacturing enterprises at the expense of ratepayers, other consumers and manufacturers.

The record of anticompetitive behavior in this industry is difficult to ignore when considering this issue. The original divestiture of AT&T was brought on by some of the worst antitrust abuses in our history. More recently, the U.S. West and NYNEX scandals were on front pages around the country. It is unclear that this bill will do enough to discourage such behavior in the future.

I am pleased that the Simon and Metzenbaum amendments were adopted earlier. I believe that, in improving the regulatory safeguards in this bill, these changes go a long way to ensure that local ratepayers and other consumers will be shielded from the costs of any anticompetitive behavior.

However, the potential for self-dealing abuses remains. While the Regional Bell Co. maintain monopoly control over local telephone service, opportunities and incentives exist for them to frustrate and impede competition.

Our telecommunications manufacturing industry has grown during the last 10 years and has brought to us a plethora of new products—everything from network switches to consumer services such as call waiting and caller ID. This is not a weak industry—its exports are increasing and are daily gaining on the trade deficit. As I said earlier in this debate, this vibrant industry is not concerned about new competition; it is concerned about the potential for the establishment of an unfair playing field with the enactment of this measure.

In this regard, I am pleased that the potential for self-dealing will be looked at closely in conference and am hopeful that measures such as those suggested by Senator INOUE and I will be included in the conference report. I am hopeful that, at that time, I will be able to support a measure that ensures

a fair market and establishes a system that produces the best products at the least cost. In a competitive market, ratepayers, other consumers, the manufacturing industry, our international competitiveness and the Bells themselves will all benefit. However, until a competitive market can be guaranteed, the risks to consumers, to manufacturers and to the industry are too great.

Mr. President, I urge the rejection of this bill.

Mr. HARKIN. Mr. President, I rise to express concern about S. 173.

The telecommunications and information industries are enormously important to our Nation's economy because they play an increasingly important role in the lives of our citizens, both at work and in the home. The enactment of S. 173 would undoubtedly influence the evolution of these industries for many years to come. The bill thus warrants careful scrutiny.

It is important to remember that the modified final judgment is the product of two major government suits involving decades of alleged antitrust violations by the former components of the Bell System. The manufacturing restriction was imposed on the Bell Cos. because they maintained the local telephone monopolies when AT&T broke up in 1984. Divestiture was costly and disruptive, but many think it was worth the benefits that resulted from increased competition in equipment manufacturing and in long distance telephone services. In those two areas, prices are down, quality is up and consumer choices have expanded.

The question which must be addressed is whether removing the manufacturing restriction will increase competition, or reduce it. According to Bell Communications Research, the joint research arm of the 7 regional companies, there are now 9,000 suppliers of products to the Bell System, a remarkable increase over the 2,000 which existed in 1984. But would S. 173 simply add seven major new players to the market or allow for the displacement of already existing competition? If the latter is true, then I can't help but be concerned.

If the Bell Cos. are allowed to manufacture the big ticket telecommunications equipment necessary to operate their networks, they would almost certainly buy from their own manufacturing affiliates thus excluding other suppliers in the marketplace. By having ownership interests in their suppliers, the Bell Cos. would have the opportunity and the incentive to charge themselves higher prices for the equipment, passing on the extra charges on to their captive ratepayers. In the end, it is these ratepayers who are forced to fund the local telephone monopoly because they only have one telephone service form which to choose. A system such as this would inevitably lead to higher rates for consumers.

I'm also concerned about institutional questions embodied in this bill. Congress often changes rules of decision by amending the law on which a court decision is based; but amending judicial consent decrees, especially where, as here, we are not touching the statute on which the decree is based, is highly unusual. I am worried that Congress may be setting a bad precedent by amending judicial consent decrees under these conditions. Most of us have only a passing familiarity with the evidence in U.S. versus AT&T, and I doubt that any of us had read the court rulings that we would be overturning with this statute. Should the disposition of antitrust litigation, based on our Nation's most venerable trade regulation statute, the Sherman Act, and abundant specific evidence of anticompetitive conduct, really be second-guessed in a forum that has not carefully reviewed the record?

Mr. President, communications equipment shipments grew at a rapid pace during the 1980's and today the telecommunications manufacturing industry in America is healthy, vibrant, and still growing. Many industry experts attribute the success of telecommunications in America to the industry structure that was put in place by the 1982 antitrust decree. Mr. President, I think it is very unwise to turn back the clock now by passing bad legislation when we have a strong and growing industry.

Mr. RIEGLE. Mr. President, I rise today as a cosponsor of S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act of 1991.

Our great challenge as a nation is to rebuild our industrial base so all citizens can obtain quality jobs. In order to do this we must save more, invest more, become better educated and more productive, and increase our technological base. Lifting the manufacturing restrictions on the Bell Cos. has the potential to both improve our technological base to meet the needs of the next century and improve our industrial base by investing in and creating more manufacturing jobs at home.

In the 7 years since the modified final judgment placed manufacturing restrictions on Bell Cos., our trade position in the field of telecommunications has declined rapidly. Shortly before the MFJ, we had a surplus in telecommunications trade. Last year—a year in which there was some improvement—we had a telecommunications trade deficit of about \$800 million. Since 1984, our cumulative telecommunications trade deficit has exceeded \$15 billion.

Our own trade position may be worse than an initial look would lead us to believe. A significant quantity of the components in American manufactured telecommunications goods were produced abroad. In addition, much of the export value attributed to the United

States comes from foreign owned companies that have plants in the United States. And the trend toward foreign ownership of telecommunications companies in the United States has accelerated: dozens of U.S. manufacturers have been bought by foreign manufacturers since the manufacturing restrictions were put in place. While we should not complain that foreign-owned companies are manufacturing and investing in the United States, we would be in a much better position if more U.S. manufacturers were owned by U.S. entities.

While our trade deficit continues to grow, our foreign competitors have ratcheted up their ability to compete in telecommunications. Japanese firms have dramatically increased their spending in research and development over the past decade. And this new push comes as if the Japanese telecommunications industry were not already doing well. Far from it: Japan had a \$22 billion surplus with the United States in telecommunications, computers, and electronics last year.

The trade figures I have cited are not some abstract figure on a ledger sheet—they represent lost jobs and lost opportunities for American workers. Since 1984, 60,000 telecommunications manufacturing jobs have been sent abroad. In my State, Michigan Bell has lost half of its workforce and the Communications Workers of America has seen its membership dwindle over this period.

The jobs that are being lost are high-quality jobs that enable workers to own homes and send their children to college. Too often for the workers who lose their jobs and for workers who never had the opportunity to get these good jobs, the alternatives are far less attractive—mostly in lower paying areas in which their skills will be underutilized. Many of the problems we have as a society—crime, drug abuse, racism—are made worse when the number of good jobs shrinks. And we will continue to see these American jobs move to Mexico, or China or Japan, or some other country unless we do something to turn this around.

The manufacturing restriction on the Bell Cos. currently in place prevents us from putting our best team on the field; and in our extremely competitive world, that means that we will lose games that we should win. We simply cannot continue to afford to leave major players out of our lineup.

The Bell Cos. have a great deal of expertise in telecommunications. The seven Regional Bell Operating Cos. employ 2 percent of all American workers and have annual revenues of \$77 billion. It's time we allowed them to get back into the business of producing telecommunications equipment.

At the same time that the manufacturing restrictions are lifted, there must be safeguards to ensure that con-

sumers will not be hurt and that competitive U.S. manufacturers retain fair access to markets. The bill contains a series of provisions designed to prevent abuses such as cross-subsidization and self-dealing. The FCC has the duty to enforce these provisions and they must be fought in doing so.

Lifting the manufacturing restrictions should mean not that market share is simply moved from one U.S. company to another—it must mean that jobs are created here and that they remain here. Tough domestic content provisions are vital to ensuring that the United States regain its leadership in telecommunications. The bill requires that the Bell Co. conduct all of their manufacturing in the United States.

Yet despite the fact that the domestic content provisions are supported by both the Bell Co. and the Communications Workers of America, members of the President's Cabinet have indicated that they will recommend a veto of this bill if it contains any domestic content provision.

It is unfortunate that the administration is taking this view—but it is not surprising. For 11 years, we have seen administrations sit and watch while American jobs have moved overseas and left American workers worse off. The legislation we have on the floor today is designed to improve U.S. competitiveness with domestic content provisions that ensure that jobs stay in the United States. It is my hope that should this bill reach the President with a domestic content provision in it, he will ignore the advice of members of his cabinet and sign a bill that creates and keeps jobs at home.

I urge my colleagues to support this bill and I thank the distinguished chairman of the Commerce Committee for the leadership he has shown in this matter.

Mr. BIDEN. Mr. President, I rise for a brief statement on S. 173, the Telecommunications Equipment Research and Manufacturing Act of 1991. The legislation, introduced by my very good friend and the chairman of the Commerce Committee, Senator HOLLINGS, would allow the Bell Operating Cos. [BOC's] to manufacture telecommunications equipment, one of three lines of business from which they are currently precluded by the modified final judgment of the AT&T consent decree.

This legislation has many benefits, and Senator HOLLINGS has worked long and hard in producing a fine product. His efforts to make U.S. companies more competitive internationally and at the same time protect American workers are to be commended.

In the end, my vote on S. 173 is a very close call. But I must do what I believe is in the consumers' best interest—and that is to vote against the legislation.

My principal concern relates to the issue of cross-subsidization.

My concern is that a BOC will create a manufacturing subsidiary, which would then customize its product as to meet the special needs of the BOC. The BOC would then provide "comparable" opportunities to other manufacturers to sell to it as S. 173 requires, but the BOC would buy most of its equipment from its own subsidiary anyway—arguing that it is customized to suit its needs. The BOC would then pay inflated prices for the equipment, with those inflated equipment costs passed on to telephone customers in the form of higher rates. In this way, consumers of local telephone service would subsidize a BOC's manufacturing subsidiary.

While S. 173 does contain some safeguards on cross-subsidization, I do not believe that they are adequate. Thus, I will vote against this bill today. If, however, the issue of cross-subsidization is addressed in conference by an amendment limiting the ability of the BOC's to engage in self-dealing, I reserve the right to vote for the bill at that time. Given the benefits the bill does offer, I sincerely hope that the issue of self-dealing can be resolved in conference.

AMENDMENT 282

Mr. SASSER. Mr. President, I am pleased at the action of the Senate last night in adopting the amendment of my colleague from South Dakota, Mr. PRESSLER.

I am a cosponsor of this amendment, which I believe will offer a valuable measure of protection for our rural telephone companies. A modern, state-of-the-art telephone network is critical for rural America—critical for development, critical for education, critical for health.

Access to highly advanced telecommunications facilities is essential for a community to attract industry. More and more business is driven by access to information. Companies require access to visual transmission and the capacity to use and send sophisticated engineering and technological information.

A company in my State of Tennessee can communicate as easily today with Paris, France, as it could with Paris, TN, 25 to 30 years ago. And unless a telephone company can offer that kind of telecommunications capacity the local community will not be able to attract business and jobs.

In the same way, a top-notch telecommunications system offers rural communities access to educational opportunities that would otherwise be closed to them. Many of the communities in my State simply cannot afford to offer many advanced, highly specialized courses. They cannot afford to dedicate a teacher salary to one narrow area.

Through modern two-way visual and voice communications, several school systems can pool their resources and

hire one teacher or obtain access to university professors. There will be major advancements in this area in the near future and I want to assure that rural Tennessee and rural America share in that future.

Medicine is another area which is becoming more and more dependent on technology and telecommunications. Communities which in the past were lucky to have a doctor at all now send data on their difficult cases to specialists and university hospitals. They can consult with top specialists, not by trying to describe symptoms, but by sharing the actual test results. This allows them to offer a level of care undreamed of even a few years ago.

Mr. President, I've lived in rural America. I remember when electricity came to parts of my State. The next generation of telecommunications technology will be as basic and essential as electricity was then. Our amendment will ensure that rural areas are part of that telecommunications revolution.

First of all, it requires the Bell Cos. to make software and equipment available to other telephone companies on a nondiscriminatory basis. This is particularly important in the area of software, which is rapidly becoming the key in telecommunications. All too often prior to divestiture, rural telephone companies had difficulty in obtaining access to equipment. We must ensure that doesn't happen again.

Second, our amendment requires the Bell Cos. to continue to make equipment available as long as reasonable demand exists. The equipment used by small companies is often not as profitable for manufacturers as are larger systems. A manufacturer seeking to trim his product line might be tempted to drop equipment vital to rural telephone companies. Our amendment will prevent that.

Third, the amendment requires the Bell Co. to engage in joint network planning. Small telephone companies need to be involved in the planning process to ensure that the national telephone network is accessible to all.

Finally, our amendment allows independent companies to go to court to enforce the safeguards contained in the bill. This is a critical part of the amendment. I must say I have not been impressed with the FCC's sensitivity to rural and other independent telephone companies' past complaints about refusals to provide equipment. This part of the amendment will allow these small telephone companies to obtain effective relief.

So, Mr. President, it was a pleasure to work with the Senator from South Dakota [Mr. PRESSLER] on this amendment. He is to be commended for offering it, and I thank the managers of the bill for accepting it.

ENFORCEMENT OF DOMESTIC CONTENT

Mr. RIEGLE. Mr. President, I would like to clarify a couple points about the enforcement of the domestic content provisions. In particular, I would like to ask the distinguished chairman of the Commerce Committee, the sponsor of the Telecommunications Equipment Research and Manufacturing Competition Act of 1991 and whether it is the intent of the committee that the certification required under section 227 (c)(3)(C)(i) be made available to the public in a timely manner. This provision requires manufacturing affiliates to certify that a good faith effort was made to obtain equivalent parts manufactured in the United States at reasonable prices, terms, and conditions.

Mr. HOLLINGS. The Senator is correct. It is the intent of the committee to compel the Federal Communications Commission to make these certifications available to the public in a timely manner.

Mr. RIEGLE. I believe that American firms should have real opportunities to prove that they can provide parts to manufacturing affiliates at reasonable prices, terms, and conditions. Therefore, I would also like to ask the distinguished chairman of the Commerce Committee whether it is the intent of the committee that the requirements under section 227 (c)(3)(D)(i) and section 227 (c)(3)(D)(ii) be fulfilled in a timely matter.

Mr. HOLLINGS. The Senator is also correct. It is the intent of the committee that the Federal Communications Commission fulfill its duty in a timely manner to determine whether manufacturing affiliates have made a good faith effort to obtain equivalent component parts manufactured in the United States at reasonable prices, terms, and conditions. It is also the intent of the committee that the Federal Communications Commission fulfill its duty in a timely manner to determine whether or not manufacturing affiliates have met the requirement that the percentage of components manufactured outside the United States does not exceed the limits called for in the legislation. Further, it is the intent of the committee that the Federal Communications Commission rule in a timely manner on complaints filed by suppliers claiming to have been damaged because a manufacturing affiliate failed to make a good faith effort to obtain equivalent parts manufactured in the United States at reasonable prices, terms, and conditions.

Mr. RIEGLE. I thank my distinguished colleague for these clarifications and for his leadership on this legislation.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

S. 173

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question occurs on the passage of the bill, as amended. The yeas and nays have not yet been ordered.

Mr. HOLLINGS. They have. I asked for the yeas and nays. I think they have been.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Colorado [Mr. WIRTH] are necessarily absent. I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

I further announce that, if present and voting, the Senator from Massachusetts [Mr. KENNEDY] would vote "aye."

Mr. SIMPSON. I announce that the Senator from Rhode Island [Mr. CHAFEE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 71, nays 24, as follows:

[Rollcall Vote No. 89 Leg.]

YEAS—71

Adams	Ford	McConnell
Baucus	Fowler	Mikulski
Bentsen	Garn	Mitchell
Bingaman	Gore	Murkowski
Boren	Gorton	Nunn
Breaux	Graham	Packwood
Brown	Grassley	Pell
Bryan	Hatch	Reid
Bumpers	Heflin	Riegle
Burdick	Helms	Robb
Burns	Hollings	Rockefeller
Byrd	Jeffords	Roth
Coats	Johnston	Rudman
Cochran	Kassebaum	Sanford
Cohen	Kasten	Sarbanes
Conrad	Kerrey	Shelby
Craig	Kerry	Simpson
D'Amato	Kohl	Smith
Danforth	Leahy	Stevens
Daschle	Levin	Symms
DeConcini	Lott	Thurmond
Domenici	Lugar	Warner
Durenberger	Mack	Wellstone
Exon	McCain	

NAYS—24

Akaka	Glenn	Nickles
Biden	Gramm	Pressler
Bond	Hatfield	Sasser
Bradley	Inouye	Seymour
Cranston	Lautenberg	Simon
Dixon	Lieberman	Specter
Dodd	Metzenbaum	Wallop
Dole	Moynihan	Wofford

NOT VOTING—5

Chafee	Kennedy	Wirth
Harkin	Pryor	

So the bill (S. 173), as amended, was passed as follows:

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 "Telecommunications Equipment Research and Manufacturing Competition Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that the continued economic growth and the international competitiveness of American industry would be assisted by permitting the Bell Telephone Companies, through their affiliates, to manufacture (including design, development, and fabrication) telecommunications equipment and customer premises equipment, and to engage in research with respect to such equipment.

SEC. 3. AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"REGULATION OF MANUFACTURING BY BELL TELEPHONE COMPANIES

"SEC. 227. (a) Subject to the requirements of this section and the regulations prescribed thereunder, a Bell Telephone Company, through an affiliate of that Company, notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to the Modification of Final Judgment on the lines of business in which a Bell Telephone Company may engage, may manufacture and provide telecommunications equipment and manufacture customer premises equipment, except that neither a Bell Telephone Company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell Telephone Company not so affiliated or any of its affiliates.

"(b) Any manufacturing or provision authorized under subsection (a) shall be conducted only through an affiliate (hereafter in this section referred to as a 'manufacturing affiliate') that is separate from any Bell Telephone Company.

"(c) The Commission shall prescribe regulations to ensure that—

"(1)(A) such manufacturing affiliate shall maintain books, records, and accounts separate from its affiliated Bell Telephone Company, that identify all transactions between the manufacturing affiliate and its affiliated Bell Telephone Company;

"(B) the Commission and the State Commissions that exercise regulatory authority over any Bell Telephone Company affiliated with such manufacturing affiliate, shall have access to the books, records, and accounts required to be prepared under subparagraph (A); and

"(C) such manufacturing affiliate shall, even if it is not a publicly held corporation, prepare financial statements which are in compliance with Federal financial reporting requirements for publicly held corporations, and file such statements with the Commission and the State Commissions that exercise regulatory authority over any Bell Telephone Company affiliated with such manufacturing affiliate, and make such statements available for public inspection;

"(2) consistent with the provisions of this section, neither a Bell Telephone Company nor any of its nonmanufacturing affiliates shall perform sales, advertising, installation, production, or maintenance operations for a manufacturing affiliate; except that institutional advertising, of a type not related to specific telecommunications equipment, car-

ried out by the Bell Telephone Company or its affiliates shall be permitted if each party pays its pro rata share;

"(3)(A) such manufacturing affiliate shall conduct all of its manufacturing within the United States and, except as otherwise provided in this paragraph, all component parts of customer premises equipment manufactured by such affiliate, and all component parts of telecommunications equipment manufactured by such affiliate, shall have been manufactured within the United States;

"(B) such affiliate may use component parts manufactured outside the United States if—

"(i) such affiliate first makes a good faith effort to obtain equivalent component parts manufactured within the United States at reasonable prices, terms, and conditions; and

"(ii) for the aggregate of telecommunications equipment and customer premises equipment manufactured and sold in the United States by such affiliate in any calendar year, the cost of the components manufactured outside the United States contained in the equipment does not exceed 40 percent of the sales revenue derived from such equipment;

"(C) any such affiliate that uses component parts manufactured outside the United States in the manufacture of telecommunications equipment and customer premises equipment within the United States shall—

"(i) certify to the Commission that a good faith effort was made to obtain equivalent parts manufactured within the United States at reasonable prices, terms, and conditions, which certification shall be filed on a quarterly basis with the Commission and list component parts, by type, manufactured outside the United States; and

"(ii) certify to the Commission on an annual basis that for the aggregate of telecommunications equipment and customer premises equipment manufactured and sold in the United States by such affiliate in the previous calendar year, the cost of the components manufactured outside the United States contained in such equipment did not exceed the percentage specified in subparagraph (B)(i) or adjusted in accordance with subparagraph (G);

"(D)(i) if the Commission determines, after reviewing the certification required in subparagraph (C)(i), that such affiliate failed to make the good faith effort required in subparagraph (B)(i) or, after reviewing the certification required in subparagraph (C)(ii), that such affiliate has exceeded the percentage specified in subparagraph (B)(ii), the Commission may impose penalties or forfeitures as provided for in title V of this Act;

"(ii) any supplier claiming to be damaged because a manufacturing affiliate failed to make the good faith effort required in subparagraph (B)(i) may make complaint to the Commission as provided for in section 208 of this Act, or may bring suit for the recovery of actual damages for which such supplier claims such affiliate may be liable under the provisions of this Act in any district court of the United States of competent jurisdiction;

"(E) the Commission, in consultation with the Secretary of Commerce, shall, on an annual basis, determine the cost of component parts manufactured outside the United States contained in all telecommunications equipment and customer premises equipment sold in the United States as a percentage of the revenues from sales of such equipment in the previous calendar year;

"(F) a manufacturing affiliate may use intellectual property created outside the United States in the manufacture of tele-

communications equipment and customer premises equipment in the United States;

"(G) the Commission may not waive or alter the requirements of this subsection, except that the Commission, on an annual basis, shall adjust the percentage specified in subparagraph (B)(i) to the percentage determined by the Commission, in consultation with the Secretary of Commerce, as directed in subparagraph (E);

"(4) no more than 90 percent of the equity of such manufacturing affiliate shall be owned by its affiliated Bell Telephone Company and any affiliates of that Bell Telephone Company;

"(5) any debt incurred by such manufacturing affiliate may not be issued by its affiliates, and such manufacturing affiliate shall be prohibited from incurring debt in a manner that would permit a creditor, on default, to have recourse to the assets of its affiliated Bell Telephone Company's telecommunications services business;

"(6) such manufacturing affiliate shall not be required to operate separately from the other affiliates of its affiliated Bell Telephone Company;

"(7) if an affiliate of a Bell Telephone Company becomes affiliated with a manufacturing entity, such affiliate shall be treated as a manufacturing affiliate of that Bell Telephone Company within the meaning of subsection (b) and shall comply with the requirements of this section;

"(8) such manufacturing affiliate shall make available, without discrimination or self-preference as to price, delivery, terms, or conditions, to all regulated local telephone exchange carriers, for use with the public telecommunications network, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, manufactured by such affiliate so long as each such purchasing carrier—

"(A) does not either manufacture telecommunications equipment, or have a manufacturing affiliate which manufactures telecommunications equipment, or

"(B) agrees to make available, to the Bell Telephone Company affiliated with such manufacturing affiliate or any of the regulated local exchange telephone carrier affiliates of such Company, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades manufactured for use with the public telecommunications network by such purchasing carrier or by any entity or organization with which such purchasing carrier is affiliated;

"(9)(A) such manufacturing affiliate shall not discontinue or restrict sales to other regulated local telephone exchange carriers of any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, that such affiliate manufactures for sale as long as there is reasonable demand for the equipment by such carriers; except that such sales may be discontinued or restricted if such manufacturing affiliate demonstrates to the Commission that it is not making a profit, under a marginal cost standard implemented by the Commission, on the sale of such equipment;

"(B) in reaching a determination as to the existence of reasonable demand as referred to in subparagraph (A), the Commission shall within sixty days consider—

"(i) whether the continued manufacture of the equipment will be profitable;

"(ii) whether the equipment is functionally or technologically obsolete;

"(iii) whether the components necessary to manufacture the equipment continue to be available;

"(iv) whether alternatives to the equipment are available in the market; and

"(v) such other factors as the Commission deems necessary and proper;

"(10) Bell Telephone Companies shall, consistent with the antitrust laws, engage in joint network planning and design with other regulated local telephone exchange carriers operating in the same area of interest; except that no participant in such planning shall delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment; and

"(11) Bell Telephone Companies shall provide, to other regulated local telephone exchange carriers operating in the same area of interest, timely information on the planned deployment of telecommunications equipment, including software integral to such telecommunications equipment, including upgrades;

"(d)(1) The Commission shall prescribe regulations to require that each Bell Telephone Company shall maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Such regulations shall require each such Company to report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

"(2) A Bell Telephone Company shall not disclose to any of its affiliates any information required to be filed under paragraph (1) unless that information is immediately so filed.

"(3) The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers in competition with a Bell Telephone Company's manufacturing affiliate have ready and equal access to the information required for such competition that such Company makes available to its manufacturing affiliate.

"(e) The Commission shall prescribe regulations requiring that any Bell Telephone Company which has an affiliate that engages in any manufacturing authorized by subsection (a) shall—

"(1) provide, to other manufacturers of telecommunications equipment and customer premises equipment, opportunities to sell such equipment to such Bell Telephone Company which are comparable to the opportunities which such Company provides to its affiliates;

"(2) not subsidize its manufacturing affiliate with revenues from its regulated telecommunications services; and

"(3) only purchase equipment from its manufacturing affiliate at the open market price.

"(f) A Bell Telephone Company and its affiliates may engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof relating to such equipment, consistent with subsection (e)(2).

"(g) The Commission may prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions of this section.

"(h)(1) For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell Telephone Company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(2) Any regulated local telephone exchange carrier injured by an act or omission of a Bell Telephone Company or its manufacturing affiliate which violates the requirements of paragraph (8) or (9) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount of damages sustained in consequence of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to prevent future violations; or such regulated local telephone exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

"(i) The authority of the Commission to prescribe regulations to carry out this section is effective on the date of enactment of this section. The Commission shall prescribe such regulations within one hundred and eighty days after such date of enactment, and the authority to engage in the manufacturing authorized in subsection (a) shall not take effect until regulations prescribed by the Commission under subsections (c), (d), and (e) are in effect.

"(j) Nothing in this section shall prohibit any Bell Telephone Company from engaging, directly or through any affiliate, in any manufacturing activity in which any Company or affiliate was authorized to engage on the date of enactment of this section.

"(k)(1) A Bell Telephone Company that manufactures or provides telecommunications equipment or manufactures customer premises equipment through an affiliate shall obtain and pay for an annual audit conducted by an independent auditor selected by and working at the direction of the State Commission of each State in which such Company provides local exchange service, to determine whether such Company has complied with this section and the regulations promulgated under this section, and particularly whether the Company has complied with the separate accounting requirements under subsection (c)(1).

"(2) The auditor described in paragraph (1) shall submit the results of such audit to the Commission and to the State Commission of each State in which the Company provides telephone exchange service. Any party may submit comments on the final audit report.

"(3) The audit required under paragraph (1) shall be conducted in accordance with procedures established by regulation by the State Commission of the State in which such Company provides local exchange service, including requirements that—

"(A) the independent auditors performing such audits are rotated to ensure their independence; and

"(B) each audit submitted to the Commission and to the State Commission is certified by the auditor responsible for conducting the audit.

"(4) The Commission shall periodically review and analyze the audits submitted to it under this subsection, and shall provide to the Congress every 2 years—

"(A) a report of its findings on the compliance of the Bell Telephone Companies with this section and the regulations promulgated hereunder; and

"(B) an analysis of the impact of such regulations on the affordability of local telephone exchange service.

"(5) For purposes of conducting audits and reviews under this subsection, an independent auditor, the Commission, and the State Commission shall have access to the financial accounts and records of each Bell Telephone Company and those of its affiliates (including affiliates described in paragraphs (6) and (7) of subsection (c)) necessary to verify transactions conducted with such Bell Telephone Company that are relevant to the specific activities permitted under this section and that are necessary to the State's regulation of telephone rates. Each State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

"(1) As used in this section:

"(1) The term 'affiliate' means any organization or entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership with a Bell Telephone Company. Such term includes any organization or entity (A) in which a Bell Telephone Company and any of its affiliates have an equity interest of greater than 10 percent, or a management interest of greater than 10 percent, or (B) in which a Bell Telephone Company and any of its affiliates have any other significant financial interest.

"(2) The term 'Bell Telephone Company' means those companies listed in appendix A of the Modification of Final Judgment, and includes any successor or assign of any such company, but does not include any affiliate of any such company.

"(3) The term 'customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

"(4) The term 'manufacturing' has the same meaning as such term has in the Modification of Final Judgment as interpreted in *United States v. Western Electric*, Civil Action No. 82-0192 (United States District Court, District of Columbia) (filed December 3, 1987).

"(5) The term 'Modification of Final Judgment' means the decree entered August 24, 1982, in *United States v. Western Electric*, Civil Action No. 82-0192 (United States District Court, District of Columbia).

"(6) The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(7) The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services.

"(8) The term 'telecommunications service' means the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities."

SEC. 4. ADDITIONAL AMENDMENT TO THE COMMUNICATIONS ACT OF 1934.

Section 220(d) of the Communications Act of 1934 (47 U.S.C. 220(d)) is amended by deleting "\$6,000" and inserting in lieu thereof "\$10,000".

SEC. 5. APPLICATION OF ANTITRUST LAWS.

Nothing in this Act shall be deemed to alter the application of Federal and State antitrust laws as interpreted by the respective courts

TITLE I—GENERAL PROVISIONS

SEC. 101. SENSE OF THE SENATE REGARDING THE NATIONAL VICTORY PARADE FOR THE PERSIAN GULF WAR.

It is the sense of the Senate that any country—

(1) for which United States' assistance is being withheld from obligation and expenditure pursuant to section 481(h)(5) of the Foreign Assistance Act of 1961; or

(2) which is listed by the Secretary of State under section 40(d) of the Arms Export Control Act or section 6(j) of the Export Administration Act of 1979 as a country the government of which has repeatedly provided support for acts of international terrorism, should not be represented, either by diplomatic, military, or political officials, or by national images or symbols, at the victory parade scheduled to be held in Washington, District of Columbia on June 8, 1991, to celebrate the liberation of Kuwait and the victory of the United Nations coalition forces over Iraq.

Mr. HOLLINGS. I move to reconsider the vote.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, I take this opportunity to thank our distinguished staff. I can tell you they have worked around the clock and done yeomen's work, John Windhausen, Toni Cook, Linda Morgan, Jim Drewry, Loretta Dunn, and Kevin Curtin, the whole Commerce Committee staff over there, plus my own staff.

I want to thank our distinguished counterpart and former chairman, the distinguished Senator from Missouri [Mr. DANFORTH], Walter McCormick, of his staff, and others. We have had a bipartisan effort, as is obvious from the vote.

Mr. DANFORTH. Mr. President, I simply want to express my appreciation for the work of our chairman, Senator HOLLINGS. This has been a remarkable accomplishment. Many people have said for a number of years that we have to do something about the present state of affairs in our telephone industry where a Federal judge basically makes the decisions. We have now moved in the direction of Congress taking over the decisionmaking, which is exactly what should be the case.

This is a major accomplishment. I think that we are going to have some difficulties with the administration, and, hopefully, there can be some room for give with respect to the domestic-content provision.

I supported my chairman in this connection. I intend to continue to work with him as the bill progresses, and my hope is that we can end up with something that the President would be willing to sign.

MORNING BUSINESS

Mr. HOLLINGS. Mr. President, on behalf of the leadership, I ask unanimous consent there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ACCESS TO HEALTH CARE FOR ALL AMERICANS

Mr. KENNEDY. Mr. President, on a matter which was addressed earlier today by the majority leader and a group of Senators in advancing the cause of access to health care and effective cost containment, I noticed during the afternoon that there were negative comments from some of our colleagues about what I consider to be an excellent proposal that has now been introduced.

The majority leader indicated that it represented the joint effort of a number of Senators, building on the work that has been done by Members on both sides of the aisle, and he indicated during the course of his press conference that he was eager to work with all of those in this body and outside this body who are concerned, as he is, with the increasing costs in our health care systems.

We are facing a health care crisis. Health care is the fastest growing failing business in America. In 1970, the United States was spending \$65 billion on health care. Now we are spending \$650 billion a year. The best estimate is it will be \$1 trillion 500 billion by the year 2000.

The time has come, Mr. President, for action. This public policy issue has been studied to death. Real people are hurting. The 10 million children in our society who have no coverage are hurting. Millions of workers without coverage are hurting. They work hard every day, 40 hours a week, 52 weeks of the year, and have no health insurance coverage. They're playing Russian roulette with their health. They are hurting. Sixty million more Americans have health insurance that even the Reagan administration said was inadequate. Approximately 100 million of our fellow citizens in this country of 250 million have inadequate coverage or no coverage at all.

Employers are paying too much today because they are also paying the bills for those who have no coverage. They're paying in the form of higher premiums, because other firms refuse to provide coverage. Workers in plants and factories all over this country are effectively paying the bill for charity care for other workers who are not covered.

We face increasing problems in dealing with AIDS and substance abuse, not just in urban areas, but in rural areas, as well. Our whole health care system is in a state of crisis. We do not

have time to keep studying the issue and keep refusing to deal with it.

Senior citizens were hurting in the Depression, and with Franklin Roosevelt's leadership, we adopted Social Security. We did not wait for the various States to try to deal with that problem. In the 1960's, when we adopted Medicare, we were not saying: Let us wait to see what the States do. We had national leadership to deal with the problem. We need the same sort of leadership now.

Mr. President, I again want to say how important today has been for this institution. The majority leader took the responsibility and advanced the debate on health care. I commend his assurance that he will make every effort to see that we are able to debate this issue and achieve the action we need.

I hope this time when we debate it, and when some Senators find reason to oppose it, they will have the decency not to use the Capitol health facilities or go out to Walter Reed Army Hospital or Bethesda Naval Hospital. I hope they will not be so hypocritical as to say "no" to the American people, and then continue to use these Federal facilities we make available for ourselves.

It is the height of hypocrisy. If they are not going to vote for decent health care for the American people, they should not take advantage of it themselves. I think the American people will be watching, and watching very closely, what we are doing, and what we are failing to do.

Those who have worked so hard to advance the debate and discussion should be commended, and I welcome the constructive attitude suggested by a number of our colleagues about the desire to work together. If this movement had not taken place now on this issue, another Congress could have gone past without the opportunity for full-fledged debate and action.

I know the majority leader is interested in working with our colleagues on this side of the aisle and the other side of the aisle. Many of us have been very much involved in the discussion of health policy over a long period of time. The time is fast moving by, and the time for action is now. I am very hopeful that in this Congress we will be able to take the kind of action necessary to deal with this issue. It is of enormous importance to the American people.

CIVIL RIGHTS

Mr. KENNEDY. Mr. President, the House of Representatives today passed the civil rights bill with the same broad, bipartisan majority as last year. I commend the House for its action, but I deplore the bitterness and the charges and counter-charges that have tarnished the debate and obscured the real issues on this essential measure.

There is still time to find common ground on the two critical issues that have divided us for the past year. Both sides agree that women and religious minorities do not have adequate remedies for intentional job discrimination.

Both sides agree that the Supreme Court's decision in the Wards Cove case should be overruled. The distance between us is actually much less than the overheated rhetoric of this debate would suggest.

For months, the debate has focused on one word—"quotas." I oppose quotas, and so does everyone else who favors this bill. Quotas are illegal today, and they will remain illegal after a civil rights bill is enacted.

For many years, the cause of equal justice for all has enjoyed broad bipartisan support in Congress and in this country. The landmark Civil Rights Act of 1964 would never have been enacted without the leadership of Everett Dirksen and Hubert Humphrey.

The landmark Americans with Disabilities Act would not have been enacted in 1990 without the leadership of Lowell Weicker, DAVID DURENBERGER, and TOM HARKIN.

Over the past year, I have enjoyed working closely with Senator JEFFORDS of Vermont to achieve a fair civil rights bill.

I particularly commend Senator DANFORTH for his efforts this year. Recently, Senator DANFORTH advanced the debate and discussion with his series of recommendations.

His proposals are constructive, and many of their features deserve serious consideration. Other provisions, however, fall short of providing the full protection against job discrimination that all working Americans deserve.

I look forward to working with him and with many other Senators in the days ahead to agree on a civil rights bill that everyone in this body can support and that the President can sign. There is still time to reach a civil rights compromise that will bring us together, not drive us apart.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,272d day that Terry Anderson has been held captive in Lebanon.

RHODE ISLAND GENERAL ASSEMBLY PASSES LEGISLATION ON LIBERIA

Mr. PELL. Mr. President, the civil war in Liberia has been devastating. All of us have been deeply moved by the reports of violence, death, and destruction resulting from the conflict. As a cosponsor of the Liberian Relief, Rehabilitation, and Reconstruction Act of 1991, introduced by Senator KENNEDY earlier this year, I believe that

the United States has a responsibility to help Liberia rebuild as it moves toward reconciliation.

One outgrowth of the strife in Liberia is especially troubling: The status of Liberians residing in the United States. Countless Liberians, many of whom reside in my home State of Rhode Island, have been displaced because of the fighting. This aspect of the Liberian crisis has been effectively characterized in a resolution passed by the Rhode Island General Assembly last month. The resolution, introduced by State representatives Newsome, Lamb, Dumas, Barone, and Rickman, notes the grave situation in Liberia and calls for increased cooperation between the Federal and State governments to alleviate the Liberian national crisis. I believe the resolution makes an extremely important contribution to United States policy on Liberia. I commend the Rhode Island legislators for their efforts, and I support them fully.

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

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

HOUSE RESOLUTION—STATE OF RHODE ISLAND

Whereas it is acknowledged that a civil war of horrific proportions is now being waged in the West African nation of Liberia; and

Whereas that conflict has caused widespread misery, death and destruction, where approximately half the 2.5 million Liberian population has been displaced inside the country, and another 760,000 have sought refuge in the neighboring countries of Ivory Coast, Sierra Leone, Guinea, Ghana, Mali and Nigeria; and

Whereas over 7,000 Liberian nationals have found temporary refuge in Rhode Island—where more Liberians reside than in any other state—in part because there exists an excellent support network of extended families and friends; and

Whereas Liberia was settled in 1822 by freed American slaves and many of its major cities are named after past United States presidents (the capital city is Monrovia); and

Whereas it is the policy of the State of Rhode Island to acknowledge our historical ties to Liberia and to welcome those Liberian nationals who are seeking refuge here until a lasting peace is restored; now, therefore, be it

Resolved, That this House of Representatives of the State of Rhode Island and Providence Plantations hereby declares it to be the policy of the State of Rhode Island to cooperate fully with our federal government in relocating displaced Liberians to this state, and to assist in every way possible with the reunification of families; and be it further

Resolved, That we call upon the United States Congress to review its immigration laws with a view toward expressing maximum sympathy and humanitarian support for Liberians who have been temporarily displaced by the civil war; and be it further

Resolved, That this House of Representatives and people of Rhode Island welcome additional Liberians who are seeking entry to the United States as tourists, students and/or refugees and call upon the Congress to

clarify its immigration laws to allow for the increased entry of those Liberians deemed most vulnerable—namely, Liberian women under 40 with minor children, seniors over 55, and those seeking official political asylum; and be it further

Resolved, That we call upon Rhode Island educational institutions to cooperate by enrolling a limited number of Liberian students on "good faith" for the academic year 1991-92 in situations where transcripts are not available but where there is demonstrated interests and capability in continuing their formal studies in the United States; and be it further

Resolved, That we call upon all media to be sensitive to our state's Liberian population and its needs for frequent and regular news coverage of events inside Liberia and throughout the West African region, including first-hand reporting whenever possible; and be it further

Resolved, That we join with other concerned people around the world in praying and working for an end to civil war in Liberia so that Liberians can prepare to return to their country and begin the long, arduous task of healing and rebuilding their nation; and be it further

Resolved, That the Secretary of State be and she hereby is authorized and directed to transmit duly certified copies of this resolution to the President of the United States, the Rhode Island delegation to the United States Congress, the United States Department of State, the United States Immigration and Naturalization Service, and all statewide media outlets.

GANGS

Mr. DECONCINI. Mr. President, I rise today to address an issue which is of growing concern to communities across the Nation. During the past month, my home State of Arizona has experienced first hand the violence which has become symptomatic of the growing problem of gangs in this country. There were three separate incidents of freeway shootings involving known gang members, one resulting in the tragic death of a young pregnant woman and her unborn child. While Los Angeles and New York have long struggled to control the impact of gang-related crime, it is obvious that the problem of gangs is not confined to those areas. As rival gangs have struggled for control of limited turf, they will seek to expand their power elsewhere.

According to a 1990 survey conducted by the Arizona Criminal Justice Commission, there were over 5,000 gang members identified by Arizona law enforcement agencies. Even more disturbing is the growing influence of gangs among Arizona high school students. Over half of the students—53 percent—reported an awareness of gangs in their schools, and 56 percent reported being personally acquainted with members of a gang. Based on the number of students who expressed an interest in joining a gang, there are 11,000 potential gang members in Arizona high schools. That figure becomes even more alarming when you consider that the survey does not account for

high-risk youth who have already dropped out of school.

Recently, I met with the members of an ad hoc gang task force which was formed to deal with the problem of increased gang activity in the Phoenix area. Comprised of State, local, and Federal law enforcement officials, the task force shared with me their views on what could be done to stem the growth of gang-related crime in the Phoenix area. Their recommendations contained few surprises.

In the short term, what is needed is a strong commitment to providing law enforcement with the resources necessary to increase patrols in areas with high gang activity, and to respond to the soaring incidence of robbery, auto theft, and assaults. Last year, the city of Phoenix police department initiated Operation Safe Streets, a 3-month enforcement program which concentrated on immediate followup on reports of active street-gang activity. Significantly, from June to August 1990, there was a marked decrease in the number of gang-related reports, drive-by shootings, and aggravated assaults. Had we the resources available to expand this program year round, and to other neighboring police departments, perhaps we could put the gang leaders out of business.

The source of the gang problem, however, goes beyond the ability of our police departments to arrest known gang members. It goes back to those 11,000 potential gang members in our schools. What we need is the combined leadership of our government and our communities to make sure that those young people are not lured into the dangerous and violent world of gangs. Perhaps we do not care to acknowledge our failings in providing for the educational, health, and economic needs of impoverished youths who are at risk of becoming involved in gangs. Perhaps we do not care to admit that it will take dollars to invest in the future of these youths. But as the Mesa Tribune stated in its June 1, 1991, editorial, we can "pay now or pay later." If we can invest now in expanding the outreach and prevention programs that have yielded such positive results in keeping children off the streets, perhaps we can be spared the expense of prosecuting and incarcerating those same children when they are adults.

If we are to arrive at a solution to the gang problem in Arizona and throughout this country, it will be through the cooperation of our elected representatives, law enforcement officials, educators, and community leaders. As we have seen in our continued efforts to fight the war on drugs, results can be achieved. But it will take commitment and diligence before we can reclaim our streets, our neighborhoods, and more importantly, our children, from the disruptive influence of gangs.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. I thank the Chair.

(The remarks of Mr. JEFFORDS and Mr. CONRAD pertaining to the introduction of S. 1226 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. JEFFORDS. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

BUDGET OF THE DISTRICT OF COLUMBIA—MESSAGE FROM THE PRESIDENT—PM 55

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying document; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

In accordance with the District of Columbia Self-Government and Governmental Reorganization Act, I am transmitting the District of Columbia Government's 1992 budget request and 1991 budget supplemental request.

The District of Columbia Government has submitted three alternative 1992 budget requests. The *first alternative* is for \$3,083 million in 1992 and includes a Federal payment of \$425 million, which is the currently authorized level. The *second alternative* is for \$3,142 million and includes a Federal payment of \$484 million, which is the amount contained in the 1992 Federal budget. The *third alternative* is for \$3,288 million, which includes a Federal payment of \$631 million, the amount requested by the D.C. Mayor and City Council. My transmittal of this District budget, as required by law, does not represent an endorsement of its contents.

There are two specific issues to which I would direct your attention. First, I encourage you to continue the abortion funding policy enacted in the District's 1989, 1990, and 1991 appropriations laws. The Congress should continue to prohibit the use of both Federal and congressionally appropriated local funds for abortions, except when the life of the mother would be endangered if the fetus were carried to term.

Second, the 1992 budget proposes to modify and make permanent the 1990 pilot project that requires the District of Columbia to charge Federal establishments directly for water and sewer services. Inappropriate charges and excessive usage have been eliminated through this pilot project. Taxpayers have been relieved of the burden of paying water bills totaling over \$4 million for non-Federal entities. Further reductions of 6-10 percent in Federal appropriations for water and sewer services have also been realized because non-appropriated, self-financing entities are now required to pay for the services they receive.

GEORGE BUSH.

THE WHITE HOUSE, June 5, 1991.

MESSAGES FROM THE HOUSE

At 12 noon, a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 476. An act to designate certain rivers in the State of Michigan as components of the National Wild and Scenic Rivers System, and for other purposes;

H.R. 990. An act to authorize additional appropriations for land acquisition at Monocacy National Battlefield, MD;

H.R. 1323. An act to amend the Wild and Scenic Rivers Act by designating certain segments of the Allegheny River in the Commonwealth of Pennsylvania as a component of the National Wild and Scenic Rivers System, and for other purposes;

H.R. 1642. An act to establish in the State of Texas the Palo Alto Battlefield National Historic Site, and for other purposes;

H.R. 2312. An act to make certain technical and conforming amendments to the Follow Through Act and the Head Start Transition Project Act; and

H.R. 2313. An act to amend the School Dropout Demonstration Assistance Act of 1988 to extend authorization for appropriations through fiscal year 1993, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 476. An act to designate certain rivers in the State of Michigan as components of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 990. An act to authorize additional appropriations for land acquisition at Monocacy National Battlefield, MD; to the

Committee on Energy and Natural Resources.

H.R. 1323. An act to amend the Wild and Scenic Rivers Act by designating certain segments of the Allegheny River in the Commonwealth of Pennsylvania as a component of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1642. An act to establish in the State of Texas the Palo Alto Battlefield National Historic Site, and for other purposes; to the Committee on Energy and Natural Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 1220. A bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes (Rept. No. 102-72).

• Mr. JOHNSTON. Mr. President, I am very pleased to inform the Senate that today I have reported the National Energy Security Act of 1991 (S. 1220). The Committee on Energy and Natural Resources ordered the legislation reported May 23 by a 17-3 vote. I believe this bill is the most comprehensive energy policy legislation ever presented to the Senate. I was pleased to see that this measure was included by the majority leader on his list of the bills that may be considered by the Senate this month.

In view of the intense interest in this legislation, I ask that the text of the bill be printed in the RECORD.

That this Act may be referred to as the "National Energy Security Act of 1991".

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TITLE I—FINDINGS AND PURPOSES

Subtitle A—Findings and Purposes

- Sec. 1101. FINDINGS.—The Congress finds that—

(1) the achievement of energy security for the United States is essential to the health of the national economy and the maintenance of national security;

(2) as an energy-rich country that nonetheless depends on oil imports for an increasing share of oil use, United States energy security requires that the Nation reduce oil consumption, maximize domestic oil production, and particularly for transportation purposes, encourage use of energy sources other than oil; and

(3) this can be accomplished with no significant adverse effect on the environment, and will stimulate economic growth, improve the competitiveness of United States industry in the global market, and reduce the possibility of global climate change.

SEC. 1102. PURPOSES.—The purposes of this Act are to—

(1) slow the nation's increasing dependence on imported oil over the short-term, and in the long-term significantly reduce that dependence;

(2) reduce the consumption of oil in the transportation sector, and encourage development and use of alternative energy sources, particularly for transportation;

(3) encourage development and deployment of renewable energy sources in the United States and on an international basis in lesser-developed countries;

(4) streamline the hydroelectric licensing process and encourage hydroelectric development at Federal dams;

(5) encourage more efficient use of energy throughout the economy, including improvements in the industrial, commercial and residential sectors, increasing energy efficiency in Federal energy management, and encouraging more efficient energy use by electric utilities;

(6) provide for oil and gas exploration, production, and development in the Arctic National Wildlife Refuge in Alaska in an environmentally sound manner;

(7) encourage the production and use of nuclear power by providing for the commercialization of advanced nuclear reactor technologies and improving the nuclear reactor licensing process;

(8) enhance the competitive position of the Federal uranium enrichment enterprise;

(9) encourage increased utilization of natural gas and other domestic energy resources to displace imported oil and meet domestic energy demand in a manner consistent with environmental values;

(10) encourage the development of domestic energy resources on the Outer Continental Shelf;

(11) establish priorities for Federal energy research, development, demonstration, and commercialization;

(12) encourage enhanced oil and gas recovery from known and producing domestic reserves;

(13) enhance the role of coal and clean coal technology in meeting the Nation's energy needs;

(14) foster competition in the electric utility industry; and

(15) provide enhanced oil security protection through the Strategic Petroleum Reserve.

Subtitle B—Goals, Least-Cost Energy Strategy, and Director of Climate Protection

SEC. 1201. GOALS AND POLICIES.—(a) GOALS.—The goals of this subtitle are to—

(1) investigate the feasibility and economic, energy, social, environmental and competitive implications of the stabilization of the generation of carbon dioxide and other greenhouse gases in the United States;

(2) assess the feasibility of further limiting, or reducing, the generation of carbon dioxide and other greenhouse gases not controlled by the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;

(3) investigate the feasibility and economic, energy, social, and environmental implications of achieving a 20 percent reduction in the generation of carbon dioxide by the year 2005 as recommended by the 1988 Toronto Scientific World Conference on the Changing Atmosphere;

(4) investigate the feasibility and economic, energy, social, and environmental implications of stabilizing carbon dioxide emissions by the year 2005; and

(5) evaluate the potential social, economic, energy, and environmental implications of implementing the policies mentioned in paragraphs (1), (2), (3), and (4) in order to enable the United States to comply with any obligations under an international global climate change framework convention or agreement.

(b) POLICIES.—The least-cost energy strategy under section 1202 shall evaluate the economic, energy, social, environmental, technical, and competitive impacts of the implementation of policies to be considered in section 1201(a) that include, but are not limited to, policies that:

(1) implement standards for more efficient use of fossil fuels;

(2) increase the energy efficiency of existing technologies;

(3) encourage technologies, including clean coal technologies, that generate lower levels of carbon dioxide and other greenhouse gases;

(4) promote the use of renewable energy resources, including solar, geothermal, sustainable biomass, hydropower, and wind power;

(5) affect the development and consumption of energy and energy efficiency resources and electricity through tax policy;

(6) encourage investment in energy efficient equipment and technologies; and

(7) encourage the development of energy technologies, such as advanced nuclear fission and nuclear fusion, that produce energy without carbon dioxide and other greenhouse gases as a byproduct, and encourage the deployment of nuclear electric generating capacity.

(c) **CHLOROFLUOROCARBONS.**—The reduction of the generation of chlorofluorocarbons shall be in accordance with the provisions of the Montreal Protocol, unless subsequent Federal legislation is enacted establishing new guidelines for the reduction or elimination of the use of chlorofluorocarbons.

(d) **FRAMEWORK CONVENTION.**—In order to promote international cooperation in addressing potential global climate change, it is the goal of the United States to establish by 1992, an international framework convention on global climate change through the activities of the Negotiating Committee for a Framework Convention of the United Nations International Environmental Program and the World Meteorological Organization and to secure the commitment of the community of nations to such convention.

SEC. 1202. LEAST-COST ENERGY STRATEGY.—(a) **STRATEGY.**—The first National Energy Policy Plan (the "Plan") under section 801 of the Department of Energy Organization Act (42 U.S.C. 7321) prepared and submitted by the President to Congress after the date of the enactment of this Act, and each subsequent such Plan, shall include a least-cost energy strategy prepared by the Secretary.

(b) **PRIORITIES.**—(1) The least-cost energy strategy shall identify Federal priorities for the encouragement of the use of energy and energy efficiency resources. In developing the least-cost energy strategy, the Secretary shall take into consideration the economic, energy, social, and environmental consequences of his choices. Such strategy shall be designed to achieve to the maximum extent practicable and at least-cost to the Nation—

(A) the energy production, utilization, and conservation objectives of the Plan; and

(B) the stabilization and eventual reductions in the generation of carbon dioxide and other greenhouse gases mentioned in section 1201(a).

(2) The least-cost energy strategy shall include—

(A) a comprehensive inventory of available energy and energy efficiency resources and their projected costs, taking into account all costs of production, transportation, and utilization of such resources, including—

(i) coal, clean coal technologies, coal seam methane, and underground coal gasification;

(ii) energy efficiency, including existing technologies for increased efficiency in production, transportation, and utilization of energy, and other technologies that are anticipated to be available through further research and development; and

(iii) other energy resources, such as renewable energy, solar energy, nuclear fission, fusion, geothermal, biomass, fuel cells, and hydropower.

(B) a proposed two-year program for assuring adequate supplies of energy and energy efficiency resources under paragraph (1), and an identification of actions that can be undertaken within existing Federal authority; and

(C) recommendations for any new Federal authority needed to achieve the purposes of this Act.

(c) **SECRETARIAL CONSIDERATION.**—(1) In developing the least-cost energy strategy, the Secretary shall give full consideration to:

(A) the relative costs of energy and energy efficiency resources based upon a comparison of the estimated system costs of other similarly reliable and available resources; and

(B) the economic, energy, social and environmental consequences resulting from the establishment of any particular order of Federal priority.

(2) System costs under paragraph (1) are all direct and quantifiable net costs for the resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

(3) When comparing an energy efficiency resource to an energy resource, a higher priority shall be assigned to the energy efficiency resource whenever its estimated system cost is equal to the estimated system cost of the energy resource.

SEC. 1203. DIRECTOR OF CLIMATE PROTECTION.—(a) **APPOINTMENT.**—Within six months after the date of the enactment of this Act, the Secretary shall appoint within the Department, a Director of Climate Protection (the "Director"). The Director shall:

(1) in the absence of the Secretary, serve as the Secretary's representative for inter-agency and multilateral policy discussions of global climate change;

(2) monitor domestic and international policies for their effects on the generation of carbon dioxide and other greenhouse gases; and

(3) have the authority to participate in the planning activities of relevant Departmental programs.

(b) Beginning 18 months after the date of the enactment of this Act, and annually thereafter, the Director shall participate in the formulation of the least-cost energy strategy under section 1202, research, and development, priorities under section 13101, and the management plan under section 13102.

SEC. 1204. REPEAL.—Title III of the Energy Security Act (42 U.S.C. 7361, et. seq.) is hereby repealed.

TITLE II—DEFINITIONS

SEC. 2101. DEFINITIONS.—As used in this Act the term—

(a) "Secretary" means the Secretary of Energy, unless otherwise provided;

(b) "joint venture" means any agreement entered into under this Act by the Secretary with more than one or a consortium of non-Federal persons (including a joint venture under the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.)) for cost-shared research, development, or demonstration of technologies, but does not include procurement contracts, grant agreements, or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code, and joint ventures authorized herein shall be conducted in accordance with the procedures and requirements of paragraphs (b)(1), (b)(2) and (b)(5) of section 6 of the Renewable Energy and Energy

Efficiency Technology Competitiveness Act of 1989 (Pub. L. No. 101-218);

(c) "non-Federal person" has the same meaning as set forth in subsection (3) of section 3 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. No. 101-218); and

(d) "lesser-developed countries" shall include, but not be limited to, Eastern Europe and the Soviet Union.

TITLE III—CORPORATE AVERAGE FUEL ECONOMY

SEC. 3101. SHORT TITLE.—This title may be cited as the "Motor Vehicle Fuel Efficiency Act of 1991".

SEC. 3102. DEFINITIONS.—Section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001) is amended by adding at the end the following new paragraphs:

"(15) The term 'light truck' means an automobile other than a passenger automobile.

"(16) The term 'vehicle class' means (i) all passenger automobiles; (ii) all light trucks; or (iii) a class of light trucks as determined by the Secretary of Transportation under section 502(b)(4)."

SEC. 3103. AVERAGE FUEL ECONOMY STANDARDS FOR PASSENGER AUTOMOBILES.—Section 502(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(a)) is amended by striking subsection (a) and inserting the following:

"(a)(1) Except as otherwise provided in subsection (c), the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1984 shall not be less than the number of miles per gallon established for such model year under the following table:

"Average fuel economy standard	
"Model year	
"1985 through 1995	27.5 miles per gallon.
"1996 through 2001	Determined by the Secretary under paragraph (2)(A).
"2002 and thereafter	Determined by the Secretary under paragraph (2)(B).

"(2) Not later than July 1, 1992, the Secretary shall prescribe, by rule, for each manufacturer of passenger automobiles, average fuel economy standards for—

"(A) passenger automobiles manufactured by such manufacturer in model years 1996 through 2001; and

"(B) passenger automobiles manufactured by such manufacturer in model years 2002 and thereafter.

"(3) The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2)(A) or (B) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d)."

SEC. 3104. AVERAGE FUEL ECONOMY STANDARDS FOR LIGHT TRUCKS.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (b) and inserting the following:

"(b)(1) The Secretary shall, by rule, prescribe average fuel economy standards for light trucks which are manufactured by any manufacturer in each model year before model year 1996. Such standards shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.

"(2) Not later than July 1, 1992, the Secretary shall prescribe, by rule, for each manufacturer of light trucks, average fuel economy standards for—

"(A) light trucks manufactured by such manufacturer in model years 1996 through 2001; and

"(B) light trucks manufactured by such manufacturer in model years 2002 and thereafter.

"(3) The average fuel economy standard prescribed by the Secretary for any manufacturer under paragraph (2)(A) or (B) shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for such manufacturer as determined under subsection (d).

"(4) Any rule prescribed by the Secretary under this subsection may provide for separate standards for different classes of light trucks (as determined by the Secretary)."

SEC. 3105. EXEMPTIONS FOR MANUFACTURERS OF LIMITED NUMBERS OF PASSENGER AUTOMOBILES.—Section 502(c)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(c)(1)) is amended by inserting "for any model year prior to model year 1996" immediately before the period at the end of the first sentence.

SEC. 3106. CALCULATION OF AVERAGE FUEL ECONOMY STANDARDS FOR INDIVIDUAL MANUFACTURERS.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (d) and inserting the following:

"(d)(1) The Secretary shall determine the maximum feasible average fuel economy achievable for passenger automobiles, light trucks, or class of light trucks manufactured by any manufacturer (i) during model year 1996 through 2001 and (ii) during model year 2002 and thereafter by—

"(A) determining, in accordance with subsection (e)(2), the maximum feasible average fuel economy (in miles per gallon) of all automobiles of such vehicle class manufactured by all manufacturers during such period;

"(B) calculating the percentage increase in the average fuel economy of all automobiles of such vehicle class that the maximum feasible average fuel economy determined in paragraph (1) represents compared to the average fuel economy of all automobiles of such vehicle class manufactured in model year 1990 as determined in accordance with section 503; and

"(C) increasing the average fuel economy of automobiles of such vehicle class manufactured by such manufacturer in model year 1990 by the percentage increase calculated in accordance with paragraph (2).

"(2) The Secretary may apply different percentage increases to different vehicle classes, but shall apply the same percentage increase calculated under paragraph (1)(B) to all manufacturers of automobiles of such vehicle class."

SEC. 3107. DETERMINATION OF MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—Section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) is amended further by striking subsection (e) and inserting the following:

"(e)(1) For purposes of subsections (a)(1), (b)(1), and (c), in determining maximum feasible average fuel economy, the Secretary shall consider—

"(A) technological feasibility;

"(B) economic practicability;

"(C) the effect of other Federal motor vehicle standards on fuel economy; and

"(D) the need of the Nation to conserve energy.

"(2) For purposes of subsections (a)(2) and (3), (b)(2) and (3), and (d), in determining the maximum feasible average fuel economy of all passenger automobiles, light trucks, or a class of light trucks, as the case may be, manufactured by all manufacturers during (i) model years 1996 through 2001 or (ii) model year 2002 and thereafter, the Secretary shall assume that, taken as a whole, the population of automobiles of such vehicle class manufactured by all manufacturers during such model year—

"(A) uses all fuel-saving technologies and designs that are capable of being commercialized by the appropriate period, considering—

"(i) the time at which improved or new technologies and designs could be introduced and the rates at which they might penetrate the market under existing industrial capabilities; and

"(ii) any technical, financial, regulatory, organizational, and marketing limitations to deploying improved or new technologies by such period;

"(B)(i) with respect to passenger automobiles, attains the same performance level (measured by the product of torque and axle ratio divided by curb weight) as passenger automobiles manufactured in model year 1990, taken as a whole; and

"(ii) with respect to light trucks or class thereof, attains performance levels and utility comparable to such class manufactured in model year 1990;

"(C) reflects the same size mix and interior volume as automobiles of such model type manufactured in model year 1990, taken as a whole;

"(D) meets all applicable emission standards; and

"(E) meets all applicable automobile safety standards."

SEC. 3108. AMENDMENT OF STANDARDS.—Section 502(f) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(f)) is amended—

(1) by striking "subsection (a)(3)" and inserting "subsection (a)(2)" each place it appears; and

(2) by striking "if required by paragraph (4) of subsection (a)," in paragraph (2)(B).

SEC. 3109. PROCEEDINGS.—Section 502(h) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(h)) is amended by striking "Proceedings under subsection (a)(4) or (d)" and inserting "Any proceeding to promulgate or amend a rule under this section".

SEC. 3110. CREDIT TRADING.—(a) CARRYING FORWARD CREDITS.—Section 502(1)(1)(B)(ii) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(1)(1)(B)(ii)) is amended to read as follows:

"(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer—

"(I) for any three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard with respect to credits earned for exceeding average fuel economy standards for model years prior to 1996; and

"(II) until used with respect to credits earned for exceeding average fuel economy standards for model years 1996 and thereafter."

(b) TRANSFERRING CREDITS.—Section 502(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(1)) is amended—

(1) by striking paragraph (3) and inserting the following:

"(3) Credits under this subsection may be transferred among manufacturers and among vehicle classes of a manufacturer in accordance with rules issued by the Secretary under paragraph (4)."; and

(2) by redesignating paragraph (4) as paragraph (4)(A) and inserting at the end the following new subparagraph:

"(B) Not later than 24 months after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary shall issue rules implementing the credit trading system authorized by paragraph (4)."

(c) CONFORMING AMENDMENTS.—Section 502(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(1)) is amended further—

(1) by striking "automobiles which are not passenger automobiles" and inserting "light trucks" in paragraph (2); and

(2) by striking "class of automobiles" and inserting "light trucks" in paragraph (2).

SEC. 3111. CALCULATION OF FUEL ECONOMY FOR LIGHT TRUCKS.—Section 503(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(2)) is amended by adding before the period the following:

"that are based upon the method required by this section for calculation of average fuel economy of passenger automobiles".

SEC. 3112. AIRBAG CREDIT FOR SMALL PASSENGER AUTOMOBILES.—(a) AIRBAG CREDIT.—Section 503 (a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)) is amended—

(1) in paragraph (1) by inserting "; subject to paragraph (4)," immediately before "be calculated"; and

(2) by adding at the end the following new paragraph:

"(4)(A) If a manufacturer manufactures small passenger automobiles which comply with Federal Motor Vehicle Safety Standard Number 208 by means of airbags for the driver seating position only or for both the driver and front seat outboard seating positions, average fuel economy for purposes of section 502 (a) and (c) shall be calculated as provided under subsection (a)(1), except that in the calculation of the sum of terms under subsection (a)(1)(B) the term applicable to any model type of small passenger automobile for which there are automobiles so equipped with airbags shall be determined by adding—

"(i) the fraction that is created by dividing the number of small passenger automobiles of such model type that are equipped with airbags for the driver seating position only, by 105 percent of the fuel economy measured for such model type,

"(ii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are equipped with airbags for both the driver and outboard front seating positions, by 110 percent of the fuel economy measured for such model type, and

"(iii) the fraction that is created by dividing the number of small passenger automobiles of such model type that are not so equipped, by the fuel economy measured for such model type.

"(B) For purposes of this paragraph, the term 'small passenger automobile' means a passenger automobile (i) with a wheel base of less than 100 inches, or with a curb weight of 2,750 pounds or less, and (ii) whose measured fuel economy is at least 35 miles per gallon."

(b) CONFORMING AMENDMENT.—Section 502(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(e)) as amended by section 3107 of this Act is amended further by adding at the end the following new paragraph:

"(3) In determining maximum feasible average fuel economy, the Secretary shall not consider the alternative calculation for air-bag-equipped passenger automobiles under section 503(a)(4)."

SEC. 3113. EXPLANATORY BOOKLET DISTRIBUTED BY SECRETARY OF ENERGY.—(a) MINIMUM NUMBER OF COPIES DISTRIBUTED.—Paragraph (1) of section 506(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(b)) is amended by adding at the end the following new sentence:

"During the 12-month period beginning on the first day of the first month after the date of enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy shall distribute no less than 100 booklets each year to each dealer and shall distribute as many in addition to 100 booklets as are reasonably requested by dealers from time to time."

(b) TECHNICAL AMENDMENTS.—(1) Section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(b)(1)) is amended further by striking "Administrator of the Federal Energy Administration" and inserting "Secretary of Energy".

(2) Section 506(e) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(e)) is amended by striking "Federal Energy Administrator" and inserting "Secretary of Energy".

SEC. 3114. EXCESSIVE FUEL CONSUMPTION FEE.—The Motor Vehicle Information and Cost Savings Act is amended by striking section 507 (15 U.S.C. 2007) and inserting the following:

"EXCESSIVE FUEL CONSUMPTION FEE

"SEC. 507. (a) If the average fuel economy calculations reported by the EPA Administrator to the Secretary under section 503(d) indicate that the average fuel economy of any manufacturer does not meet the applicable average fuel economy standards established under section 502(a), (b), or (c), the Secretary shall assess the manufacturer an excessive fuel consumption fee in an amount determined under section 508.

"(b) The amount of the fee shall be assessed by the Secretary by written notice.

"(c) (1) Not later than 30 days after a determination by the Secretary under subsection (a) that a manufacturer has failed to meet any applicable average fuel economy standard under section 502, such manufacturer may apply to the Federal Trade Commission for a certification under this subsection. If the manufacturer shows and the Federal Trade Commission determines that reduction of the fee which the Secretary shall otherwise assess is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such fee is assessed, the Commission shall so certify. The certification shall specify the maximum amount that such fee may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application under this subsection not later than 90 days after the application is filed with the Commission. A proceeding under this subsection shall not have the effect of delaying the manufacturer's liability under this section for a fee for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this subsection becomes final shall be paid to the court in which the fee is collected, and shall (except as otherwise provided in paragraph (2)) be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

"(2) Whenever a fee has been assessed and collected from a manufacturer under this section, and is being held by a court in accordance with paragraph (1), and the Secretary subsequently determines to reduce such fee pursuant to section 508(c), the Secretary shall direct the court to remit the appropriate amount of the fee to such manufacturer.

"(d)(1) Any manufacturer assessed a fee under this section may obtain review of a determination (i) of the Secretary to assess such fee or (ii) of the Federal Trade Commission under subsection (c) in the United States Court of Appeals for the District of Columbia Circuit, or for any circuit wherein the manufacturer resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5, United States Code.

"(2) If any manufacturer fails to pay a fee after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order assessing the fee shall not be subject to review.

"(e) A claim of the United States for a fee assessed against a manufacturer under this section shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to subsection (d))."

SEC. 3115. AMOUNT OF THE EXCESSIVE FUEL CONSUMPTION FEE.—Subsections (a), (b), (c), and (d) of section 508 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008(a)-(d)) are amended to read:

"AMOUNT OF THE EXCESSIVE FUEL CONSUMPTION FEE

"SEC. 508. (a)(1) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to passenger automobiles manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 502(a) or (c), multiplied by the number of passenger automobiles manufactured by such manufacturer during such model year, reduced (at the election of the manufacturer) by (ii) credits available under section 502(1) for such model year.

"(2) The Secretary shall determine the amount of the excessive fuel consumption fee to be assessed under section 507 with respect to light trucks manufactured in any model year by multiplying the base fee provided in subsection (b) by (i) the number of tenths of a mile per gallon by which the applicable average fuel economy standard ex-

ceeds the average fuel economy of the light trucks manufactured by such manufacturer during such model year, multiplied by the number of light trucks to which such standard applies manufactured by such manufacturer during such model year, reduced (at the election of the manufacturer) by (ii) credits available under section 502(1) for such model year.

"(b) For purposes of calculating the amount of any civil penalty under this section, the amount of the base fee shall be—

"For model years:	
"Prior to 1993	\$5.00
"1993	\$10.00
"1996	\$20.00
"1997 and thereafter	The amount of the fee applicable in the prior model year as adjusted in accordance with the annual implicit price deflator for the gross national product during such model year.

"(c) The Secretary shall have the discretion to reduce the amount of the fee calculated under this section only to the extent—

"(1) necessary to prevent the insolvency or bankruptcy of the manufacturer,

"(2) such manufacturer shows that its failure to meet the standards of section 502 resulted from an act of God, a strike, or a fire, or

"(3) the Federal Trade Commission has certified that reduction of such fee is necessary to prevent a substantial lessening of competition, as determined under section 507(c).

"(d)(1)(A) The Secretary shall, by rule in accordance with the provisions of this subsection and subsection (e), substitute a higher amount for the amount of the base fee which would be used to calculate the fee under subsection (a) in the absence of such rule, if the Secretary finds that—

"(i) the additional amount of the fee which may be imposed under such rule will result in, or substantially further, substantial energy conservation for automobiles in future model years for which such higher fee may be imposed; and

"(ii) subject to subparagraph (B), such additional amount of fee will not result in substantial deleterious impacts on the economy of the United States or any State or region of any State.

"(B) Any findings under subparagraph (A)(ii) may be made only if the Secretary finds that it is likely that—

"(i) such additional amount of fee will not cause a significant increase in unemployment in any State or region thereof;

"(ii) such additional amount will not adversely affect competition; and

"(iii) such additional amount will not cause a significant increase in automobile imports.

"(2) Any rule under paragraph (1) may not provide that the amount per tenth of a mile per gallon used to calculate the fee under subsection (a) be less than the base fee or more than twice the base fee provided by subsection (b)."

SEC. 3116. ESTABLISHMENT OF THE EXCESSIVE FUEL CONSUMPTION FUND.—Section 508 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008) is amended further by adding at the end the following new subsection:

"(f)(1) There is hereby established in the Treasury of the United States a separate fund, to be known as the Excessive Fuel Consumption Fund. The Fund shall consist of all fees collected by the Secretary under this section.

"(2) Subject to appropriation, the Secretary of Energy may make expenditures from the Fund for purposes of—

"(A) providing financial assistance to the States in accordance with section 514; and

"(B) funding other energy conservation programs, to the extent that the amount available in the Fund exceeds the amount needed under subparagraph (A).

"(3) The Secretary of the Treasury shall hold the Fund and, after consulting with the Secretary of Transportation and the Secretary of Energy, shall report annually to the Congress on the financial condition and operations of the Fund during the preceding fiscal year. The budget of the Fund shall be included in the Budget of the United States Government."

SEC. 3117. SCRAPPAGE OF OLDER VEHICLES.—The Motor Vehicle Information and Cost Savings Act is amended further by adding at the end thereof the following new section:

"SCRAPPAGE OF OLDER VEHICLES

"SEC. 514. (a) The Secretary of Energy shall provide financial assistance to State programs encouraging the voluntary removal from use and the marketplace pre-1980 model year automobiles.

"(b)(1) Within 180 days after the enactment of the Motor Vehicle Fuel Efficiency Act of 1991, the Secretary of Energy, after consulting with the EPA Administrator, shall adopt rules necessary to review and approve State programs that qualify for financial assistance under subsection (a).

"(2) Any rules adopted by the Secretary of Energy under paragraph (1) shall require that to qualify for Federal assistance under subsection (a) at least 50 percent of the cost of the program be paid for from State or private funds.

"(c) The Secretary of Energy is authorized, subject to appropriation, to make expenditures from the Excessive Fuel Consumption Fund for purposes of this section."

SEC. 3118. TECHNICAL AND CONFORMING AMENDMENTS.—(a) DESIGNATION OF THE EPA ADMINISTRATOR.—Section 502 (g)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(g)(1)) is amended by striking "Environmental Protection Agency" and inserting "EPA".

(b) ELIMINATION OF THE SECRETARY'S ADJUSTMENT AUTHORITY.—Section 502(1)(1)(B) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002 (1)(1)(B)) is amended by striking "any adjustment under subsection (d) or".

(c) DESIGNATION OF THE ENERGY AND COMMERCE COMMITTEE.—Section 503(b)(3)(D)(ii)(II) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(3)(D)(ii)(II)) is amended by striking "Interstate and Foreign Commerce" and inserting "Energy and Commerce".

(d) LEGISLATIVE VETO.—Section 504(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2004(a)) is amended by striking "(or in the case of an amendment submitted to each House of the Congress under section 502(a)(4), at any time prior to 60 days after the expiration of the 60-day period specified in section 502(a)(5))".

TITLE IV—FLEETS AND ALTERNATIVE FUELS

Subtitle A—Alternative Fuel Fleets

SEC. 4101. DEFINITIONS.—For the purposes of this subtitle—

(1) "alternative fuel" means methanol, ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, ethanol, or other alcohol with gasoline or other fuels; natural gas; liquefied

petroleum gas; hydrogen; coal-derived liquid fuels; and electricity;

(2) "alternative fuel vehicle" means a motor vehicle that—

(A) operates solely on alternative fuel; or

(B) is a flexi-fueled vehicle;

(3) "diesel truck" means a truck that has a gross vehicle weight over 8,500 pounds and under 26,000 pounds and is powered by diesel fuel;

(4) "Federal agency" means any executive department, military department, government corporation, independent establishment, executive agency, the United States Postal Service, the Congress, and the courts of the United States;

(5) "fleet" means a number of motor vehicles that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by a Federal agency, State, or person. This term does not include—

(A) motor vehicles held for daily lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement vehicles;

(E) emergency vehicles;

(F) military vehicles that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) non-road vehicles, including farm and construction vehicles; or

(H) vehicles that under normal operations are garaged at a personal residence at night;

(6) "flexi-fueled vehicle" means a motor vehicle that can operate on alternative and non-alternative fuel;

(7) "motor vehicle" means—

(A) any four-wheel passenger automobile, as the term "passenger automobile" is defined in section 501(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001(2));

(B) any truck with a gross vehicle weight up to 26,000 pounds, including "light trucks," as defined in section 501(15) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001(15)) and "diesel trucks" as defined in this section;

(C) and any bus designed to transport more than ten persons;

(8) "person" means—

(A) any individual, corporation, partnership, or association;

(B) any municipality or political subdivision of a State;

(9) "covered person" means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States; and

(10) "State" means a State, any agency of a State (but not a municipality or political subdivision of a State), or the District of Columbia.

SEC. 4102. FEDERAL FLEETS.—(a) PURCHASE REQUIREMENTS.—When any Federal agency purchases, leases, or otherwise acquires vehicles for a Federal fleet, in the years specified in this section, the following percentage of the vehicles purchased, leased, or otherwise acquired shall be alternative fuel vehicles in the respective years—

(1) in 1995, 10 percent;

(2) in 1996, 15 percent;

(3) in 1997, 25 percent;

(4) in 1998, 50 percent;

(5) in 1999, 75 percent; and

(6) in 2000 and each year thereafter, 90 percent.

(b) PROGRAM COORDINATION.—The Secretary shall work with the Administrator of General Services and the head of each Federal agency to plan effective coordination and cooperation by Federal agencies in the purchase, use, and refueling of alternative fuel vehicles acquired under this section or other provisions of law.

(c) REFUELING.—The Administrator of General Services shall, to the maximum extent practicable, arrange for the fueling of alternative fuel vehicles acquired under this section at commercial fueling facilities that are open to the public and offer alternative fuels for sale to the public.

(d) COST OF VEHICLES TO FEDERAL AGENCY.—Notwithstanding the provisions of section 211 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 491), the Administrator of General Services shall not include the incremental costs of alternative fuel vehicles in the amount to be reimbursed by Federal agencies if the Administrator determines that appropriations provided pursuant to this section are sufficient to provide for the incremental cost of such vehicles over the cost of comparable conventional vehicles.

(e) LIMITATIONS ON APPROPRIATIONS.—Funds appropriated pursuant to the authorization under this section shall be applicable only—

(1) to the portion of the cost of acquisition, maintenance, and operation of vehicles acquired under this paragraph which exceeds the cost of acquisition, maintenance, and operation of comparable conventional vehicles;

(2) to the portion of the costs of fuel storage and dispensing equipment attributable to such vehicles which exceeds the costs for such purposes required for conventional vehicles; and

(3) to the portion of the costs of acquisition of alternative fuel vehicles which represents a reduction in revenue from the disposal of such vehicles as compared to revenue resulting from the disposal of comparable conventional vehicles.

(f) VEHICLE COSTS.—The incremental cost of vehicles acquired under this section over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be acquired by the United States.

(g) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Such sums as are appropriated for the Administrator of General Services pursuant to the authorization under this section shall be added to the General Supply Fund established in section 109 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 756).

SEC. 4103. STATE FLEETS.—When any State that owns, operates, leases, or otherwise controls at least 50 motor vehicles purchases, leases, or otherwise acquires motor vehicles for use in a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of Census, with a 1980 population of 250,000 or more, the following percentage of the vehi-

cles purchased, leased, or otherwise acquired for such fleet in the years specified shall be alternative fuel vehicles—

- (1) in 1995, 10 percent;
- (2) in 1996, 15 percent;
- (3) in 1997, 25 percent;
- (4) in 1998, 50 percent;
- (5) in 1999, 75 percent; and
- (6) in 2000 and each year thereafter, 90 percent.

SEC. 4104. PRIVATE AND MUNICIPAL FLEETS.—When any covered person that owns, operates, leases, or otherwise controls at least 50 motor vehicles purchases, leases, or otherwise acquires vehicles for a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of Census, with a 1980 population of 250,000 or more, the following percentage of the vehicles purchased, leased, or otherwise acquired for such fleet in the years specified shall be alternative fuel vehicles—

- (1) in 1998, 30 percent;
- (2) in 1999, 50 percent; and
- (3) in 2000 and each year thereafter, 70 percent.

SEC. 4105. RULES OF GENERAL APPLICABILITY.—(a) **TREATMENT OF FRACTIONS.**—If the number of vehicles purchased, leased, or otherwise acquired by a Federal agency, State, or covered person in any year when multiplied by the percentage specified in section 4102, 4103, or 4104 contains a fraction, the number of vehicles required to be alternative fuel vehicles shall be increased to the next whole number.

(b) **FUEL USE REQUIREMENT.**—The vehicles purchased pursuant to section 4102, 4103, or 4104 shall be operated solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable.

(c) **DIESEL TRUCKS.**—Any Federal agency, State, or covered person that operates a fleet that is subject to the requirements of section 4102, 4103, or 4104, respectively, and contains one or more diesel trucks may purchase, lease, or otherwise acquire diesel trucks after 1994 in proportion (relative to the total number of motor vehicles) to the number of diesel trucks in the agency, State, or person's fleet that is subject to the requirements of section 4102, 4103, or 4104 on the date of enactment of this subtitle, notwithstanding such sections.

(d) **DELAYED PURCHASE OPTION.**—Any covered person subject to section 4104 may postpone the acquisition of alternative fuel vehicles required to be acquired in 1998 and 1999, but after 1999, such person may only acquire alternative fuel vehicles until such person acquires a cumulative number of such vehicles which exceeds 150 percent of the cumulative number of alternative fuel vehicle purchases that would have been needed to meet the 1998 and 1999 requirements of section 4104. Such acquisitions shall be in addition to any acquisition requirements under section 4104 for years after 1999.

SEC. 4106. EXEMPTIONS.—(a) **VEHICLE AND FUEL AVAILABILITY.**—The Secretary shall exempt any Federal agency, State, or covered person from the requirements of section 4102, 4103, or 4104, respectively, in whole or in part, if the Secretary determines that:

- (1) alternative fuel vehicles meeting the requirements of such Federal agency, State, or person are not available for purchase, lease, or acquisition by other means; or
- (2)(A) commercial alternative fuel refueling facilities are not available to the Federal

agency, State, or person in the area in which the vehicles are operated; and

(B) providing an alternative fuel refueling facility for such agency, State, or person's alternative fuel vehicles would be economically impracticable.

(b) **DURATION OF EXEMPTIONS.**—An exemption granted by the Secretary under subsection (a) shall be for an initial period of no more than 12 months and shall be renewable for additional periods of no more than 12 months.

SEC. 4107. VEHICLE CONVERSIONS.—The requirements of sections 4102, 4103, and 4104 may be met through the conversion of existing or new gasoline or diesel-powered vehicles to alternative fuel vehicles. For purposes of such sections, the conversion of a vehicle to an alternative fuel vehicle shall be treated as the purchase of an alternative fuel vehicle. Nothing in this subtitle shall be construed to require any Federal agency, State, or covered person to convert existing or new gasoline or diesel-powered vehicles to alternative fuel vehicles or to purchase converted vehicles.

SEC. 4108. CREDITS.—(a) **IN GENERAL.**—The Secretary shall allocate a credit to a State or covered person that is subject to the requirements of section 4103 or 4104, respectively, if that State or person purchases an alternative fuel vehicle in excess of the number that State or person is required to purchase under section 4103 or 4104 or purchases an alternative fuel vehicle before the date that State or person is required to purchase an alternative fuel vehicle under such section.

(b) **ALLOCATION.**—In allocating credits under subsection (a), the Secretary shall allocate one credit for each alternative fuel vehicle the State or covered person purchases that exceeds the number of alternative fuel vehicles that State or person is required to purchase under section 4103 or 4104 or that is purchased before the date that State or person is required to purchase an alternative fuel vehicle under such section. In the event that a vehicle is purchased before the date otherwise required, the Secretary shall allocate one credit per vehicle for each year the vehicle is purchased before the required date. The credit shall be allocated for the same type vehicle as the excess vehicle or earlier purchased vehicle.

(c) **USE OF CREDITS.**—At the request of a State or covered person allocated a credit under this section, the Secretary shall treat the credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by that State or person when determining whether that State or person has complied with this subtitle in the year designated. A credit may be counted toward compliance for only one year.

(d) **TRANSFERABILITY.**—A State or covered person allocated a credit under this section or to whom a credit is transferred under this section, may transfer freely the credit to another State or person who is required to comply with this subtitle. At the request of the State or person to whom a credit is transferred, the Secretary shall treat the transferred credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by the State or person to whom the credit is transferred when determining whether that State or person has complied with this subtitle in the year designated. A transferred credit may be counted toward compliance for only one year.

SEC. 4109. REPORTS.—The Secretary may require a Federal agency, State, or covered

person to file with the Secretary the reports the Secretary determines necessary to implement this subtitle.

SEC. 4110. ENFORCEMENT.—(a) **CIVIL PENALTIES.**—A State or covered person who violates a requirement or prohibition of section 4103 or 4104, respectively, or 4105(b) is subject to a civil penalty of not more than \$2,500 per violation. Each month in which a violation occurs constitutes a separate violation, unless the violator establishes that the vehicle necessary to comply with this subtitle could not be purchased, leased, or otherwise acquired in that month. The first month of a violation of the yearly acquisition requirements of section 4103 or 4104 is the month in which a State or person purchases, leases, or otherwise acquires vehicles that result in noncompliance with the yearly alternative fuel vehicle purchase requirement under that section. Each month in which compliance has not been achieved after the first month is a separate violation.

(b) **CIVIL ACTIONS.**—The Secretary may request the Attorney General to commence a civil action for a permanent or temporary injunction or to assess and recover any civil penalty under subsection (a) of this section. An action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has his principal place of business. The court in which the action has been brought may restrain a violation, require compliance, assess a civil penalty, collect any noncompliance assessment and nonpayment penalty owed the United States, and award any other appropriate relief. In such an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) **MITIGATION OF PENALTIES.**—In the determining the amount of a penalty to be assessed under this section, the court shall take into consideration, in addition to other factors justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

SEC. 4111. IMPLEMENTATION.—(a) **REGULATIONS.**—Within 180 days after the date of enactment of this subtitle the Secretary shall issue regulations to implement this subtitle. Such regulations shall include measures to ensure that Federal agencies, States, and covered persons comply with the requirements of sections 4102, 4103, and 4104, respectively, and the criteria by which the Secretary will determine whether to exempt agencies, States, and covered persons from such requirements under section 4105.

(b) **DELEGATION TO STATES.**—The Secretary may delegate the administration and enforcement of this subtitle within any State to the Governor of such State if—

- (1) the Governor certifies that the State has a program to administer and enforce the subtitle; and
- (2) the Secretary finds that the State program is in accordance with the requirements of the subtitle.

(c) **FINANCIAL ASSISTANCE.**—There is authorized to be appropriated not more than \$20,000,000 to remain available until expended for purposes of providing financial assistance to States to which the Secretary delegates administration and enforcement of this subtitle.

SUBTITLE B—Electric and Electric-Hybrid Vehicle Demonstration, Infrastructure, Development, and Conforming Amendments

Part A—Electric and Electric-Hybrid Vehicle Demonstration

SEC. 4201. SHORT TITLE.—This part may be cited as the "Electric and Electric-Hybrid Vehicle Demonstration Act".

SEC. 4202. DEFINITIONS.—For the purposes of this part, the term—

(1) "associated equipment" means that equipment necessary for the regeneration, refueling or recharging of batteries or other forms of electric energy used to power an electric vehicle and, in the case of electric-hybrid vehicles, that equipment necessary for the application or use of the non-electric source of power in such vehicles;

(2) "comparable conventionally-fueled vehicle" means a commercially available vehicle powered by an internal combustion engine that utilizes gasoline or diesel fuel as its fuel source and provides passenger capacity or payload capacity comparable or similar to an electric vehicle or electric-hybrid vehicle, as determined by the Secretary;

(3) "discount payment" means that discount from the electric vehicle suggested retail price provided to the user of an electric vehicle or electric-hybrid vehicle as determined pursuant to section 4205 of this part;

(4) "electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current;

(5) "electric-hybrid vehicle" means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electrical source of power;

(6) "electric vehicle suggested retail price" or "electric-hybrid vehicle suggested retail price" means the price (including any additions to the price of such vehicle added as a result of delivery to the point of use of such vehicles) of an electric vehicle or electric-hybrid vehicle set forth in a cooperative agreement under section 4203(b), not adjusted to reflect any discount payment that may be available under this part;

(7) "eligible metropolitan area" means—
(A) any ozone non-attainment area classified under subpart 2 of part D of Title I of the Clean Air Act, as amended, as Serious, Severe, or Extreme as of the date of enactment of this part;

(B) any carbon monoxide nonattainment area with a carbon monoxide design value at or above 16.0 parts per million based on data available as of the date of enactment of this part, but does not include carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedences; or

(C) any other metropolitan statistical area with a 1980 population of 250,000 or more that has been designated by a proposer and the Secretary for a demonstration project under this part;

(8) "manufacturer" means a person or entity that produces an electric vehicle or electric-hybrid vehicle and is capable, if determined to be by the Secretary, of providing service and parts for such vehicle for a period of five years or more;

(9) "proposer" means a person or entity that submits a proposal to conduct a demonstration project under the program authorized by this part and may include a unit of State or local government;

(10) "retail price differential" means the difference between the comparable conventionally-fueled vehicle suggested retail price

and the electric vehicle or electric-hybrid vehicle suggested retail price;

(11) "suggested retail price" means the price (including any additions to the price of such vehicle added as a result of delivery to the point of use of such vehicle) of a commercially available conventionally-fueled vehicle, as determined by the manufacturer's established retail price, not adjusted to reflect any reductions in such price discounts that may be available; and

(12) "user" means a person or entity that purchases or leases an electric vehicle or electric-hybrid vehicle, including fleet operators.

SEC. 4203. PROGRAM AND SOLICITATION.—(a) **PROGRAM.**—The Secretary shall conduct a program to demonstrate electric vehicles, electric-hybrid vehicles and the associated equipment of such vehicles, in consultation with the Electric and Hybrid Vehicle Program Site Operators, vehicle manufacturers, the electric utility industry, and such other persons as the Secretary deems appropriate. Such program shall be structured to evaluate the performance of such vehicles in field operation, including fleet operation, and evaluate the necessary supporting infrastructure for electric and electric-hybrid vehicle commercialization.

(b) **SOLICITATION.**—(1) Not later than one year after the date of enactment of this part, the Secretary shall solicit proposals to demonstrate electric vehicles, electric-hybrid vehicles or such vehicles and associated equipment in one or more eligible metropolitan areas.

(2) The solicitation shall require the proposer to include in the proposal a description of the proposal including the manufacturer or manufacturers of the electric or electric-hybrid vehicles; the intended users of the vehicles; the eligible metropolitan area or areas involved; the number of vehicles to be demonstrated and their type, characteristics, and life-cycle costs; the retail price differential; the proposed discount payment; the contributions of State or local governments and other persons to the demonstration project; the type of associated equipment to be demonstrated; and any other information the Secretary requires to make selections under section 4204. If the proposal includes a lease arrangement, the proposal shall indicate the terms of such lease arrangement for the electric vehicles, electric-hybrid vehicles or associated equipment.

(c) **ADDITIONAL SOLICITATIONS.**—The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out the purposes of this part.

SEC. 4204. SELECTION OF PROPOSALS.—(a) **SELECTION.**—(1) The Secretary, in consultation with the Secretary of Transportation, the Secretary of Commerce and the Administrator of the Environmental Protection Agency, may, not later than 120 days after receipt of proposals under section 4203, select at least one, but not more than ten, proposals for negotiation of cooperative agreements to receive financial assistance under section 4205.

(2) Any proposal selected for negotiation under paragraph (1) must satisfy the limitations set forth in section 4205(c).

(3) If the Secretary intends to enter into four or more cooperative agreements, at least one such cooperative agreement shall be for a demonstration project located in an eligible metropolitan area referred to in section 4202(7)(C) and which is not located in a nonattainment area referred to in sections 4202(7)(A) or (B).

(b) **CONSIDERATION.**—In selecting a proposal and in negotiating a cooperative agreement under this section, the Secretary shall consider—

(1) the ability of a proposer to undertake and complete the proposed demonstration project;

(2) the ability of a manufacturer, directly or indirectly, or in combination with the proposer, to develop, assist in the demonstration of, manufacture, distribute, sell or lease and provide service for, including the ability to provide warranties and to assure the availability of all parts, those electric vehicles or electric-hybrid vehicles that are proposed to be included in the demonstration project;

(3) the geographic and climatic diversity of the eligible metropolitan area or areas in which the demonstration project is to be undertaken when compared with other proposals or other selected demonstration projects;

(4) the long-term technical and competitive viability of the electric and electric-hybrid vehicle, and the ability of the manufacturer of such vehicles to make and incorporate subsequent advancements, cost reductions, modifications, and technology improvements;

(5) the electric vehicle or electric-hybrid vehicle suggested retail price of the vehicles to be included in the demonstration project, the comparable conventionally-fueled vehicle suggested retail price, the proposed discount payment, and in the case of a demonstration project that includes a lease arrangement, the terms of such arrangement for the vehicle or associated equipment;

(6) the extent of involvement of State or local government and other persons in the demonstration project;

(7) whether the involvement of State or local government or other persons in the demonstration project (A) will permit a reduction of the Federal cost share per vehicle or (B) will otherwise be used to leverage the Federal contribution to be provided among a greater number of vehicles; and

(8) other criteria as the Secretary deems appropriate.

(c) **CONDITIONS.**—The Secretary shall include in any cooperative agreement under this section provisions intended to assure that—

(1) the vehicle or vehicles will be used primarily in the eligible metropolitan area or areas identified in the proposal and set forth in the final agreement made with the Secretary;

(2) the number of vehicles to be included in the demonstration project shall be no less than 50 vehicles, except that the Secretary—

(A) may select and enter into a cooperative agreement for a demonstration project with fewer than 50 vehicles if the Secretary determines that selection of such a proposal will ensure that there is geographic or climatic diversity of the proposals selected and that an adequate demonstration to accelerate the development and use of vehicles can be undertaken with fewer than 50 vehicles; and

(B) may permit a group of such vehicles to be used in an area outside such eligible metropolitan area or areas identified in such proposal if the Secretary determines that such proposal would further the purposes of this part.

(3) as a part of the demonstration project, the proposer shall seek to obtain from the user or users of the vehicles and to provide to the manufacturer information regarding operation, maintenance, and useability of the vehicle for five years after purchase or during the lease period; and

(4) the proposer shall provide such information regarding operation, maintenance and use of vehicles as the Secretary may request during the period of the demonstration project.

(d) **ADDITIONAL DEMONSTRATIONS.**—The Secretary may enter into more than ten cooperative agreements under this section, if the Secretary determines that the total amount of available funds is not likely to be otherwise utilized.

SEC. 4205. DISCOUNT PAYMENTS TO USERS.—(a) **CERTIFICATION.**—The Secretary shall provide a discount payment to a proposer for reimbursement of the discount provided to the user, if the proposer certifies to the Secretary, in such form and in such manner and time as may be required by the Secretary, that—

(1) the electric vehicle or electric-hybrid vehicle has been purchased or leased by a user in accordance with the terms and conditions of the cooperative agreement referred to in section 4204; and

(2) the proposer has provided to the user a discount payment from the electric vehicle or electric-hybrid vehicle suggested retail price in accordance with the terms and conditions for the discount payment in the cooperative agreement under section 4204.

(b) **PAYMENT.**—Not later than 30 days after receipt from the proposer of certification that the Secretary determines satisfies subsection (a), the Secretary shall pay to the proposer the full amount of the discount payment.

(c)(1) **RESTRICTIONS ON DISCOUNT PAYMENTS.**—The discount payment shall be no greater than the retail price differential or the price of the comparable conventionally-fueled vehicle, whichever is the lesser.

(2) The actual purchase price of the vehicle, adjusted to reflect the discount payment and any additional reduction in the actual purchase price of the vehicle that may result from contributions to a purchase price reduction provided by other parties, may not be less than the manufacturer's suggested retail price of a comparable conventionally-fueled vehicle.

(3) The maximum Federal share of the discount payment that may be provided to reimburse a proposer for a discount payment provided to a user shall be no greater than \$10,000 per electric vehicle or electric-hybrid vehicle.

(4) The aggregate discount payments paid to a proposer under this part may not exceed \$3,000,000.

(d) **LEASE AGREEMENTS.**—For purposes of the discount payment, in the case of an electric vehicle or electric-hybrid vehicle included in a demonstration project that is the subject of a lease agreement, the Secretary shall provide a rebate in accordance with the terms of the cooperative agreement.

SEC. 4206. COST-SHARING.—(a) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreement under this part, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(b) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under subsection (a) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this part.

SEC. 4207. REPORTS TO CONGRESS.—The Secretary shall report annually to the Committee on Energy and Natural Resources of the

United States Senate and the United States House of Representatives on the progress being made, through the cooperative agreements under this part, to accelerate the development and use of electric vehicles and electric-hybrid vehicles.

SEC. 4208. AUTHORIZATION.—There is authorized to be appropriated to the Secretary for fiscal years 1992, 1993 and 1994 such sums as may be necessary to carry out the purposes of this part, to remain available until expended.

PART B—ELECTRIC AND ELECTRIC-HYBRID VEHICLE INFRASTRUCTURE DEVELOPMENT

SEC. 4211. SHORT TITLE.—This part may be cited as the "Electric Vehicle and Electric-Hybrid Infrastructure Development Act".

SEC. 4212. DEFINITIONS.—For purposes of this part, the term—

(1) "infrastructure" includes, but is not limited to, those support and maintenance services and facilities, electricity delivery mechanisms and methods, treatment of investment in electric vehicles and associated equipment, consumer education programs, safety and health procedures, and battery availability, replacement, recycling and disposal, that may be required to enable electric utilities, automobile manufacturers and others, to support the operation, maintenance and utilization of electric vehicles, electric-hybrid vehicles, and associated equipment;

(2) "non-Federal person" means an entity not part of the Federal Government that is organized under the laws of the United States and located in the United States, the controlling interest (as defined by the Secretary) of which is held by United States nationals or permanent resident aliens, including—

(A) a for-profit business;

(B) a private foundation;

(C) a nonprofit organization such as a university;

(D) a trade or professional society; and

(E) a unit of State or local government.

(3) "associated equipment" means that equipment necessary for the regeneration, refueling or recharging of batteries or other forms of electrical energy used to power an electric vehicle and, in the case of electric-hybrid vehicles, the non-electric source of energy;

(4) "electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current; and

(5) "electric-hybrid vehicle" means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current but also relies on a non-electrical source of power.

SEC. 4213. DATA ACQUISITION TO SUPPORT INFRASTRUCTURE DEVELOPMENT AND MARKETS FOR USE OF ELECTRIC VEHICLES AND ELECTRIC-HYBRID VEHICLES.—(a) **General.**—Not later than 180 days after the date of enactment of this part, the Secretary, in consultation with appropriate State, regional and local authorities, shall establish a program for the collection and dissemination of information and data which would be useful to persons seeking to manufacture, sell, lease, own or operate electric vehicles and electric-hybrid vehicles. Such information and data—

(1) shall be sufficient to evaluate—

(A) the degree to which the availability of energy and fuel supplies may constrain the introduction of electric vehicles or electric-hybrid vehicles; and

(B) the electric vehicle or electric-hybrid vehicle trips made daily, miles driven per trip, projections as to the number of trips that could be accomplished in combination with mass transit so as to conserve energy; and

(2) may include other appropriate demographic and consumer preferences information necessary to make the evaluation under paragraph (1).

(b) **CONSULTATION BY THE SECRETARY.**—The Secretary shall consult with interested persons including, but not limited to, vehicle manufacturers, fleet operators, public utilities and State or local governmental entities, to determine the types of information and data to be collected and analyzed pursuant to the program authorized by subsection (a).

SEC. 4214. STATE INFRASTRUCTURE DEVELOPMENT PLANS.—(a) **GUIDELINES.**—(1) Within 180 days after the date of enactment of this part, the Secretary shall issue guidelines for use by States and local governmental entities to develop comprehensive infrastructure plans to support the deployment of electric vehicles and electric-hybrid vehicles. Such guidelines shall include sufficient information to help States to evaluate—

(A) the availability of the necessary infrastructure to provide electricity and other forms of energy in the quantities and at the locations required to support operation of electric vehicles or electric-hybrid vehicles;

(B) the development of electric vehicle and electric-hybrid vehicle incentives and implementation programs designed to accelerate the introduction and use of such vehicles; and

(C) such studies that may be conducted or information that may be acquired with respect to how the production, development, or use of electric vehicles and electric-hybrid vehicles are likely to affect the more efficient use of energy resources and thereby enhance national energy security.

(2) Such guidelines also shall address the development, modification, and implementation of State infrastructure plans and shall describe those program elements, as described in subsection (c) to be addressed in such plans.

(b) **TECHNICAL AND FINANCIAL ASSISTANCE.**—(1) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall offer the Governor of each State, within 120 days of the date of issuance of the guidelines under subsection (a), the opportunity to request technical and financial assistance under subsection (c) for the formulation of a comprehensive infrastructure plan for such State in conformance with the guidelines issued under subsection (a). Such request shall include a determination by the Governor that—

(A) electricity and other forms of energy are likely to be available in sufficient quantities to support the introduction of electric vehicles and electric-hybrid vehicles in such State; and

(B) the introduction of electric vehicles or electric-hybrid vehicles in such State is feasible.

(2)(A) If the Secretary is satisfied that the determination of a Governor under paragraph (1) is consistent with the purposes of this part, the Secretary shall offer the Governor of such State the opportunity to submit, within 180 days after submission of the determination under paragraph (1), a comprehensive infrastructure plan for approval under subsection (c)(2).

(B) Any plan developed under subparagraph (A) shall be developed in consultation with

local governmental entities and shall include—

(i) the anticipated number and schedule for introduction of electric vehicles or electric-hybrid vehicles in such State;

(ii) provisions intended to ensure that electricity and other forms of energy will be available in sufficient quantities to support the anticipated quantities and schedule for introduction of electric vehicles or electric-hybrid vehicles;

(iii) provisions designed to assure the progress toward, and achievement of, the goal of introducing substantial numbers of electric vehicles and electric-hybrid vehicles in such State by the year 2001;

(iv) a detailed description of the requirements, including the estimated cost of implementation, of the infrastructure plan; and

(v) an assessment of whether accomplishing any of the goals in this subsection would require amendment to State law or regulation.

(c) **TECHNICAL AND FINANCIAL ASSISTANCE.**—(1) Upon request of the Governor of any State who has submitted the assessment and made the determination under subsection (b), the Secretary may provide to such State—

(A) information and technical assistance, including model State laws and proposed regulations relating to electric vehicles and electric-hybrid vehicles;

(B) financial assistance for the purpose of the development of such plan; and

(C) financial assistance for the purpose of the implementation of such plan as approved by the Secretary pursuant to this section.

(2) In determining whether to approve a State infrastructure plan submitted under subsection (b)(2), and in determining the amount of Federal financial assistance, if any, to be provided to any State under this section, the Secretary shall consider:

(A) energy and environmental-related impacts of introduction and use of electric vehicles or electric-hybrid vehicles included in the proposed infrastructure plan;

(B) the availability of electricity and other forms of energy required to support varying numbers of electric vehicles or electric-hybrid vehicles;

(C) the number of electric vehicles or electric-hybrid vehicles likely to be introduced by the year 2001 and the availability of electricity and other fuels resulting from successful implementation of the plan; and

(D) such other factors as the Secretary considers appropriate.

(d) **REPORT.**—The Secretary shall report annually to the Congress, and shall furnish copies of such report to the Governor of each State participating in the program, on the operation of the program under this part.

SEC. 4215. ELECTRIC UTILITY AND OTHER INDUSTRY INFRASTRUCTURE DEVELOPMENT PROJECTS.—(a) **GENERAL.**—The Secretary shall undertake cooperative agreements with one or more non-Federal persons, including fleet operators, to provide the infrastructure necessary to support the use of electric vehicles or electric-hybrid vehicles.

(b) **SOLICITATION OF PROPOSALS.**—(1) Within one year after the date of enactment of this Act, the Secretary shall solicit proposals from non-Federal persons, including fleet operators, to carry out the purposes of this section.

(2) Within 180 days after proposals have been solicited, the Secretary shall select from among those proposals submitted under this section and thereafter enter into negotiations. If, after negotiation, the Secretary determines that a proposal meets the pur-

poses of this section, he may enter into a cooperative agreement with the non-Federal person submitting such proposal.

(3) The Secretary shall undertake no more than five cooperative agreements under this section. The proposals to be selected by the Secretary shall, to the extent practicable, represent geographically and climatically diverse regions of the United States.

(4) The aggregate Federal financial assistance for each cooperative agreement under this part may not exceed \$3,000,000.

(c) **PROPOSALS.**—The infrastructure proposals under this section may address—

(1) the addition to existing facilities of the capability to service electric or electric-hybrid vehicles, and to provide or service associated equipment, as well as the installation of charging facilities where such service might be required for the use and operation of electric vehicles or electric-hybrid vehicles;

(2) the feasibility of designing rate structures, rate levels, ratemaking procedures, billing systems and financing methods, related to investment by electric utilities in infrastructure capital-related expenditures and public information programs conducted by electric utilities regarding use of electricity, the conservation of electric energy and the use of electric vehicles or electric-hybrid vehicles;

(3) the development of associated safety and health procedures; and

(4) such other requirements as the Secretary considers necessary in order to address the infrastructure needed to support the development and use of energy storage technologies, including advanced batteries, and the demonstration of electric vehicles or electric-hybrid vehicles.

SEC. 4216. COST-SHARING.—(a) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreements under this part, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(b) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under subsection (a) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this part.

SEC. 4217. COMPLIANCE WITH EXISTING LAW.—Nothing in this part shall be deemed to convey to any person, partnership, corporation, or other entity, immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this part, "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

SEC. 4218. AUTHORIZATION.—There is authorized to be appropriated to the Secretary for fiscal years 1992, 1993, and 1994, such sums as may be necessary to carry out the purposes of this part.

PART C—AMENDMENT TO THE ALTERNATIVE MOTOR FUELS ACT

SEC. 4221. AMENDMENTS TO THE ENERGY POLICY AND CONSERVATION ACT.—(a) Section 400AA(a) of the Energy Policy and Conservation Act (Pub. L. No. 94-163; 42 U.S.C. 6374 (a)(1)) is amended by striking out "or natural gas dual energy vehicles." and inserting in lieu thereof "natural gas dual energy vehicles, electric vehicles, or electric-hybrid vehicles."

(b) Section 400AA(g) of the Energy Policy and Conservation Act (Pub. L. No. 94-163; 42 U.S.C. 6374 (g)) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(7) the term 'natural gas' includes liquefied petroleum gas, including propane;

"(8) the term 'electric vehicle' means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current; and

"(9) 'electric-hybrid vehicle' means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electrical source of power."

(c) Section 400AA(i) of the Energy Policy and Conservation Act (42 U.S.C. 6374(i)) is amended by adding at the end thereof the following new paragraph:

"(3) For the purposes of this section, there is authorized to be appropriated for the fiscal years 1994, 1995, and 1996 such sums as may be necessary to carry out the provisions of this section."

SEC. 4222. AMENDMENTS TO THE MOTOR VEHICLE INFORMATION AND COST SAVING ACT.—(a) Section 513(c) of the Motor Vehicle Information and Cost Savings Act (Pub. L. No. 92-513; 15 U.S.C. 2013(c)) is amended in the first sentence by inserting after "natural gas" each place it occurs the parenthetical "(including liquefied petroleum gas)".

(b) Section 513(d) of said Act (Pub. L. No. 92-513; 15 U.S.C. 2013(d)) is amended by inserting after "natural gas" the first time it occurs the following parenthetical, "(including liquefied petroleum gas)".

Subtitle C—Alternative Fuels

SEC. 4301. SHORT TITLE.—This subtitle may be cited as the "Replacement and Alternative Fuels Act of 1991".

SEC. 4302. FINDINGS.—The Congress finds and declares that—

(1) United States national security demands that we reduce our dependency on imported oil;

(2) domestic resources are available to substantially reduce our dependency on imported oil;

(3) the transportation sector, currently 95 percent dependent on oil, accounts for more than 60 percent of our national oil consumption;

(4) a comprehensive energy program, including the stimulation of the production and use of automobiles capable of using alternative fuels, is needed to reduce pollution as well as reduce our dependency on imported oil;

(5) such program should be designed to create a positive impact on the economy, our national trade balance, and our national budget; and

(6) such program should allow market forces, within appropriate environmental parameters, to affect the selection of replacement or alternative fuels.

SEC. 4303. PURPOSES.—The purposes of this subtitle are to—

(1) enhance energy security;

(2) reduce air pollution;

(3) improve our balance of trade;

(4) reduce the budget deficit;

(5) improve the marketability of alternative and flexible fuel vehicles; and

(6) improve the condition of the national economy through the enhancement of the replacement fuel industry and the creation of an alternative fuel industry.

SEC. 4304. DEFINITIONS.—For purposes of this subtitle—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "alcohol" means methanol, ethanol, or other alcohol that are suitable for use by themselves or in combination with other fuels as a motor fuel;

(3) the term "conventional petroleum" means imported or domestic petroleum derived from oil wells, including stripper wells;

(4) the term "domestic" means derived from resources within the 50 States, the territories of the United States, or Canada;

(5) the term "motor fuel" means any substance suitable as a fuel for a motor vehicle, as the term "motor vehicle" is defined in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));

(6) the term "alternative fuel" means a motor fuel not designed to be mixed with gasoline, including liquefied petroleum gas, natural gas, "neat" alcohol, hydrogen, coal-derived liquid fuels, and electricity;

(7) the term "replacement fuel" means a motor fuel capable of mixing with gasoline, including alcohol and ethers or products derived from alcohol;

(8) the term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, traffic, transportation, exchange, or other commerce described in subparagraph (A); and

(9) the term "provider" means—

(A) any person engaged in the refining of crude oil to produce motor fuel;

(B) any importer of motor fuel;

(C) any person engaged in the transportation and sale of natural gas or liquefied petroleum gas for use as a motor fuel;

(D) any person engaged in the production of alcohol or hydrogen for sale and use as a motor fuel; and

(E) any utility engaged in the generation and sale to the public of electricity.

SEC. 4305. REPLACEMENT AND ALTERNATIVE FUEL PROGRAM.—(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program to promote the development and use of domestically produced replacement and alternative fuels. Such program shall promote the replacement of conventional petroleum motor fuels with replacement and alternative fuels to the maximum extent practicable. Such program shall, to the extent practicable, seek to ensure the availability of those replacement and alternative fuels that will have the greatest impact in improving air quality in urban areas, along transportation corridors, and nationwide.

(b) DEVELOPMENT PLAN.—Under the program established under subsection (a), the Secretary, in consultation with the Administrator, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of appropriate agencies, shall review appropriate information and—

(1) estimate the production capacity in the United States for replacement fuel and alternative fuel needed to implement the provisions of this subtitle;

(2) determine the technical and economic feasibility of producing in the United States sufficient replacement fuels and alternative fuels, by the calendar year 2010 to replace 30

percent or more, on an energy equivalent basis, of the projected consumption of motor fuel in the United States for that year;

(3) assess the suitability and cost-effectiveness of raw materials, other than conventional petroleum, for the production in the United States of replacement and alternative fuels;

(4) assess the suitability and cost-effectiveness of the means and methods of developing and encouraging the production, distribution, and use of replacement and alternative fuels; and

(5) identify ways to encourage the development of reliable replacement fuel and alternative fuel industries in the United States, and the technical, economic, and institutional barriers to such development.

SEC. 4306. ALTERNATIVE FUEL DEMAND ESTIMATES.—(a) ANNUAL ESTIMATES.—Not later than October 1, 1994, and not later than October 1 of each year thereafter, the Secretary, in consultation with the Administrator and appropriate State and Federal officials, shall estimate—

(1) the number of each type of alternative fuel vehicles likely to be in use in the United States during the following calendar year;

(2) the probable geographic distribution of such vehicles; and

(3) the amount of each type of alternative fuel that is needed to fuel such number of vehicles.

(b) PROVIDER CERTIFICATIONS.—Not later than October 1, 1994, and not later than October 1 of each year thereafter, the Secretary shall require providers of domestic replacement and alternative fuels to certify to the Secretary the amount of each type of replacement and alternative fuel that such provider plans to produce.

SEC. 4307. VOLUNTARY SUPPLY COMMITMENTS.—The Secretary shall undertake to obtain commitments from providers of domestic replacement and alternative fuels to produce and offer for sale to the public sufficient amounts of domestic replacement and alternative fuels to meet the needs of vehicles requiring such fuels.

SEC. 4308. SECRETARIAL AUTHORITY.—(a) NOTIFICATION OF CONGRESS.—In the event that the Secretary determines under this subtitle that the amount of replacement and alternative fuels available in any area of the United States is insufficient to meet public demand and the Secretary is unable to obtain voluntary commitments under section 4307 to supply such demand, the Secretary shall provide written notice to Congress.

(b) SUBMITTAL OF PLAN.—Not later than 30 days after submitting notice under subsection (a), the Secretary shall submit a plan setting forth the actions the Secretary may take to require providers of motor fuels to make available to the public adequate domestic supplies of the replacement or alternative fuel of which there is a shortage. In developing any such plan, the Secretary shall consult with providers of motor fuels to consider alternative means of securing adequate supplies of such fuel and shall give providers an opportunity to comment on any specific proposed requirements to make such fuel available.

(c) IMPLEMENTATION OF PLAN.—The Secretary may implement a plan under subsection (b) 60 calendar days after it has been submitted to Congress in accordance with this section.

(d) PERSONS SUBJECT TO REQUIREMENT.—In exercising the authority under this section, the Secretary shall impose the requirement of providing the required amount of replacement or alternative fuel proportionately on

all appropriate providers of motor fuels in a fair and equitable manner.

SEC. 4309. AUTHORIZATION.—There is authorized to be appropriated to the Secretary to carry out this subtitle not to exceed \$10,000,000 for each of the fiscal years 1992 through 1996.

Subtitle D—Mass Transit and Training

SEC. 4401. MASS TRANSIT PROGRAM.—(a) COOPERATIVE AGREEMENTS AND JOINT VENTURES.—(1) The Secretary, in consultation with the Administrator of the Urban Mass Transit Administration, may, consistent with this Act and the Alternative Motor Fuels Act of 1988 (Pub. L. No. 100-494), enter into cooperative agreements and joint ventures proposed by municipal, county, or regional transit authority in an urban area with a population over 100,000 (according to latest available census information) to demonstrate the feasibility, including safety of specific vehicle design, of using natural gas or other alternative fuels for mass transit.

(2) The cooperative agreements and joint ventures under paragraph (1) may include interested or affected private firms willing to provide assistance in cash, or in kind, for any such demonstration.

(b) COST-SHARE.—(1) The Secretary may not enter into any cooperative agreement or joint venture under subsection (a) with any municipal, county or regional transit authority unless such government entity agrees to provide at least 25 percent of the costs of such demonstration.

(2) The Secretary, at his discretion, may grant such priority under this section to any entity that demonstrates that the use of natural gas or other alternative fuels used for transportation would have a significant effect on the ability of an air quality region to comply with applicable regulations governing ambient air quality.

(c) AUTHORIZATION.—There is authorized to be appropriated not more than \$30,000,000 for each of fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 4402. TRAINING PROGRAM.—(a) PROGRAM.—The Secretary of Labor shall establish and carry out a training and certification program for technicians who are responsible for vehicle installation of equipment that converts gasoline or diesel-fueled vehicles to the capability to run on natural gas or other alternative fuels alone, or on natural gas or other alternative fuels and either diesel fuel or gasoline, and for the maintenance of such converted vehicles. Such training and certification programs shall provide these technicians with instruction on the correct installation procedures and techniques, adherence to specifications, vehicle operating procedures, emissions testing, and other appropriate mechanical concerns applicable to these vehicle conversions.

(b) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with, and provide financial assistance to, under this section, appropriate parties to provide training programs that will ensure the proper operation and performance of conversion equipment.

(c) CONSISTENCY.—The program under this section shall be consistent with the Alternative Motor Fuels Act of 1988 (Pub. L. No. 100-494).

(d) AUTHORIZATION.—There is authorized to be appropriated not more than \$5,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

TITLE V—RENEWABLE ENERGY
Subtitle A—CORECT AND COEECT

SEC. 5101. DUTIES OF CORECT AND COEECT.—Section 256 of Part B of Title II of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended by striking subsection (d) and inserting the following in lieu thereof:

“(d)(1) DUTIES.—There shall be established two interagency working groups (hereafter in this subsection referred to as the Committee on Renewable Energy Commerce and Trade (CORECT) and the Committee on Energy Efficiency Commerce and Trade (COEECT)). These interagency working groups shall, in consultation with the representative industry groups and relevant agency heads, make recommendations to coordinate the actions and programs of the Federal Government to promote the export of domestic renewable energy and energy efficiency products and technologies, respectively. The Secretary of Energy shall chair each group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working groups, with or without reimbursement, as may be necessary to carry out their functions and undertake other actions or activities, consistent with existing laws and regulation, as, in the judgement of the Secretary, may be necessary to achieve the purposes of this section.

“(2)(A) ADDITIONAL DUTIES OF CORECT.—CORECT, through its member agencies, shall promote the development and application in lesser-developed countries of renewable energy resource products and technologies that—

“(i) promote the use of hybrid fossil-renewable energy systems;

“(ii) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, windpower, small-scale hydropower, solar, geothermal and other renewable energy resource technologies; and

“(iii) foster rural and urban energy development and energy self-sufficiency through the use of reliable and cost-effective renewable energy resource technologies.

“(B) In addition, CORECT shall:

“(i) explore mechanisms for assisting domestic manufacturers, particularly small business manufacturers, of renewable energy resource products, to export their products and technologies;

“(ii) provide staffing to support the authority and responsibilities described in this section;

“(iii) provide technical and financial support for the establishment and sponsorship by United States' firms of training programs, workshops, and other educational programs on renewable energy technologies for representatives of lesser-developed countries and their firms; and

“(iv) augment budgets for the trade and development programs of the member agencies of the Council in order to support pre-feasibility or feasibility studies for projects that utilize renewable energy resource technologies.

“(3)(A) ADDITIONAL DUTIES OF COEECT.—COEECT, through its member agencies, shall promote the development and application in lesser-developed countries of energy efficiency resource products and technologies that—

“(i) reduce dependence on unreliable sources of energy by encouraging the use of energy efficiency resource products and technologies; and

“(ii) foster rural and urban energy development and energy self-sufficiency through the

use of reliable and economical energy efficiency resource products and technologies including services.

“(B) In addition, COEECT shall:

“(i) explore mechanisms for assisting domestic manufacturers, particularly small business manufacturers, of energy efficiency resource products and technologies, to export their products and services; and

“(ii) provide staffing to support the authority and responsibilities described in this section.

“(3) TRAINING AND ASSISTANCE.—In furthering the purposes of this section, CORECT and COEECT shall, through their member agencies,—

“(A) provide aggressive in-country technical training for local users and international development personnel;

“(B) provide financial and technical assistance to nonprofit institutions that support the export and marketing efforts of domestic renewable energy and energy efficiency service companies, and develop environmentally responsible renewable energy and energy efficiency projects in developing nations;

“(C) establish feasibility and loan guarantee programs to facilitate access to capital and credit;

“(D) provide assistance and training materials to loan officers of the World Bank, international lending institutions, commercial and energy attaches at embassies of the United States, and such other personnel as the Council deems appropriate, in order to provide information about renewable energy and energy efficiency products and technologies to foreign governments or other potential project sponsors;

“(E) support, through financial incentives, private sector efforts to commercialize and export renewable energy and energy efficiency resource technologies.

“(5) OUTREACH.—CORECT and COEECT, through their member agencies, may establish renewable energy and energy efficiency industry outreach offices in the Pacific Rim and in the Caribbean Basin for the purpose of providing information concerning renewable energy and energy efficiency products, technologies and industries of the United States to territories, foreign governments, industries, and other entities.”

SEC. 5102. INFORMATION AND TECHNICAL PROGRAM.—Section 256(c)(2)(D) of Part B of Title II of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended by adding after clause (ii) the following new clause:

“and (iii) information on the specific renewable energy and energy efficiency technology needs of lesser-developed countries, the technical and economic competitiveness of various renewable energy and energy efficiency resource products, processes and technologies, and the status of ongoing technology assistance programs shall be provided. Information from this program shall be made available to industry, Federal and multilateral lending agencies, non-governmental organizations, host-country and donor-agency officials, and such others as the Secretary deems necessary.”

SEC. 5103. COMPREHENSIVE ENERGY TECHNOLOGY EVALUATION.—Section 256 of Part B of Title II of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended by striking subsections (g) and (h) and inserting in lieu thereof subsections (g) and (h) as follows:

“(g)(1) Not later than June 1, 1992, and biennially thereafter, the Secretary, in consultation with member agencies, shall prepare and submit to Congress a report evalu-

ating the range of energy efficiency and renewable energy resource technologies available to meet the energy needs of lesser-developed countries. This report also shall provide information on the specific energy and energy conservation needs of lesser-developed countries, an inventory of United States products and technologies available to meet those needs, and an update on the status of ongoing bilateral and multilateral technology assistance and renewable energy and energy efficiency programs.

“(2) The report should also include an evaluation of current renewable energy and energy efficiency resource technology export efforts, their success in meeting program objectives, and recommendations for future programs that:

“(A) develop and promote sustainable use of indigenous renewable energy and energy efficiency resources and technologies in lesser-developed countries;

“(B) given the credit and capital restrictions for meeting energy demands in the lesser-developed countries, focus on technologies that are both appropriate and cost-effective;

“(C) assist lesser-developed countries in meeting their existing energy needs rather than creating new needs, in order to ensure immediate income-generating and timely use of the power generated;

“(D) work with local individuals to assure that programs and projects meet specific national and local energy resource needs;

“(E) use indigenous materials and associated hardware, wherever possible, in order to reduce costs and ensure project duplication;

“(F) provide examples of cost-effective systems and applications for in-country non-governmental organizations and project technical personnel;

“(G) provide mechanisms for assisting United States manufacturers, particularly smaller manufacturers, of energy efficiency and renewable energy resource technologies, in exporting their goods and services;

“(H) expand technical and administrative training programs, as well as distribution of multilingual technical training manuals and related materials; and

“(I) examine the potential for using economic incentives, such as shared savings contracts, loan guarantees, and tax incentives, to promote technology transfer to lesser-developed countries.

“(h) AUTHORIZATION.—(1) There is authorized to be appropriated for purposes of carrying out the programs under sections (d) and (e) \$10,000,000 for fiscal year 1992, including \$2,000,000 to carry out the purposes of subparagraph (d)(2), and such sums as may be necessary for fiscal year 1993 and 1994 to carry out the purposes of this subtitle except for subparagraph (d)(4).

“(2) There is authorized to be appropriated to the Secretary for the purposes of subparagraph 256(d)(4), in addition to the amount specified in the previous sentence, \$2,750,000 for fiscal year 1992, and such sums as may be necessary for fiscal years 1993 and 1994.”

SEC. 5104. CONFORMING AMENDMENT.—Section 203(a) of the Department of Energy Organization Act (Pub. L. No. 95-91; 42 U.S.C. 7133) is amended by adding a new paragraph (12) at the end thereof:

“(12) the export and promotion to lesser-developed countries of domestic energy resource technologies and products, including renewable energy, energy efficiency, and clean coal technologies, and the development of policies and programs designed to enhance the knowledge of foreign governments and companies, and relevant international lend-

ing institutions regarding domestic energy resource technologies and products."

SUBTITLE B—RENEWABLE ENERGY INITIATIVES

SEC. 5201. RENEWABLE ENERGY DEVELOPMENT, TECHNOLOGY EXPORT TRAINING, AND COMMERCIALIZATION.—(a) JOINT VENTURES FOR RENEWABLE ENERGY DEVELOPMENT FOR OIL DISPLACEMENT AND TECHNOLOGY EXPORT TRAINING.—Section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. No. 101-218) is amended by adding new subsections (f), (g), and (h) as follows:

"(f) ADDITIONAL JOINT VENTURES FOR RENEWABLE ENERGY DEVELOPMENT FOR OIL DISPLACEMENT.—

"(1) OIL DISPLACEMENT BY BIOFUELS ENERGY SYSTEMS.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of biofuels energy systems technology in accordance with the provisions of this paragraph.

"(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the development of biofuels energy systems for commercial application in uses that have substantial prospects for displacing the consumption of oil.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993 and 1994 to carry out the purposes of this paragraph.

"(2) OIL DISPLACEMENT BY HIGH TEMPERATURE GEOTHERMAL ENERGY.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of high-temperature geothermal energy conversion technology in accordance with the provisions of this paragraph.

"(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the production of high-temperature geothermal energy for commercial application in uses that have substantial prospects for displacing the consumption of oil.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(3) OIL DISPLACEMENT BY LOW-TEMPERATURE GEOTHERMAL ENERGY.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of low-temperature geothermal energy conversion technology in accordance with the provisions of this paragraph.

"(B) The purposes of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for the production of low-temperature geothermal energy for commercial application in uses that have substantial prospects for displacing the consumption of oil.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(4) OIL DISPLACEMENT BY SOLAR WATER HEATING.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of solar water heating technology in accordance with the provisions of this paragraph.

"(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for solar water heating for commercial application in institutional water heating and process heat uses that have substantial prospects for displacing the consumption of oil.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(5) DIESEL FUEL OIL DISPLACEMENT BY PHOTOVOLTAIC AND WIND ENERGY SYSTEMS.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of photovoltaic and wind energy systems in accordance with the provisions of this paragraph.

"(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for photovoltaic and wind energy systems for commercial application in electric power generation uses that have substantial prospects for displacing the consumption of diesel fuel oil.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(6) DIESEL FUEL OIL DISPLACEMENT BY DIRECT COMBUSTION OR GASIFICATION OF BIOMASS.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the commercialization of technologies for the direct combustion or gasification of biomass in accordance with the provisions of this paragraph.

"(B) The purpose of joint ventures supported under this paragraph shall be to design, test and demonstrate critical enabling technologies for direct combustion or gasification of biomass, including waste wood, for industrial process heat and electric power generation for commercial application in uses that have substantial prospects for displacing the consumption of diesel fuel oil.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(7) OIL DISPLACEMENT BY FUEL CELLS TECHNOLOGY.—

"(A) The Secretary shall solicit proposals for and provide financial assistance to at least one joint venture for the demonstration of fuel cells technology in accordance with the provisions of this paragraph.

"(B) The purpose of joint ventures supported under this paragraph shall be to design, test, and demonstrate critical enabling technologies for the production of electric energy from fuel cells in order to accelerate commercial application of fuel cells.

"(C) There is authorized to be appropriated to the Secretary not to exceed \$3,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this paragraph.

"(g) RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGY EXPORT TRAINING.—

"(1) The Secretary shall solicit proposals for and provide financial assistance to at least two joint ventures for the training of individuals from lesser-developed countries at a location or locations in the United States, at least one of which shall be in the operation and maintenance of renewable energy equipment and at least one of which shall be in the operation and maintenance of energy efficiency equipment, in accordance with the provisions of this subsection.

"(2) The purpose of joint ventures supported under this subsection shall be to train individuals, including engineers and other professionals, in the operation and maintenance of renewable energy and energy efficiency equipment manufactured in the United States, including equipment for water pumping and the production of electric power in remote areas, in order to enhance the prospects that such equipment can be used to displace the use of diesel fuel oil in developing countries.

"(3) There is authorized to be appropriated to the Secretary not to exceed \$6,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this subsection.

"(h) UTILITY-SCALE PHOTOVOLTAIC JOINT VENTURES.—

"(1) The Secretary shall solicit proposals and provide financial assistance for at least one joint venture for a utility-scale photovoltaic project of at least ten megawatts.

"(2) In general, the goals of joint ventures under this subsection shall include—

"(A) the integration of photovoltaics in approaches to the transmission and delivery systems;

"(B) the development of cost-saving adjuncts to utility delivery such as sub-station upgrades, peak power, and large-scale voltage line augmentation; and

"(C) the incorporation of new photovoltaic innovations into standard utility rate-making practices.

"(3) Joint ventures supported under this subsection may include participants that are considered to be end-users of the technology such as rural electric cooperatives, public utilities, investor-owned utilities, and independent power producers.

"(4) In selecting joint ventures for support under this subsection, the Secretary shall consider giving preference to proposals for projects that would be located in States where State law would allow inclusion of the project in the rate base or would otherwise allow for favorable regulatory treatment or return on investment.

"(5) There is authorized to be appropriated to the Secretary not to exceed \$9,000,000 for each of fiscal years 1992, 1993, and 1994 to carry out the purposes of this subsection."

(b) CONFORMING AMENDMENTS.—Section 6 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. No. 101-218) is amended as follows:

(1) By replacing the phrase "subsection (c)" with the phrase "subsections (c), (f), (g) and (h)" in the first sentence of paragraph (b)(1).

(2) By substituting a new paragraph (4) of subsection (b) to read as follows:

"(4) DRAFT SOLICITATIONS AND PUBLIC COMMENT.—The Secretary shall issue a draft solicitation for joint ventures under subsection (c) by September 30, 1990 and a draft solicitation for joint ventures under subsections (f), (g), and (h) by September 30, 1992. After any such draft solicitation has been issued, the Secretary shall provide for a period of public comment before the issuance of a final solicitation."

(3) By striking the phrase "subsection (c)" everywhere it appears in subsection (d) and replacing it with "subsections (c) or (f), (g), and (h)".

(c) RENEWABLE ENERGY COMMERCIALIZATION.—The Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. No. 101-218) is amended by adding at the end the following new section:

"SEC. 11. COMMERCIALIZATION.—

"(a) DEFINITIONS.—For the purposes of this section the term—

"(1) 'qualified borrower' means an enterprise, that engages in the production and sale of electricity, thermal energy or other forms of energy using a renewable energy technology, or a manufacturer of renewable energy equipment who wishes to finance improvements in, or expansion of, facilities for the manufacture of renewable energy technologies;

"(2) 'renewable energy technology', with respect to a participant in any provision under this section, means any technology that produces, or uses as its principal energy source, biomass, geothermal, photovoltaic, wind, or solar thermal (including solar water heating, solar industrial process preheat, and solar industrial process heat); and

"(3) 'Federal share' means that portion of the interest on a loan financed by a private lender that is paid by the Federal Government, subject to subsection (b).

"(b) BUY DOWN AGREEMENTS.—

"(1) IN GENERAL.—The Secretary shall enter into agreements with private lenders to pay the Federal share of the interest on loans made to qualified borrowers for the purpose of financing the manufacture, construction or acquisition of equipment that principally utilizes a renewable energy technology. Buy down agreements entered into by the Secretary, may be implemented either directly through private lenders for Federal facilities or indirectly through an appropriate State energy office.

"(2) RESTRICTION.—Interest rate buy down agreements under this section shall not apply to projects where electricity is sold to electric utilities under section 210 of the Public Utility Regulatory Policies Act of 1978 (Pub. L. No. 95-617).

"(3) FEDERAL SHARE.—The Federal share of interest on a loan shall be determined by the Secretary on the basis of—

"(A) the need of the borrower for the assistance;

"(B) the degree to which financing of the project will assist in the regional diversification and commercialization of renewable energy resources in the United States; and

"(C) the achievement of the purposes and goals of this section.

"(4) LOAN TERMS.—The Secretary may enter into an agreement under paragraph (1) to pay the Federal share of interest on not less than ten separate loans that—

"(A)(i) have a principal amount of at least \$250,000 and less than \$1,000,000 and have a maturity of not less than 15 years; or

"(ii) have a principal amount of at least \$1,000,000, and have a maturity of not less than 20 years;

"(B) carry an interest rate no greater than five percent above the prime rate or at an interest rate that the Secretary determines to be reasonable; and

"(C) contain such other terms and conditions that the Secretary deems appropriate.

"(c) REPORT.—Not later than two years after the date of enactment of this section and annually thereafter, the Secretary shall report to Congress on the projects funded under this section and the progress being made toward accomplishing the goals and purposes of this section.

"(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary for fiscal years 1992, 1993, and 1994 such sums as may be necessary to carry out the purposes of this section."

SEC. 5202. REPORT ON WASTE MINIMIZATION TECHNOLOGIES IN INDUSTRY. (a) REPORT.—Within one year after the date of enactment of this Act, the Secretary shall provide to the Committee on Energy and Natural Re-

sources of the United States Senate and to the United States House of Representatives a report evaluating opportunities to minimize waste outputs from production processes in industries in the United States.

(b) CONTENTS.—The report required by this section shall include—

(1) an assessment of the technologies available to increase productivity and simultaneously reduce the consumption of energy and material resources and the production of wastes;

(2) an assessment of the current use of such technologies by industry in the United States;

(3) the status of any such technologies currently being developed, together with projected time-frames for their commercial availability;

(4) the energy savings resulting from the use of such technologies;

(5) the environmental benefits of such technologies;

(6) the costs of such technologies;

(7) an evaluation of any existing Federal or state regulatory disincentives for the employment of such technologies; and

(8) an evaluation of any other barriers to the use of such technologies.

(c) CONSULTATION.—In preparing the report required by this section, the Secretary shall consult with the Administrator of the Environmental Protection Agency, any other Federal, State, or local official the Secretary deems necessary, representatives of appropriate industries, members of organizations formed to further the goals of environmental protection or energy efficiency, and other appropriate interested members of the public, as determined by the Secretary.

SEC. 5203. AMENDMENTS TO THE ENERGY POLICY AND CONSERVATION ACT.—Section 362(d) of the Energy Policy and Conservation Act (Pub. L. No. 94-163; 42 U.S.C. 6322(d)) is amended by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively, and adding a new paragraph (12) as follows:

"(12) support for pre-feasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;"

SEC. 5204. SPARK M. MATSUNAGA RENEWABLE ENERGY AND OCEAN TECHNOLOGY CENTER.—(a) FINDINGS.—The Congress finds that—

(1) the late Spark M. Matsunaga, United States Senator from Hawaii, was a long-standing champion of research and development of renewable energy, particularly wind and ocean energy, photovoltaics, and hydrogen fuels;

(2) it was Senator Matsunaga's vision that renewable energy could provide a sustained source of non-polluting energy and that such forms of alternative energy might ultimately be employed in the production of liquid hydrogen as a transportation fuel and energy storage medium available as an energy export;

(3) Senator Matsunaga also believed that research on other aspects of renewable energy and ocean resources, such as advanced materials, could be crucial to full development of energy storage and conversion systems; and

(4) Keahole Point, Hawaii is particularly well-suited as a site to conduct renewable energy and associated marine research.

(b) PURPOSE.—It is the purpose of this section to establish the facilities and equipment located at Keahole Point, Hawaii as a cooperative research and development facility, to

be known as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center.

(c) ESTABLISHMENT.—The facilities and equipment located at Keahole Point, Hawaii are established as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center (referred to as the "Center").

(d) ADMINISTRATION.—(1) Not later than 180 days after the date of enactment of this section, the Secretary shall seek to enter into a cooperative agreement with a qualified research institution to administer the Center.

(2) For the purpose of paragraph (1), a qualified research institution is a research institution located in the State of Hawaii that has demonstrated competence and will be the lead organization in the State in renewable energy and ocean technologies.

(e) ACTIVITIES.—The Center may carry out research, development, and technology transfer activities on—

(1) solar and renewable energy;

(2) energy storage, including the production of hydrogen from renewable energy;

(3) materials applications related to energy and marine environments;

(4) other environmental and ocean resource concepts, including sea ranching and global climate change; and

(5) such other matters as the Secretary may direct.

(f) MATCHING FUNDS.—To be eligible for Federal funds under this section, the Center must provide funding in cash or in kind from non-Federal sources for each amount provided by the Secretary.

(g) AUTHORIZATION.—There is authorized to be appropriated to the Secretary \$3,000,000 for fiscal year 1992, \$4,000,000 for fiscal year 1993, \$5,000,000 for fiscal year 1994, and such sums as are necessary thereafter for the purposes of this section.

SEC. 5205. RENEWABLE ENERGY TECHNICAL ACHIEVEMENT AWARD.—(a) PROGRAM.—Within one year after the date of enactment of this Act, the Secretary, in consultation with the National Academy of Sciences, shall establish a program to reward outstanding achievement in each of the following technologies: solar thermal, photovoltaics, wind, biomass, geothermal, and such other renewable energy technologies as the Secretary deems appropriate.

(b) TECHNICAL ACHIEVEMENT MILESTONES.—The Secretary, in consultation with the National Academy of Sciences, shall establish a milestone for technical achievement for the year 2010 for each technology listed in subsection (a). The Secretary shall also establish criteria necessary to determine whether the technical achievement milestones have been met. Such criteria shall include:

(1) the cost of power delivered under each technology;

(2) the efficiency of each technology's energy conversion;

(3) the potential for large-scale commercial production; and

(4) such other criteria as the Secretary deems appropriate.

(c) AWARD.—The Secretary, in consultation with the National Academy of Sciences, shall award up to \$5,000,000 in each renewable energy technology category to the first person who is a United States citizen and has been determined by the Secretary to have met the technical achievement milestones described under subsection (b).

(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section.

Subtitle C—Hydropower

SEC. 5301. STREAMLINING OF FEDERAL POWER ACT REGULATION.—The Federal Power Act, as amended, (16 U.S.C. 791a et seq.) is further amended by:

“(a) striking in section 4(e) the following: “, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation”

and inserting the following in lieu thereof:

“and in the case of a Government dam shall be subject to and contain such conditions as the Secretary of the department under whose supervision such Government dam falls shall deem necessary to ensure that the license will not interfere or be inconsistent with the authorized purposes for which such Government dam was created and shall not detract from all lawful obligations of the Secretary of jurisdiction, including operation and maintenance, relating to such Government dam in accordance with contractual or other arrangements and in a manner which ensures the protection, preservation and safety of the public welfare: *Provided further*, That licenses issued for projects located in whole or in part on an Indian reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such Indian reservation”;

(b) striking “(2)” in section 10(j)(1) and inserting “(3)” in lieu thereof;

(c) striking everything after paragraph (1) in section 10(j) and inserting the following new paragraphs in lieu thereof:

“(2) With respect to a project located in part or in whole within a reservation, other than an Indian reservation, and not located at a Government dam, a license issued under this part shall include conditions for the protection and utilization of such reservation. Subject to paragraph (3), such conditions shall be based on recommendations received from the Secretary under whose supervision such reservation falls.

“(3) Whenever the Commission believes that any recommendation referred to in paragraphs (1) or (2) may be inconsistent with the purposes and requirements of this part or other applicable law, the Commission and the relevant agencies or Secretaries referred to in paragraphs (1) and (2) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise and statutory responsibilities of such agencies or Secretaries. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency or Secretary, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

“(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this part or with other applicable provisions of law.

“(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1) or (2) as appropriate.”;

(d) striking subsection (i) in section 10 and relettering the subsections accordingly;

(e) in section 4 inserting “, and for the purposes of subsections (h) and (i), the Commission shall” after “empowered” and inserting the following after subsection (g):

“(h) Establish procedures that, to the extent practicable, provide for the earliest identification and performance of all studies

and analyses required to be performed in conjunction with an application for a license under this part.

“(i)(1) Coordinate a single, consolidated review, including review under the National Environmental Policy Act of 1969, of a project which is the subject of an application for a license under this part, by all Federal agencies, State agencies and affected Indian tribes interested in the project that is the subject of the application. The Commission shall give reasonable notice of the application and the consolidated review to all Federal agencies, State agencies and affected Indian tribes that may be interested in the project that is the subject of the application. The Commission shall be the lead agency for purposes of compliance with the National Environmental Policy Act of 1969. A review under the National Environmental Policy Act of 1969 completed by the Commission as part of this consolidated review shall be the only documentation needed by an agency to satisfy the requirements of the National Environmental Policy Act of 1969 for the project subject to the review. The Commission's decision concerning issuance of a license and the terms, conditions and prescriptions of the license shall take into account the results of the consolidated review. An agency's decision concerning its recommendations, terms, conditions and prescriptions for the license and any approvals within its authority related to the project shall take into account the results of the consolidated review. The Commission may establish reasonable time limits for submission of recommendations, terms, conditions, prescriptions and reports by a Federal agency, State agency or Indian tribe as part of the consolidated review. If an agency does not meet the Commission's time limitations, the Commission may continue to process and to take any appropriate action on the application.

“(2) Where environmental documents are prepared in connection with an application for a license under this part, the Commission shall permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant to prepare such environmental document. The contractor shall be chosen by the Commission in its sole discretion. The Commission shall establish procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.”

SEC. 5302. STATE LICENSING JURISDICTION OVER SMALL PROJECTS.—The Federal Power Act, as amended, (16 U.S.C. 791a et seq.) is further amended by adding the following at the end of section 23:

“(c) In the case of any project works: (1) that are not part of a project licensed under this Act prior to the date of enactment of this subsection; (2) for which a license application has not been accepted for filing by the Commission prior to the date of enactment of this subsection (unless such application is withdrawn at the election of the applicant); (3) having a power production capacity of 5000 kilowatts or less; (4) located entirely within the boundaries of a single State; and (5) not located in whole or in part on any Indian reservation, unit of the National Park System, component of the Wild and Scenic Rivers System or segment of a river designated for study for potential addition to such system, the State in which such project works are located shall have the exclusive

authority to authorize such project works under State law, in lieu of licensing by the Commission under the otherwise applicable provisions of this Part, effective upon the date on which the Governor of the State notifies the Secretary of Energy that the State has assessed its river resources in a comprehensive way and has in place a process for regulating such projects which gives appropriate consideration to the improvement or development of the State's waterways for the use or benefit of intrastate, interstate, or foreign commerce, for the improvement and use of waterpower development, for the adequate protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds), and for other beneficial public uses, including irrigation, flood control, water supply, recreational and other purposes, and Indian rights, if applicable.

“(d) In the case of a project that would be subject to authorization by a State under subsection (c) but for the fact that the project has been licensed by the Commission prior to the enactment of subsection (c), the licensee of such project may in its discretion elect to make the project subject to the authorizing authority of the State.

“(e) With respect to projects located in whole or in part on Federal lands, State authorizations for project works pursuant to subsection (c) of this section shall be subject to the approval of the Secretary having jurisdiction with respect to such lands and subject to such terms and conditions as the Secretary may prescribe.

“(f) Nothing in subsection (c) shall preempt the application of Federal environmental, natural, or cultural resources protection laws according to their terms.”

SEC. 5303. IMPROVEMENT AT EXISTING FEDERAL FACILITIES.—(a) STUDIES OF OPPORTUNITIES FOR INCREASED HYDROELECTRIC GENERATION.—The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army, shall perform studies of cost effective opportunities to increase hydropower production at existing Federally-owned or operated water regulation, storage, and conveyance facilities. Such studies shall be completed within two years after the date of enactment of this Act and transmitted to the Committee on Energy and Natural Resources of the United States Senate and to the United States House of Representatives. An individual study shall be prepared for each of the Nation's principal river basins. Each such study shall identify and describe with specificity the following matters:

(1) opportunities to improve the efficiency of hydroelectric generation at such facilities through, but not limited to, mechanical, structural, or operational changes;

(2) opportunities to improve the efficiency of the use of water supplied or regulated by Federal projects where such improvement could, in the absence of legal or administrative constraints, make additional water supplies available for hydroelectric generation or reduce project energy use;

(3) opportunities to create additional generating capacity at existing facilities through, but not limited to, the construction of additional generating units, the uprating of generators and turbines, and the construction of pumped storage facilities; and

(4) preliminary assessment of the costs of such measures.

(b) EXCEPTION FOR PREVIOUS STUDIES.—In those cases where studies of the type required by this section have been prepared by any agency of the United States and published within the ten years prior to the date

of enactment of this Act, the Secretary may choose not to perform new studies but incorporate the information developed by such studies into the study reports required by this section.

(c) AUTHORIZATION.—There is authorized to be appropriated in each of the fiscal years 1992, 1993, and 1994 such sums as may be necessary to carry out the purposes of this section.

SEC. 5304. WATER CONSERVATION AND ENERGY PRODUCTION.—(a) STUDIES.—The Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388), and Acts supplementary thereto and amendatory thereof, is authorized and directed to conduct feasibility investigations of opportunities to increase the amount of hydroelectric energy available for marketing by the Secretary from Federal hydroelectric power generation facilities resulting from a reduction in the consumptive use of such power for Federal reclamation project purposes or as a result of an increase in the amount of water available for such generation because of water conservation efforts on Federal reclamation projects or a combination thereof. The Secretary of the Interior is further authorized and directed to conduct feasibility investigations of opportunities to mitigate damages to or enhance fish and wildlife as a result of increasing the amount of water available for such purposes because of water conservation efforts on Federal reclamation projects. Such feasibility investigations shall include, but not be limited to—

(1) an analysis of the technical, environmental, and economic feasibility of reducing the amount of water diverted upstream of such Federal hydroelectric power generation facilities by Federal reclamation projects;

(2) an estimate of the reduction, if any, of project power consumed as a result of the decreased amount of diversion;

(3) an estimate of the increase in the amount of electrical energy and related revenues which would result from the marketing of such power by the Secretary;

(4) an estimate of the fish and wildlife benefits which would result from the decreased or modified diversions;

(5) a finding by the Secretary of the Interior that the activities proposed in the feasibility study can be carried out in accordance with applicable Federal and State law, interstate compacts and the contractual obligations of the Secretary; and

(6) a finding by the affected Federal Power Marketing Administrator that the hydroelectric component of the proposed water conservation feature is cost-effective and that the affected Administrator is able to market the hydro-electric power expected to be generated.

(b) CONSULTATION.—In preparing feasibility studies pursuant to this section, the Secretary of the Interior shall consult with, and seek the recommendations of, affected State, local and Indian tribal interests, and shall provide for appropriate public comment.

(c) CONSTRUCTION.—Upon a finding of feasibility by the Secretary of the Interior, and agreement with the affected Power Marketing Administrator, and the expiration of 90 days during which the feasibility investigation related thereto has lain before the Congress, the Secretary of the Interior, acting pursuant to the Federal reclamation laws, is authorized to construct, operate and maintain the water conservation features described by and justified in the feasibility investigations prepared pursuant to subsection (a) of this section.

(d) FINANCING.—Revenues received by the respective Federal Power Marketing Administrators from the marketing of hydroelectric energy made available as a result of the water conservation activities undertaken pursuant to this section shall be disposed of by the respective Federal Power Marketing Administrators pursuant to applicable Federal power marketing law.

(e) AUTHORIZATION.—There is hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this section.

SEC. 5305. PROJECTS ON FRESH WATERS IN THE STATE OF HAWAII.—(a) GENERAL LICENSING AUTHORITY.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended by striking "several States, or upon" and inserting "several States (except fresh waters in the State of Hawaii), or upon".

(b) MANDATORY LICENSING AUTHORITY.—Section 23(b) of the Federal Power Act (16 U.S.C. 817(b)) is amended by striking "United States, or upon" and inserting "United States (except fresh waters in the State of Hawaii), or upon".

SEC. 5306. CERTAIN PROJECTS IN THE STATE OF ALASKA.—The following projects located entirely within the State of Alaska are removed from jurisdiction of the Federal Energy Regulatory Commission and all applicable laws and regulations relating to such jurisdiction:

(1) a project located at Sitka, Alaska, with application number UL89-08-000; and

(2) a project located at Juneau, Alaska, with preliminary permit number 10681-000.

SEC. 5307. EXTENSION OF TIME LIMITATIONS FOR CERTAIN PROJECTS IN ARKANSAS.—(a) AUTHORIZATION OF EXTENSIONS. Notwithstanding the time limitations of section 13 of the Federal Power Act, (16 U.S.C. 806) the Federal Energy Regulatory Commission upon the request of the licensee for FERC Projects Nos. 3033 and 3034 (and after reasonable notice) is authorized in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend—

(1) until August 10, 1994 the time required for the licensee to acquire the required real property and commence the construction of Project No. 3033, and until August 10, 1999 the time required for completion of construction of such project; and

(2) until August 10, 1996 the time required for the licensee to acquire the required real property and commence the construction of Project No. 3034, and until August 10, 2001 the time required for completion of construction of such project.

(b) TERMINATION OF AUTHORIZATION FOR EXTENSIONS.—The authorization for issuing extensions shall terminate three years after the date of enactment of this Act. The Commission to facilitate requests under this section may consolidate such requests.

TITLE VI—ENERGY EFFICIENCY

Subtitle A.—Industrial, Commercial and Residential

SEC. 6101. BUILDING ENERGY EFFICIENCY CODES.—(a) ESTABLISHMENT OF CODES.—Title III of the Energy Conservation and Production Act (Pub. L. No. 94-385), as amended, is amended by—

(1) amending section 303 by—

(A) striking paragraph (9),

(B) renumbering the subsequent paragraphs, and

(C) adding at the end the following new paragraphs—

"(13) the term "Federal building energy code" means an energy consumption goal to

be met without specification of the methods, materials, or equipment to be employed in achieving that goal, but including statements of the requirements, criteria, and evaluation methods to be used, and any necessary commentary.

"(14) The term "industry voluntary building energy code" means a building energy code developed and updated through an industry process, such as that used by the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; or other appropriate organizations."; and

(2) striking sections 304, 306, 308, 309, 310, and 311 and their captions and inserting the following in lieu thereof—

"FEDERAL BUILDING ENERGY CODE

"SEC. 304. (a) Within two years of enactment of the National Energy Security Act of 1991, the Secretary, after consulting with appropriate Federal agencies; the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-conditioning Engineers; the National Association of Home Builders; the Illuminating Engineering Society; the American Institute of Architects; and the National Conference of States on Building Codes and Standards, shall issue by rule a Federal building energy code that assures the inclusion in Federal buildings of all energy efficiency measures that are technologically feasible and economically justified. This code shall become effective no earlier than six months and no later than two years after issued.

"(b) The Federal building energy code shall—

"(1) contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of the industry voluntary building energy code, and

"(2) include a method of compliance that uses the same format as that used by the industry voluntary building energy code.

"(c) The Secretary shall identify and describe the basis for any substantive difference between the Federal building energy code and the industry voluntary building energy code.

"(d) Interim energy performance standards for new Federal residential and commercial buildings issued by the Secretary under this title as it existed before enactment of the National Energy Security Act of 1991 shall remain in effect until the head of a Federal agency required to adopt procedures under section 305(a) adopts those procedures.

"FEDERAL COMPLIANCE

"SEC. 305. (a) The head of each Federal agency shall adopt procedures necessary to assure that new Federal residential or commercial buildings meet or exceed the Federal building energy code.

"(b) The head of a Federal agency may expend Federal funds for the construction of a new Federal building only if the building meets or exceeds the Federal building energy code.

"(c) The head of each Federal agency that guarantees a mortgage for constructing a new building shall adopt the procedures necessary to assure that the building meets or exceeds the Federal building energy code.

"SUPPORT FOR INDUSTRY VOLUNTARY BUILDING ENERGY CODE

"SEC. 306. (a) Within one year of the enactment of the National Energy Security Act of 1991, the Secretary, after consulting with appropriate Federal agencies; the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-

conditioning Engineers; the National Conference of States on Building Codes and Standards; and any other appropriate building codes and standards organization, shall support the upgrading of an industry voluntary building energy code for new residential and commercial buildings. The support shall include—

"(1) a compilation of data and other information regarding building energy efficiency codes in the possession of the Federal government, State and local governments, and industry organizations;

"(2) assistance in improving the technical basis for the energy code;

"(3) assistance in determining the cost-effectiveness and the technical feasibility of the energy efficiency measures included in the code; and

"(4) development of interim energy performance standards for new non-Federal residential buildings.

"(b) The Secretary, in consultation with the appropriate Federal agencies, shall periodically review the technical and economic basis of the industry voluntary building energy code. Based upon ongoing research activities and a review of appropriate industry energy standards, the Secretary shall—

"(1) recommend amendments to the industry voluntary building energy code,

"(2) seek adoption of all technically feasible and economically justified energy efficiency measures, and

"(3) participate otherwise in any industry process for review and modification of the industry voluntary building energy code.

"ADOPTION INCENTIVES

"SEC. 307. (a) STATE REPORT.—Within two years of the enactment of the National Energy Security Act of 1991, each State shall submit a report to the Secretary on the type and status of, and compliance and enforcement procedures for building energy codes used within the State, including a list of the units of general purpose local government within the State that identifies which, if any, have adopted building energy codes.

"(b) AVAILABILITY OF INCENTIVE FUNDING.—If the Secretary certifies that a state or any units of general purpose local government which have jurisdiction regarding energy building codes, has adopted building energy codes at least as stringent as those of the industry voluntary energy building codes, then the Secretary shall provide incentive funding to that State or such units of general purpose local government to fund activities to further promote the adoption and implementation of the industry voluntary energy building codes. Such incentive funds shall be allocated from funds made available under subsection (c), on the basis of the average number of residential housing starts within such State or unit of general purpose local government during the previous three years. The Secretary may use up to five percent of the funds made available under subsection (c) for administration of activities conducted pursuant to this section.

"(c) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to provide incentive funding to the States pursuant to this section.

"TECHNICAL ASSISTANCE

"SEC. 308. The Secretary may provide technical assistance to States, units of general purpose local government, and other appropriate organizations to promote the adoption and implementation of the voluntary energy building codes or to otherwise promote the design and construction of energy efficient buildings.

"REPORTS

"SEC. 309. The Secretary, in consultation with the appropriate Federal agencies, shall report annually to Congress on activities conducted pursuant to this title including:

"(1) the recommendations made regarding the prevailing industry voluntary building energy code under section 304(c);

"(2) a State-by-State summary of progress made in the adoption and implementation of the voluntary energy building codes or more stringent codes; and

"(3) recommendations to Congress on opportunities to further promote energy efficiency and other purposes of this part.

"(b) CONFORMING AMENDMENT.—The Table of Contents of the Energy Conservation and Production Act (Pub. L. No. 94-385) is amended by striking the items relating to sections 304, 306, 308, and 309, and inserting in lieu thereof the following—

"Sec. 304. Federal building energy code.

"Sec. 305. Federal compliance.

"Sec. 306. Support for industry voluntary building energy code.

"Sec. 307. Adoption incentives.

"Sec. 308. Technical Assistance.

"Sec. 309. Reports."

SEC. 6102. RESIDENTIAL ENERGY EFFICIENCY RATINGS AND MORTGAGES.—

(a) RATINGS.—Title II of the National Energy Conservation Policy Act (NECPA)(Pub. L. No. 96-619) is amended by adding a new Part 6 as follows:

"PART 6—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

"SEC. 271. VOLUNTARY RATING GUIDELINES.

"(a) Within 18 months of the date of enactment of the National Energy Security Act of 1991, the Secretary, in consultation with the Secretary of Housing and Urban Development and other appropriate institutions, shall, by rule, promulgate voluntary guidelines that may be used by State and local governments, utilities, builders and others, that would enable the assignment of an energy efficiency rating to residential buildings.

"(b) The voluntary guidelines under subsection (a) shall:

"(1) provide for a uniform rating scale of the efficiency with which any residential building uses energy on an annual basis;

"(2) provide that such rating shall take into account local climate conditions and construction practices, and does not discriminate among fuel types, except that solar energy collected on-site shall be credited toward the energy efficiency rating of such building;

"(3) provide that all residential buildings can receive a rating at the time of sale;

"(4) provide that the rating is prominently communicated to potential buyers and renters; and

"(5) provide that the rating system is consistent with, and supportive of, the uniform plan for energy efficient mortgages developed pursuant to Section 946 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. No. 101-625).

"SEC. 272. TECHNICAL ASSISTANCE.

"Within 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall establish a program to provide technical assistance to State and local organizations to encourage the adoption of residential energy efficiency rating systems based on the voluntary guidelines promulgated under this part.

"SEC. 273. AUTHORIZATION.

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this part."

(b) CONFORMING AMENDMENT.—The National Energy Conservation Policy Act (Pub. L. No. 95-619) is further amended by adding in the Table of Contents at the end of title II, the following items:

"PART 6—RESIDENTIAL ENERGY EFFICIENCY RATINGS

"Sec. 271. Rating guidelines.

"Sec. 272. Technical assistance.

"Sec. 273. Authorization."

(c) ENERGY EFFICIENCY MORTGAGES.—The Cranston-Gonzalez National Affordable Housing Act (Pub. L. No. 101-625) is amended as follows:

(1) At the end of section 104 add the following new definition:

"(24) The term "energy efficient mortgage" means a mortgage which provides financial incentives for the purchase of energy efficient homes, or which provides financial incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage."

(2) In section 946 make the following amendments:

(A) In subsection (a) strike the words "mortgage financing incentives for energy efficiency" and insert in lieu thereof "energy efficient mortgages";

(B) at the end of subsection (a) add the following new sentence:

"The plan shall be consistent with and mutually supportive of the Federal building energy code and the residential energy efficiency rating voluntary guidelines to be developed by the Secretary of Energy pursuant to the National Energy Security Act of 1991."

(C) in subsection (b) after the word "include" add the words "but not be limited to";

(D) at the end of subsection (b) add the following new sentence:

"The Task Force shall determine whether a notification of the availability of energy efficient mortgages to potential home purchasers would promote energy efficiency in residential buildings, and if so, then the Task Force shall recommend appropriate notification guidelines, and member agencies are authorized to implement such guidelines."

Sec. 6103. Manufactured Housing Energy Efficiency.—(a) AMENDMENTS TO CRANSTON-GONZALEZ.—Section 943 of the Cranston-Gonzalez National Affordable Housing Act, (Pub. L. No. 101-625), is amended by—

(1) striking the phrase "thermal insulation, energy efficiency" in subparagraph (d)(1)(D); and

(2) inserting a new subparagraph (E) as follows, and relettering the existing subparagraphs accordingly:

"(E) consult with the Secretary of Energy and make recommendations regarding additional or revised standards for thermal insulation and energy efficiency applicable to manufactured housing;"

(b) DUTIES OF THE SECRETARY.—The Secretary shall assess the energy performance of manufactured housing and make recommendations to the Commission established under section 943 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. No. 101-625) regarding thermal insulation and energy efficiency improvements applicable to manufactured housing which are technically feasible and economically justified. The Secretary shall also test the perform-

ance and determine the cost-effectiveness of manufactured housing constructed to the standards established under such section.

SEC. 6104. IMPROVING EFFICIENCY IN ENERGY-INTENSIVE INDUSTRIES.—(a) SECRETARIAL ACTION.—The Secretary, acting in accordance with authority contained in the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (Pub. L. No. 93-577) and other applicable laws, shall—

(1) pursue a research and development program intended to improve energy efficiency and productivity in energy-intensive industries and industrial processes; and

(2) undertake joint ventures to encourage the commercialization of technologies developed under paragraph (1).

(b) JOINT VENTURES.—(1) The Secretary shall—

(A) conduct a competitive solicitation for proposals from specialized private firms and investors for such joint ventures under subsection (a)(2); and

(B) provide financial assistance to at least five such joint ventures.

(2) The purpose of the joint ventures shall be to design, test, and demonstrate changes to industrial processes that will result in improved energy efficiency and productivity. The joint ventures may also demonstrate other improvements of benefit to such industries so long as demonstration of energy efficiency improvements is the principal objective of the joint venture.

(3) In evaluating proposals for financial assistance and joint ventures under this section, the Secretary shall consider—

(A) whether the research and development activities conducted under this section improve the quality and energy efficiency of industries or industrial processes;

(B) the regional distribution of the energy-intensive industries and industrial processes; and

(C) whether the proposed joint venture project would be located in the region which has the energy-intensive industry and industrial processes that would benefit from the project.

(c) AUTHORIZATION.—There is authorized to be appropriated to the Secretary \$5,000,000 for fiscal year 1992, \$15,000,000 for fiscal year 1993, and \$25,000,000 for fiscal year 1994, to carry out the purposes of this section.

SEC. 6105. REPORT.—The Secretary, in consultation with the Council of Economic Advisors, shall submit to the Congress within one year after the date of enactment of this Act, and every three years thereafter through the year 2004, a report setting forth energy efficiency policy options that would both decrease domestic oil consumption and overall domestic energy consumption by one, two, three, and four percent, per-year per-unit of GNP, through the year 2005, below the projected consumption for 2005. The Secretary shall evaluate, describe and rank these policy options according to their cost-effectiveness and their feasibility of implementation.

SEC. 6106. VOLUNTARY GUIDELINES FOR INDUSTRIAL PLANTS.—(a) VOLUNTARY GUIDELINES FOR ENERGY EFFICIENCY AUDITING AND INSULATING.—Within one year after the date of enactment of this Act, the Secretary, after consultation with utilities, major industrial energy consumers and representatives of the insulation industry, shall establish voluntary guidelines for—

(1) the conduct of energy efficiency audits of industrial facilities to identify cost-effective opportunities to increase energy efficiency; and

(2) the installation of insulation to achieve cost-effective increases in energy efficiency in industrial facilities.

(b) EDUCATION AND TECHNICAL ASSISTANCE.—The Secretary shall conduct a program of education and technical assistance to promote the use of the voluntary guidelines established under subsection (a).

(c) ANNUAL REPORT.—The Secretary shall report annually to Congress on activities conducted pursuant to this section, including an evaluation of the effectiveness of these guidelines, and the responsiveness of the industrial sector to these guidelines.

(d) AUTHORIZATION.—There is authorized to be appropriated \$750,000 annually to carry out the purposes of this section.

SEC. 6107. ENERGY EFFICIENCY LABELING FOR WINDOWS AND WINDOW SYSTEMS.—(a) DEVELOPMENT OF PROGRAM.—Not later than one year after the date of enactment of this Act, the Secretary shall, after consulting with the National Fenestration Rating Council, industry representatives, and other appropriate organizations, provide financial and technical assistance to support the voluntary development of a national window rating program to establish energy efficiency ratings for windows and window systems. Such program shall set forth information and specifications that will enable purchasers of windows or window systems to make more informed purchasing decisions based upon the potential cost and energy savings of alternative window products.

(b) SECRETARIAL ACTION.—If a voluntary national window rating program, consistent with the objectives of subsection (a), is not established within two years of the date of the enactment of this Act, then the Secretary shall, after consulting with the National Institute of Standards and Technology, develop, within one year, a rating program to establish energy efficiency ratings for windows and window systems under section 323 of the Energy Policy and Conservation Act (hereinafter in this title referred to as EPCA) (Pub. L. No. 94-163).

(c) FEDERAL TRADE COMMISSION RULES.—The Federal Trade Commission (hereinafter in this section, the "Commission") shall prescribe labeling rules under section 324 of EPCA for the rating program established pursuant to either subsection (a) or (b) of this section, unless the Commission determines that labeling in accordance with subsections (a) or (b) of this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to any type of window or window system (or class thereof).

(d) COVERED PRODUCTS.—For purposes of sections 323 and 324 of EPCA, windows and window systems shall be considered covered products under section 322 of such Act unless excluded by the Commission pursuant to subsection (c) of this section.

(e) AUTHORIZATION.—There is authorized to be appropriated to the Secretary \$750,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 6108. ENERGY EFFICIENCY INFORMATION.—(a) DATA ON ENERGY EFFICIENCY.—Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275), and after consulting with State and Federal energy officials, representatives of energy-using classes and sectors, and representatives of energy policy public-interest or research organizations, the Administrator of the Energy Information Administration shall expand the scope and frequency of the data it collects and reports on energy use in the United States with the objective of sig-

nificantly improving the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs. The Administrator shall take into account reporting burdens and the protection of proprietary information as required by law. In expanding the collection of such data to meet this objective, the Administrator shall consider—

(1) expanding data collection to include energy intensive sectors not presently covered in Energy Information Administration surveys;

(2) increasing the frequency with which the Energy Information Administration conducts end-use energy surveys among households, commercial buildings, and manufacturing;

(3) expanding the survey instruments to include questions regarding participation in government and utility conservation programs, the energy efficiency of existing stocks of equipment and structures, and recent changes in the technical efficiency and operating practices that affect energy use;

(4) expanding the time period for which fuel-use data is collected from individual survey respondents;

(5) expanding the sample sizes for fuel-use surveys in order to improve the accuracy of subgroups of energy users;

(6) expanding the scope and frequency of data collection on the energy efficiency and load-management programs operated by electric and gas utilities; and

(7) establishment of reporting requirements and voluntary energy efficiency improvement targets for energy intensive industries.

(b) ANNUAL REPORT.—The Administrator shall report annually to Congress on the energy efficiency in classes and sectors of the economy and on any data resulting from this section.

(c) REPORT ON INDUSTRIAL REPORTING AND VOLUNTARY TARGETS.—Not later than one year after the date of enactment of this Act the Administrator shall report to Congress on the conclusions of the Administrator's consideration of establishing reporting requirements and voluntary energy efficiency improvement targets pursuant to paragraph (a)(7) of this section, including an evaluation of the costs and benefits of such reporting requirements and voluntary energy efficiency improvement targets, and including recommendations by the Administrator on proposals or activities to improve energy efficiency in energy intensive industries.

SEC. 6109. ENERGY EFFICIENCY LABELING FOR LAMPS AND LUMINAIRES.—(a) DEVELOPMENT OF PROGRAM.—Not later than one year after the date of enactment of this Act, and in consultation with the National Electric Manufacturers Association, industry representatives, and other appropriate organizations, the Secretary shall provide financial and technical assistance to support the voluntary development of a national energy efficiency rating and labeling program for lamps and luminaires. Such program shall set forth information and specifications that will enable purchasers of lamps and luminaires to make informed decisions among the energy efficiency and cost of alternative lamps and luminaires.

(b) SECRETARIAL ACTION.—If a national energy efficiency rating and labeling program consistent with the objectives of subsection (a) is not voluntarily established within two years of the date of enactment of this Act, then the Secretary shall, in consultation with the National Institute of Standards and Technology, develop, within one year, a rating program for lamps and luminaires under section 323 of EPCA (Pub. L. No. 94-163).

(c) FEDERAL TRADE COMMISSION RULES.—The Federal Trade Commission shall prescribe labeling rules under section 324 of EPCA for lamps and luminaires, except to the extent that the Commission determines that labeling in accordance with subsection (b) of this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to any type of lamp or luminaire (or class thereof).

(d) COVERED PRODUCTS.—For purposes of sections 323 and 324 of EPCA, lamps and luminaires shall be considered covered products under section 322 of such Act (42 U.S.C. 6292) unless excluded by the Commission pursuant to subsection (c) of this section.

(e) AUTHORIZATION.—There is authorized to be appropriated to the Secretary \$750,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 6110.—COMMERCIAL AND INDUSTRIAL EQUIPMENT STANDARDS.—Title III, Part C, of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended by adding the following new section 344A:

“SEC. 344A—(a) DEFINITIONS.—For the purposes of this section:

“(1) the term ‘lamp’ means incandescent, fluorescent and high intensity discharge lamps;

“(2) the term ‘small commercial package air conditioning and heating equipment’ means air-cooled, and electrically operated unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity); and

“(3) the term ‘large commercial package air conditioning and heating equipment’ means air-cooled, and electrically operated unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity).”

“(4) the term ‘energy conservation standard’ means—

“(A) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or

“(B) a design requirement for a product.

“(b) INITIAL DETERMINATIONS.—The Secretary shall, within 12 months after the date of enactment of the National Energy Security Act of 1991, determine, with respect to: lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment; and utility distribution transformers; whether—

“(1) it is practicable to classify such products into types and to prescribe test procedures to measure energy use, energy efficiency, or estimated annual operating cost during a representative average use cycle or period of use which are not unduly burdensome to conduct; and

“(2) it is likely that energy efficiency standards would result in significant energy savings, without a reduction in performance, for those products which the Secretary has determined under paragraph (1) that it is practicable to classify and prescribe test procedures.

“(c) TEST PROCEDURES.—The Secretary shall, within 18 months after the date of enactment of the National Energy Security Act of 1991, prescribe test procedures for those lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution

transformers for which he has determined under subsection (b) that classification into types and testing procedures are practicable and that it is likely that energy efficiency standards would result in significant energy savings, without a reduction in performance. In establishing these test procedures, the Secretary shall use existing and generally accepted industry testing procedures when practicable and consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. For small commercial package air conditioning and heating equipment and large commercial package air conditioning and heating equipment for which the Secretary establishes test procedures pursuant to this section, such test procedures shall be consistent with those generally accepted industry testing procedures or rating procedures, if any, developed by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers as in effect on the date of the enactment of the National Energy Security Act of 1991. If such an industry test procedure or rating procedure for such small commercial package air conditioning and heating equipment or large commercial package air conditioning and heating equipment is subsequently amended the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless he determines by rule published in the Federal Register, supported by clear and convincing evidence, that to do so would not meet the purposes and criteria of this section with respect to the product. If the Secretary issues a rule containing such a determination the rule may establish an amended test procedure for such product that meets the purposes and criteria of this section with respect to that product.

“(d) CLASSIFICATION AND STANDARDS.—(1) The Secretary, for those products for which test procedures have been prescribed under subsection (c), shall, within 18 months thereafter:

“(A) determine types (or classes) for lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers; and

“(B) develop energy conservation standards for each type (or class) of lamps, small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and utility distribution transformers for which such standards would be technologically feasible and economically justified. Except as provided in subsections (d)(3)(B) and (d)(3)(C) of this section, such standards shall become effective no less than 18 months and no more than 3 years after development of such standards.

“(2) In establishing these standards, the Secretary shall take into consideration the criteria contained in sections 325(1) and (m) of this Act.

“(3)(A) In establishing these standards, the Secretary shall first review existing and generally accepted industry voluntary energy efficiency standards for these products, if any, to determine whether the adoption of industry standards would be consistent with the objective of increasing energy efficiency to the extent technically feasible and economically justified. In which case, the Secretary shall adopt such industry standards.

“(B) For small package air conditioning and heating equipment for which the Sec-

retary establishes standards pursuant to this section, the Secretary shall establish such standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1994. Such standards levels shall be as follows:

“(i) The minimum seasonal energy efficiency ratio of three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 10.0 for products manufactured on or after January 1, 1994.

“(ii) The minimum seasonal energy efficiency ratio of three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 9.7 for products manufactured on or after January 1, 1994.

“(iii) The minimum energy efficiency ratio of central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 8.9 (at a standard rating of 95 degrees Fahrenheit, dry bulb (F db)) for products manufactured on or after January 1, 1994.

“(iv) The minimum heating seasonal performance factor of three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 6.8 for products manufactured on or after January 1, 1994.

“(v) The minimum heating seasonal performance factor of three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 6.6 for products manufactured on or after January 1, 1994.

“(vi) The minimum coefficient of performance in the heating mode of central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.0 (at a high temperature rating of 47 degrees F db) for products manufactured on or after January 1, 1994.

“(C) For large package air conditioning and heating equipment for which the Secretary establishes standards pursuant to this section, the Secretary shall establish such standards at the standard levels set forth for such products in ASHRAE/IES Standard 90.1 as in effect on the date of enactment of this Act. Such standards shall become effective for such products manufactured on or after January 1, 1995. Such standard levels shall be as follows:

“(i) The minimum energy efficiency ratio of central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 8.5 (at a standard rating of 95 degrees F db) for products manufactured on or after January 1, 1995.

“(ii) The minimum coefficient of performance in the heating mode of central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 2.9 for products manufactured on or after January 1, 1995.

“(D) If ASHRAE/IES Standard 90.1 as in effect on the date of enactment of the National Energy Security Act of 1991 is subsequently amended with respect to any small commercial package air conditioning and heating equipment or large commercial package air conditioning and heating equipment for

which the Secretary establishes standards pursuant to this section, then the Secretary shall amend the standard for that product to the level in the amended ASHRAE/IES Standard 90.1 unless he determines by rule published in the Federal Register, supported by clear and convincing evidence, that adoption of the level in the amended ASHRAE/IES Standard 90.1 would not meet the purposes and criteria of this section with respect to such product. If the Secretary issues a rule containing such a determination, the rule may establish an amended standard for such product that meets the purposes and criteria of this section with respect to that product. A standard as amended by the Secretary under this subsection shall become effective for products manufactured on or after a date which is four years after the effective date of the relevant standard in amended ASHRAE/IES Standard 90.1, except that an amended standard issued by the Secretary pursuant to a rule under this subparagraph (d)(3)(C) shall become effective for products manufactured on or after a date which is four years after the date the rule is published in the Federal Register.

"(4) These standards shall, upon their effective date, preempt any state or local regulation concerning the energy efficiency or energy use of such products.

"(5) Except as provided in subparagraphs (d)(3)(B) through (D), the Secretary shall periodically, but at least every five years, review and update any standards established pursuant to this section, and shall reevaluate whether standards are justified for those products for which standards were not adopted.

"(e) LABELING.—(1) The Federal Trade Commission shall, within twelve months after the date on which a test procedure is prescribed by the Secretary for a product (or class thereof) under subsection (c), prescribe a labeling rule for the product (or class thereof), except to the extent that, with respect to a product (or class thereof) the Commission determines that a labeling rule is not economically or technically feasible, would not result in significant energy savings and is not necessary for informational purposes.

"(2) If the Commission determines that labeling is not necessary under paragraph (1) and the Secretary prescribes standards under subsection (d), then the Commission, within twelve months after the date on which a standard is prescribed by the Secretary, shall prescribe a labeling rule designed solely to facilitate enforcement of the requirements of this section and other applicable provisions of law. A labeling rule for small commercial package air conditioning and heating equipment and large commercial package air conditioning and heating equipment shall be designed solely to facilitate enforcement of the regulations of this section and other applicable provisions of law.

"(f) REQUIREMENT OF MANUFACTURERS.—For the purpose of requirements of this Act, manufacturers and private labelers are subject to the requirements of section 326 of this Act.

"(g) ENFORCEMENT.—After the date on which a manufacturer must provide a label for a product pursuant to subsection (e)—

"(1) each product shall be considered, for purposes of paragraphs (1) and (2) of section 332(a) of this Act a new covered product to which a rule under section 324 of this Act applies; and

"(2) it shall be unlawful for any manufacturer or private labeler to distribute in commerce any new product manufactured after

this date which is not in conformity with the applicable energy conservation standard prescribed for the product (or class thereof) under subsection (d). For purposes of section 333 of this Act, this paragraph shall be considered to be a part of section 332 of this Act.

"(h) ENERGY EFFICIENCY LABELING FOR COMMERCIAL OFFICE EQUIPMENT.—(1) DEVELOPMENT OF PROGRAM.—Not later than one year after the date of enactment of the National Energy Security Act of 1991, and after consulting with appropriate industry representatives, the Secretary shall provide financial and technical assistance to support the voluntary development of a national energy efficiency rating and labeling program including any necessary test procedures for commercial office equipment that is widely used and for which there is a potential for significant energy savings. The program shall set forth information and specifications that will enable purchasers of office equipment to make informed decisions about the energy efficiency and costs of alternative commercial office equipment.

"(2) SECRETARIAL ACTION.—If a national energy efficiency rating and labeling program consistent with the objectives of paragraph (1) is not voluntarily established within two years of the date of enactment of this Act, then the Secretary shall, after consulting with the National Institute of Standards and Technology, prescribe, within one year, test procedures for such commercial office equipment under section 323 of this Act.

"(3) FEDERAL TRADE COMMISSION RULES.—The Federal Trade Commission (hereinafter in this section, the "Commission") shall prescribe labeling rules under section 324 of this Act for commercial office equipment, except to the extent that the Commission determines that labeling in accordance with subsection (b) of this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions with respect to commercial office equipment (or class thereof).

"(4) COVERED PRODUCTS.—For purposes of sections 323 and 324 of this Act, commercial office equipment shall be considered covered products under section 322 of this Act unless excluded by the Commission pursuant to subsection (c).

"(5) AUTHORIZATION.—There is authorized to be appropriated to the Secretary such sums as are necessary to carry out the purposes of this section.

"(i) STUDY OF UTILITY DISTRIBUTION TRANSFORMERS.—

"(1) Not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall evaluate the practicability and cost-effectiveness and potential energy savings of replacing or upgrading existing utility distribution transformers during routine maintenance.

"(2) The Secretary shall report the findings of his evaluation to Congress with recommendations on how such energy savings, if any, could be achieved."

SEC. 6111. ENERGY EFFICIENCY OF SHOWERHEADS.—(a) STATEMENT OF PURPOSE.—Section 2 of EPCA (Pub. L. No. 94-163) is amended by—

(1) striking "and" at the end of paragraph (6);

(2) striking the period at the end of paragraph (7) and inserting "; and"; and

(3) adding at the end thereof the following new paragraph:

"(8) to conserve energy and water by improving the water efficiency of showerheads."

(b) DEFINITIONS.—Section 321(a) of EPCA (Pub. L. No. 94-163), is amended by adding at the end thereof the following new paragraph: "(30) the term 'total water use' means the quantity of water directly used by a showerhead, determined in accordance with test procedures under section 323."

(c) COVERAGE.—Section 322(a) of EPCA (Pub. L. No. 94-163), is amended by—

(1) redesignating paragraph (14) as paragraph (15); and

(2) inserting after paragraph (13) the following new paragraph:

"(14) Showerheads, except safety shower showerheads."

(d) TEST PROCEDURES.—Section 323(b)(3) of EPCA is amended by striking "or estimated annual operating cost" and inserting "estimated annual operating cost, or, in the case of showerheads, total water use, in accordance with applicable American National Standards Institute (ANSI) flow rate standards."

(e) LABELING.—Section 324 of EPCA (Pub. L. No. 94-163), is amended—

(1) in subsection (a)(2) by adding at the end thereof the following new subparagraph:

"(C) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (14) of section 322(a), requiring that a label state whether the product meets the standards under section 325(i), in accordance with American National Standards Institute (ANSI) marking and labeling requirements."

(2) in subsection (a)(3) by striking "paragraph (14)" and inserting "paragraph (15)";

(3) in subsection (b)(1)(B) by striking "paragraph (14)" and inserting "paragraph (15)";

(4) in subsection (b)(3) by striking "paragraph (14)" and inserting "paragraph (15)"; and

(5) in subsection (b)(5) by striking "paragraph (14)" and inserting "paragraph (15)".

(f) STANDARDS.—Section 325 of EPCA (Pub. L. No. 94-163), is amended—

(1) by redesignating subsections (i), (j), (k), (l), (m), (n), (o), (p), and (q) as subsections (j), (k), (l), (m), (n), (o), (p), (q), and (r), respectively; and

(2) by inserting after subsection (h) the following new subsection:

"(i) STANDARDS FOR SHOWERHEADS.—(1) For a showerhead manufactured on or after July 1, 1992, the standard shall be one that ensures the maintenance of public health and safety, allowing a maximum rate of water use of—

"(A) 2.5 gallons per minute, when measured at a flowing water pressure of 80 pounds per square inch; or

"(B) if before March 1, 1992, the American National Standards Institute (ANSI) publishes an amended standard for showerheads prescribing a maximum rate of water use that is less than the rate prescribed by the ANSI standard in effect on the date of enactment of the National Energy Security Act of 1991, the rate prescribed in the amended standard becomes effective.

"(2)(A) If, after July 1, 1992, ANSI publishes an amended standard different from that in effect pursuant to paragraph (1), the Secretary, not later than 180 days after publication of the amended standard, shall publish a notice of the amended standard, and, subject to subparagraph (B), the amended standard shall be in effect for showerheads manufactured on or after the date that is 90 days after the date of the notice.

"(B) The Secretary may not prescribe an amended standard that increases the maximum rate of water use of showerheads over

the rate allowed by the standard established under paragraph (1), unless the Secretary determines that it is in the interest of public health and safety.

(g) EFFECT ON OTHER LAW.—Section 327 of EPCA (Pub. L. No. 94-163), is amended—

(1) in subsection (c)—

(A) by striking "or energy use of such covered product" and inserting "energy use or total water use of the covered product";

(B) by striking "or" at the end of paragraph (2);

(C) by striking the period at the end of paragraph (3) and inserting "; or"; and

(D) by adding at the end thereof the following new paragraph:

"(4) is a State, regional, or local regulation that establishes flow rate requirements for showerheads that was prescribed or enacted before June 15, 1991."; and

(2) by adding at the end thereof the following new subsection:

"(h) LABELING OF SHOWERHEADS.—No State, regional, or local regulation concerning the labeling of showerheads shall be effective on or after the date that the Commission prescribes a label for showerheads pursuant to section 324(a)(2)(C)."

Subtitle B.—Federal Energy Management.

SEC. 6201. FEDERAL ENERGY MANAGEMENT AMENDMENTS.—Part 3 of Title V of the National Energy Conservation Policy Act (NECPA) (Pub. L. No. 95-619), as amended, is further amended as follows:

(a) In section 543—(1) Strike subsection (a) and insert the following new text in lieu thereof:

"(a) ENERGY MANAGEMENT REQUIREMENT FOR FEDERAL BUILDINGS.—(1) Not later than January 1, 2000, each Federal agency shall, to the maximum extent practicable, install in Federal buildings under the control of such agency in the United States, all energy conservation measures with payback periods of less than ten years as calculated using the methods and procedures developed pursuant to section 544. Within two years after the date of enactment of the National Energy Security Act of 1991, each agency shall submit to the Secretary a list of projects meeting the ten-year payback criterion, the energy that each project will save and total energy and cost savings involved.

"(2) An agency may exclude from the requirements of paragraph (1) any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with the requirements of paragraph (1) would be impracticable. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, or the unique character of many facilities operated by the Departments of Defense and Energy. Each agency shall identify and list in each report made under section 548, the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the impracticability standards set forth herein, and may within 90 days after receipt of the findings, reverse a finding of impracticability, in which case the agency shall comply with the requirements of paragraph (1). This section shall not apply to an agency's facilities that generate or transmit electric energy, nor to the uranium enrichment facilities operated by the Department of Energy.";

(2) In subsection (b):

(A) after the words "subsection (a)," insert the following:

"The Secretary of Energy shall consult with the Secretary of Defense and the Administrator of the General Services Administration in developing guidelines for the implementation of this Part, and";

(B) strike the phrase "Federal Energy Management Improvement Act of 1988," in paragraph (1) and insert in lieu thereof "National Energy Security Act of 1991, and submit to the Secretary of Energy";

(C) after the words "high priority projects," insert the following: "and such plan shall include steps to take maximum advantage of contracts authorized under title VIII of this Act (42 U.S.C. 8287 et seq.), financial incentives, and other services provided by utilities for efficiency investment and other forms of financing to reduce the direct costs to the government;";

(D) at the end of paragraph (2), strike the semicolon and insert the following: "; and update such surveys periodically, but not less than every three years;";

(E) replace paragraph (3) with the following new paragraph:

"(3) using such surveys, determine the cost and payback period of energy conservation measures likely to achieve the goals of this section;"; and

(F) insert a new paragraph (4) as follows, and renumber paragraph (4) as "(5)":

"(4) install those energy conservation measures that will attain the requirements of this section in a cost-effective manner as defined in Section 544, and"

(b) In section 544—

(1) strike "National Bureau of Standards," in subsection (a) and insert in lieu thereof "National Institute of Standards and Technology,"; and

(2) strike all after the word "each", in paragraph (b)(2) and insert in lieu thereof:

"agency shall, after January 1, 1994, fully consider the energy efficiency of all potential building space at the time of renewing or entering into a new lease. Further, all government leased space constructed after January 1, 1994, shall meet model Federal energy conservation performance standards for new commercial buildings promulgated pursuant to Section 304 of the Energy Conservation and Production Act (Pub. L. No. 94-385)."

(c) In section 545—add after the word "measures" the following: "as needed to meet the requirements of section 543."

(d) In section 546—strike subsection (b) and insert in lieu thereof the following:

"(b) IMPLEMENTATION.—To facilitate the financing of energy conservation measures, each Federal agency shall promote the use of contracts authorized by title VIII of this Act (42 U.S.C. 8287 et seq.). The Secretary, in consultation with the Secretary of Defense and the Administrator of the General Services Administration, within six months after the date of the enactment of the National Energy Security Act of 1991, shall develop appropriate procedures and methods for use by Federal agencies to select energy service contractors that will achieve the intent of this section in a cost-effective manner. Notwithstanding any other procurement laws and regulations, such procedures and methods shall apply to the selection of energy service contractors by each Federal agency."

(e) In section 548—

(1) strike the word "Each" in subsection (a) and insert in lieu thereof the following:

"In addition to the plan required to be submitted to the Secretary pursuant to section 543(b)(1), each";

(2) insert the phrase "by April 2 of each year," after the word "annually" in subsection (b); and

(3) insert the words "by each agency", after the words "under this part" in subsection (b)(1).

(f) At the end of Part 3—add the following new sections:

"SEC. 552. UTILITY INCENTIVE PROGRAMS.—Federal agencies are permitted and encouraged to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation in Federally owned or leased facilities. Federal agencies may accept incentives designed to encourage energy demand management or energy conservation, generally available from any such utility to its customers, to adopt technologies and practices that are determined to be cost-effective.

"SEC. 553. SHARED ENERGY SAVINGS.—(a) The Secretary shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts and will reduce the administrative effort and cost on the part of the government as well as the private customers.

"(b)(1) In carrying out subsection (a), the Secretary may:

"(A) request statements of qualifications, including financial and performance information, from firms engaged in providing shared energy savings contracting;

"(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

"(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

"(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

"(2) In carrying out subsection (a), the Secretary may also provide for the direct negotiation by departments, agencies, and instrumentalities, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

"SEC. 554. FEDERAL PRODUCT SCHEDULE.—Not later than two years after the date of enactment of the National Energy Security Act of 1991, the Administrator of the General Services Administration, in consultation with the Secretary, shall conduct an analysis of significant energy consuming products in the Federal product schedule and develop and implement a method to identify those products which offer cost-effective opportunities to reduce energy consumption and costs. The Administrator shall also issue guidelines for users of the Federal Product Schedule to encourage the purchase of identified energy efficient models.

"SEC. 555. PURCHASE OF FEDERAL VEHICLES.—The Administrator of the General Services Administration, through the Automotive Commodity Center, in evaluating and accepting bids for the purchase of passenger vehicles and light trucks to meet specified requirements, shall consider the fuel efficiency of the passenger vehicles and light trucks offered in the bid, and the probable fuel and cost savings to the Federal Govern-

ment over the expected term of Federal use of such passenger vehicles and light trucks.

“SEC. 556. FEDERAL ENERGY EFFICIENCY PROJECTS FUNDING.—(a) IN GENERAL.—Not later than one year after the date of enactment of the National Energy Security Act of 1991, the Secretary shall establish guidelines for the transfer of up to \$1 million per project to encourage any Federal agency to undertake energy efficiency projects in Federally owned facilities.

“(b) PROJECT SELECTION.—The Secretary shall establish procedures for the receipt of proposals under this section. The Secretary shall consider the following factors in determining whether to provide funding under subsection (a):

- “(1) the cost-effectiveness of the project;
- “(2) the proportion of energy and cost savings anticipated to the Federal Government;
- “(3) the amount of funding committed to the project by the agency requesting financial assistance;
- “(4) the extent that a proposal leverages financing from other non-Federal sources; and
- “(5) any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal Government.

“(c) REPORTS.—The Secretary shall report annually to Congress, in the supporting documents accompanying the President's budget, on the activities under this section. The report shall include the projects funded and the projected energy and cost savings from installed measures.

“(d) AUTHORIZATION.—For purposes of this subsection, there is authorized to be appropriated, and to remain available until expended, not more than \$50 million.

“SEC. 557. FINANCIAL INCENTIVE PROGRAM FOR FACILITY ENERGY MANAGERS.—(1) The Secretary shall establish a financial bonus program, not to exceed \$5,000 per award, to reward facility energy managers for outstanding energy savings in Federal agencies.

“(2) Not later than June 1, 1992, the Secretary shall issue procedures for the establishment of a bonus program, including the criteria to be used in selecting outstanding facility energy managers. Such criteria shall include, but not be limited to, evident success in generating utility incentives and shared energy saving contracts and, the amount of energy saved by conservation and energy efficiency projects.

“(3) Each year the Secretary shall publish and disseminate to Federal agencies a report highlighting the achievements of bonus award winners.

“(4) There is authorized to be appropriated to carry out this subsection not more than \$250,000 for each of the fiscal years 1992, 1993, and 1994.”

(g) CONFORMING AMENDMENT.—The National Energy Conservation Policy Act (Pub. L. No. 95-619) is further amended by adding in the Table of Contents at the end of title V, part 3, the following items:

- “Sec. 552. Utility incentive programs.
- “Sec. 553. Shared energy savings.
- “Sec. 554. Federal product schedule.
- “Sec. 555. Purchase of Federal vehicles.
- “Sec. 556. Federal energy efficiency projects funding.
- “Sec. 557. Financial incentive program for facility energy managers.”

SEC. 6202. PLAN REGARDING DEMONSTRATION OF NEW TECHNOLOGY.—(a) PLAN.—Within one year after the date of the enactment of this Act, the Secretary shall submit a plan to Congress for the demonstration in Federally owned facilities of energy efficiency and renewable energy technologies. The tech-

nologies shall be those technologies, as determined by the Secretary, that are ready for commercial demonstration. The plan shall include:

- (1) a listing of those technologies with specific candidate sites for the demonstration;
- (2) the energy, environmental, cost savings or other expected benefits;
- (3) a timetable for implementation; and
- (4) a process for evaluation of the performance of the technologies.

(b) UPDATE.—The plan shall be updated every two years.

SEC. 6203. STUDY OF FEDERAL PURCHASING POWER.—(a) STUDY.—The Secretary shall conduct a study to evaluate the potential use of the purchasing power of the Federal Government to promote the development and commercialization of energy efficient products. The study shall identify products for which there is a high potential for Federal purchasing power to substantially promote their development and commercialization, and shall include a plan to develop such potential. The study shall be conducted in consultation with utilities, manufacturers, and appropriate nonprofit organizations concerned with energy efficiency.

(b) REPORT.—The Secretary shall report to Congress on the results of the study within two years of the date of the enactment of this Act.

(c) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SUBTITLE C—UTILITIES

SEC. 6301. ENCOURAGEMENT OF INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY RESOURCES AND STUDY OF CERTAIN STATE RATE-MAKING POLICIES.—(a) AMENDMENT TO THE PUBLIC UTILITY REGULATORY POLICIES ACT.—The Public Utility Regulatory Policies Act of 1978 (Pub. L. No. 95-617), as amended, is further amended by inserting the following new paragraph at the end of section 111:

“(7) ENCOURAGEMENT OF INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY RESOURCES.—

“(A) The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources and other demand side management measures are at least as profitable, taking into account income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generating equipment.

“(B)(i) The rates allowed to be charged by a State-regulated electric utility shall be such that the utility is encouraged to make investments and expenditures for all cost-effective improvements in the energy efficiency of power generation, transmission and distribution.

“(ii) For purposes of meeting the standard provided in clause (i) of this subparagraph, each State regulatory authority shall consider the disincentives caused by existing ratemaking policies, as well as incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution technologies.

“(C)(i) Each State regulatory authority shall require each electric utility for which it has ratemaking authority to employ a planning and selection process for new energy resources that evaluates the full range of alternatives, including new power supplies, energy conservation and efficiency,

and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

“(ii) All plans or filings before a State regulatory authority to meet the requirements of clause (i) of this subparagraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

“(iii) For purposes of clause (i) of this subparagraph, the term “system cost” shall mean all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

“(D) For purposes of implementing the provisions of this paragraph, any reference contained in this title to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of the National Energy Security Act of 1991.”

(b) REPORT.—Not later than two years after the date of enactment of this Act, the Secretary shall submit a report to the President and to the Congress containing—

- (1) a survey of all State laws, regulations, practices, and policies under which State regulatory authorities require or permit rates charged by an electric utility to reflect least-cost planning;
- (2) an evaluation by the Secretary of whether, and to what extent, least-cost planning is likely to result in:

(A) higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

(B) enhanced or reduced reliability of electric service; and

(C) increased or decreased dependence on particular energy resources; and

(3) an evaluation by the Secretary of whether, and to what extent, ratemaking methodologies implementing least-cost planning adequately take into account the impact of such measures on electric utilities' costs, operations, and rate of return on investment.

(c) DEFINITION.—For purposes of subsection (b), the term “least-cost planning” means any standard, regulation, practice, or policy by which a State regulatory authority considers, or requires a State regulated electric utility to consider or implement, a plan for action (including, but not limited to, the construction of or purchase of electric energy from new generation facilities and investment in or expenditures for conservation, energy efficiency resources, or other demand-side management measures) to be taken by a State regulated electric utility for purposes of providing adequate and reliable service to its electric customers with the incurrence of lowest costs by such utility and its customers.

SEC. 6302. CONSERVATION GRANTS TO STATE REGULATORY AUTHORITIES.—(a) CONSERVATION GRANTS.—The Secretary is authorized in accordance with the provisions of this section to provide grants to State regulatory

authorities in an amount not to exceed \$500,000 per authority, for purposes of encouraging the consideration of conservation, energy efficiency resources and other demand side management measures as a mechanism for modifying future electricity demand.

(b) **PLAN.**—A State regulatory authority wishing to receive a grant under this section shall submit a plan to the Secretary that specifies the actions such authority proposes to take that would achieve the purposes of this section.

(c) **SECRETARIAL ACTION.**—In determining whether, and in what amount, to provide a grant to a State regulatory authority under this section the Secretary shall consider, in addition to other appropriate factors, the actions proposed by the State regulatory authority:

(1) to consider implementation of the rate-making standard established in section 111(d)(7) of the Public Utility Regulatory Policies Act of 1978; and

(2) to achieve the purposes of this section.

(d) **RECORDKEEPING.**—Each State regulatory authority that receives a grant under this section shall keep such records as the Secretary shall require.

(e) **RULES.**—The Secretary may prescribe such rules as may be necessary or appropriate for carrying out the provisions of this section.

(f) **DEFINITIONS.**—For purposes of this section, the term "State regulatory authority" shall have the same meaning as defined in section 3 of the Public Utility Regulatory Policies Act of 1978.

(g) **AUTHORIZATION.**—There is authorized to be appropriated \$5,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 6303. INTEGRATED RESOURCE PLANNING BY CUSTOMERS OF POWER MARKETING ADMINISTRATIONS.—(a) **IN GENERAL.**—Within six months after the date of enactment of this Act, the Southwestern Power Administration and the Southeastern Power Administration (hereinafter PMA) shall each initiate a proceeding for purposes of considering the adoption of a requirement that each long-term firm power service contract entered into or amended subsequent to one year from the date of enactment of this Act between a nonregulated electric utility and such PMA contain an article requiring such utility to develop and implement to the extent practicable an integrated resource planning program. For purposes of this section—

(1) A "long-term firm power service contract" shall mean any contract for the sale by a PMA of firm capacity, with or without energy, which is to be delivered over a period of more than one year;

(2) The term "non-regulated electric utility" shall have the same meaning as provided in section 3(9) of the Public Utility Regulatory Policies Act of 1978. In the case of a contract between a PMA and a joint action agency or similar entity, the term shall include the entity's distribution or user members; and

(3)(A) An "integrated resource planning program" shall be one under which a nonregulated utility engages in a planning and selection process for new energy resources that evaluates the full range of alternatives, including new power supplies, energy conservation and efficiency, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diver-

sity, reliability, dispatchability, and other factors of risk, and shall treat demand and supply resources on a consistent and integrated basis.

(B) For purposes of this paragraph, the term "system cost" shall mean all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

(b) **CONSIDERATIONS.**—As part of a proceeding under subsection (a), each PMA shall consider a requirement that each contract article referred to in subsection (a) shall:

(1) require the nonregulated electric utility to establish an integrated resource planning program with specific goals;

(2) contain time schedules for meeting program goals and delineate actions to be taken in the event such goals are not met. Such actions may provide (A) for suspension of capacity and energy deliveries that would otherwise be supplied to the nonregulated electric utility under such contract, (B) for liquidated damages, and (C) for termination of such contract if compliance is not achieved within the period stated in such contract; and

(3) provide for review and modification of such program by the nonregulated utility every three years.

(c) **PROCEDURES.**—A proceeding under subsection (a) shall be conducted in accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553). Nothing in this section shall require a PMA to adopt either in whole or in part the requirements for contract articles described in subsections (a) and (b). To the extent that a PMA decides to adopt in whole or in part such requirements in a proceeding under subsection (a), it shall promulgate regulations implementing such requirements as part of the same proceeding.

(d) **DETERMINATIONS.**—If the Secretary determines that a PMA has conducted or is in the process of conducting, as of the date of enactment of this section, a proceeding that meets the requirements of this section, such PMA shall not be required to initiate a new proceeding, and the requirements of this section shall be deemed satisfied with respect to such PMA.

(e) **EXCEPTION.**—Nothing in this section shall authorize a PMA to require an article as described in subsection (b) of this section in a utility's long-term firm power services contract if any Federal agency requires such utility to prepare an integrated resource planning program.

SEC. 6304. TENNESSEE VALLEY AUTHORITY INTEGRATED RESOURCE PLANNING AND IMPLEMENTATION.—(a) **IN GENERAL.**—In the exercise of its functions the Tennessee Valley Authority shall employ an integrated resource planning program.

(b) **DEFINITIONS.**—For the purposes of this section the term: (1) "integrated resource planning program" shall be a program under which the Tennessee Valley Authority engages in a planning and selection process for new energy resources that evaluates the full range of existing and incremental resources, including new power supplies, energy conservation and efficiency, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk;

shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis; and (2) "system cost" shall mean all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, transportation, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply.

(c) **ASSISTANCE TO DISTRIBUTORS.**—The Tennessee Valley Authority shall implement the provisions of this section in cooperation with its distributors and shall provide appropriate assistance to them. Such assistance may include publications, workshops, conferences, one-on-one assistance, equipment loans, technology-assessment studies, marketing studies, and other appropriate mechanisms to transfer information on energy-efficiency and renewable energy options and programs to customers.

(d) **PUBLIC COMMENT.**—Prior to the selection and addition of major new energy resources on the TVA system, TVA shall provide the public an opportunity for review and comment in the selection process.

Subtitle D.—Used Oil Energy Production

SEC. 6401. PURPOSE.—The purpose of this subtitle is to promote the refining, re-refining and reprocessing of used lubricating oil into fuels and other petroleum products.

SEC. 6402. REQUIREMENTS FOR ENERGY PRODUCTION FROM USED OIL.—Section 383 of the Energy Policy and Conservation Act (EPCA) (Pub. L. No. 94-163) is amended—

(a) in subsection (c) by—

(1) striking "As soon as practicable after the date of enactment of this Act" and inserting "Not less than 15 months after the date of enactment of the National Energy Security Act of 1991"; and

(2) striking "National Bureau of Standards" each place it appears and inserting "National Institute of Standards and Technology"; and (b) by adding at the end thereof the following new subsection:

"(g) **MARKET INCENTIVES FOR THE REUSE OF USED OIL.**

"(1) **REQUIREMENTS.**—(A) Beginning not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, a producer or importer of 100,000 gallons or more per year of lubricating oil shall each year either refine, re-refine, or reprocess into petroleum products, including fuels, using a method described in subparagraph (B), an amount of used oil equal to at least that amount of oil determined by—

"(i) multiplying the lubricating oil produced or imported that year by such person, by

"(ii) the percentage established by the Secretary under paragraph (2).

"(B) A producer or importer of lubricating oil may comply with this paragraph by—

"(i) refining, re-refining, or reprocessing used oil for purposes of producing petroleum products, including fuels; or

"(ii) purchasing credits under the credit system established pursuant to paragraph (3).

"(2) **ESTABLISHMENT OF REUSE PERCENTAGE.**—The Secretary shall establish, on an annual basis, a percentage for use under paragraph (1). The percentage applicable during the first year that the requirement established by paragraph (1) is in effect, shall be a percentage that is equal to the reuse rate for lubricating oil that exists on the

date of the enactment of the National Energy Security Act of 1991. Such rate shall be determined by using data for the most recent year for which data are available. Through the year 2000, the percentage shall be an additional two percentage points higher than the actual percentage for the previous year as determined by the Secretary.

“(3) REGULATIONS.—(A) IN GENERAL.—Not later than 18 months after the date of the enactment of the National Energy Security Act of 1991, the Secretary shall promulgate regulations to implement these requirements. These regulations shall cover:

“(i) producers or importers of lubricating oil;

“(ii) generators or collectors of used oil;

“(iii) a system, including permits, by which refiners, re-refiners and reprocessors of used oil may create credits which may be purchased by producers and importers of lubricating oil for the purpose of complying with subparagraph (1)(B);

“(iv) enforcement;

“(v) record-keeping;

“(vi) any other requirement which the Secretary considers necessary for administering the program set forth by this subsection; and

“(vii) prohibitions on the mixing of used oil with hazardous wastes or other physical or chemical impurities not associated with its use as a lubricating oil, and the creation of credits from such mixed used oil.

“(B) Exemptions.

“(i) This subsection shall not apply to a facility:

“(aa) that is classified as an S.I.C. number 2911 facility under the Office of Management and Budget Standard Classification Manual and that refines used oil into fuel or other petroleum products, the amount of which is equal to no more than the amount of used oil that the owner of the facility is required to refine or otherwise reuse under paragraph (1)(A).

“(bb) that is classified as an S.I.C. number 2899, or S.I.C. number 2992 facility under the Office of Management and Budget Standard Classification Manual and that compounds or blends lubricating base oil into finished lubricant products as its principal activity, provided that such facility has a contract to reprocess a customer's used lubricant, and does not take title to such lubricant, and such reprocessed lubricant product is returned to the customer.

“(ii) This subsection shall not apply to used oil that is generated on-site for on-site energy production activities, including storage, use, and transportation, carried out at a facility that is classified as an S.I.C. number 4911 facility under the Office of Management and Budget Standard Classification Manual.

“(iii) The Secretary shall promulgate regulations establishing requirements for exempt refineries that refine used oil. The regulations shall cover record-keeping, testing, and such other matters as the Secretary determines are necessary and appropriate for refining used oil at exempt refineries.

“(4) DEFINITIONS.—For purposes of this subsection, the term:

“(A) ‘credit’ means a legal record of used oil refined, re-refined or reprocessed in accordance with this subsection for purposes of complying with paragraph (1);

“(B) ‘producer’ with respect to lubricating oil means any person who produces a lubricant base stock from crude oil. Such production does not include the re-refining of used oil;

“(C) ‘importer’ with respect to lubricating oil means any person who imports a lubricant base stock or lubricating oil, except for

lubricating oil contained in transportation vehicles or other machinery;

“(D) ‘lubricant base stock’ means oil from which lubricating oil is made after introduction of additives;

“(E) ‘generator’ and ‘collector’ mean any person who collects, stores, accumulates, or otherwise generates used oil. Such terms do not include an individual who generates used oil by removing such oil from the engine of a light duty motor vehicle or household appliance owned by that individual;

“(F) ‘re-refiner’ and ‘reprocessor’ mean any person who produces lubricating oils, fuels, or other petroleum products through the processing of used oil; and

“(G) ‘refiner’ means any owner or operator of a facility that is classified as an S.I.C. 2911 facility under the Office of Management and Budget Standard Classification Manual.

“(5) AUTHORIZATIONS.—(A) There is authorized to be appropriated to the Secretary of Energy \$2,000,000 to carry out this subsection.

“(B) There is authorized to be appropriated to the Secretary of Commerce for use by the National Institute of Standards and Technology \$3,000,000 to carry out its responsibilities under this section.

“(6) REPORT.—One year after the date of enactment of this subsection, and annually thereafter, the Secretary shall submit a report to the House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate on the implementation and operation of this subsection.”

SEC. 6403. LISTING OR IDENTIFICATION OF USED OIL.—Section 3001 of the Solid Waste Disposal Act is amended by adding at the end the following:

“(j) USED OIL.—Notwithstanding this Act or any other provision of law, the Administrator shall not list or identify used oil as a hazardous waste under this subtitle, nor shall used oil otherwise be deemed to be a hazardous waste under this subtitle.”

SEC. 6404. SUNSET PROVISION.—The provisions of this subtitle expire five years after the date of enactment of this Act.

Subtitle E.—State, Local Insular, and Tribal Energy Assistance

SEC. 6501. INSULAR AREAS ENERGY ASSISTANCE PROGRAM.—(a) FINANCIAL ASSISTANCE.—

(1) The Secretary, pursuant to the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (Pub. L. No. 93-577), may grant financial assistance to Insular area governments or private sector persons working in cooperation with Insular area governments to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy measures which reduce the dependency of the Insular areas on imported fuels and promote development in the Insular areas.

(2) Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, the affected local energy institutions.

(3) In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

(A) whether the measure will reduce the relative dependence of the Insular area on imported fuels;

(B) the ease and costs of operation and maintenance of any facilities contemplated as a part of the project;

(C) whether the project will rely on the use of conservation measures or indigenous, renewable energy resources that were identified in the 1982 Territorial Energy Assess-

ment or are identified by the Secretary as consistent with the purpose of this section;

(D) whether the measure will contribute significantly to development or the quality of the environment in the Insular area; and

(E) any other factors which the Secretary may determine to be relevant to a particular project.

(4) The Secretary shall require at least 20 per centum of the costs of any project under this section to be provided from non-Federal sources. Such cost sharing may be in the form of in-kind services, donated equipment, or any combination thereof.

(b) DEFINITIONS.—For the purpose of this section, the term—

(1) “Insular area government” means American Samoa government, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, Federated States of Micronesia, Government of Guam, Republic of the Marshall Islands, Republic of Palau, and United States Virgin Islands; and

(2) “1982 Territorial Energy Assessment” means the assessment prepared by the Department of Energy pursuant to the Omnibus Territorial Act. (Pub. L. No. 96-597, as amended).

“SEC. 6502. STATE BUILDINGS ENERGY INCENTIVE FUND.—Title III, Part D, of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended as follows:

(a) Designate the existing text of subsection 365(f) as paragraph (1) and insert the following new paragraph (2):

“(2) In addition to the amounts authorized to be appropriated under paragraph (1), there is authorized to be appropriated such sums as may be necessary, to remain available until expended, to carry out the purposes of section 363(f).”; and

(b) at the end of section 363 add the following new subsection (f):

“(f) If the Secretary determines that a State has demonstrated a commitment to improving the energy efficiency of buildings within the State, then beginning in fiscal year 1993, the Secretary may allocate funds appropriated pursuant to section 365(f)(2) to provide up to \$1,000,000 to such State for deposit into a state revolving fund designed to finance energy efficiency improvements in State and local government buildings in such State. In making this determination the Secretary shall consider whether:

“(1) such State, or a majority of the units of local government with jurisdiction over building energy codes within such State, have adopted building codes at least as stringent as the industry voluntary building energy code as defined under Title III of this Act;

“(2) such State has a program to finance energy efficiency improvement projects in State and local government facilities and buildings that includes a revolving fund to finance such projects; and

“(3) such State has raised funding from non-Federal sources, including but not limited to, oil overcharge funds, State or local government appropriations, or utility contributions, sufficient to provide at least 75 percent of the total funds provided for deposit into such revolving fund.”

SEC. 6503. PRIVATE SECTOR INVESTMENTS IN LOW INCOME WEATHERIZATION.—Title IV of the Energy Conservation and Production Act (ECPA) (Pub. L. No. 94-385) is amended by adding the following new sections 414A and 414B:

“SEC. 414A. PRIVATE SECTOR INVESTMENTS.

“(a) IN GENERAL.—The Secretary shall provide financial assistance to recipients of Federal financial assistance or financial as-

assistance from States pursuant to sections 413 and 414 of this title to pay for the costs of the development and the initial implementation of partnerships, agreements or other arrangements with utilities, private sector interests or other institutions, pursuant to which financial assistance would be made available to make energy conservation improvements in low income housing. Financial assistance provided by the Secretary under this section may be used for the negotiation of partnerships, agreements and other arrangements; the presentation of arguments before State or local agencies; expert advice on the development of partnerships, agreements and other arrangements; or other activities reasonably associated with the development and initial implementation of such arrangements.

"(b) CONDITIONS.—Financial assistance provided under this section to institutions other than States shall, to the extent practicable, coincide with the timing of awards such institutions are receiving under sections 413 or 414 of this title. No less than 80 percent of the funds awarded under this section shall be provided to entities other than states. Recipients of assistance under this section shall have up to three years to carry out projects undertaken with such assistance.

"(c) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 414B. TECHNICAL TRANSFER GRANTS.

"(a) IN GENERAL.—The Secretary may provide financial assistance to recipients of Federal financial assistance or financial assistance from States pursuant to sections 413 and 414 of this title for the purpose of: evaluating technical and management measures which increase program and/or private entity performance in weatherizing low income housing; producing technical information for use by persons involved in weatherizing low income housing; exchanging information; and conducting training programs for persons involved in weatherizing low income housing. No less than 50 percent of the funds granted under this section shall be provided to entities other than states. Recipients of technical transfer grants may assign all or part of work under the grants to non-profit entities.

"(b) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section."

SEC. 6504. TRAINING OF BUILDING DESIGNERS AND CONTRACTORS.—Section 362 of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended by adding the following new paragraph at the end of subsection (d):

"(15) programs to provide training and education to building designers and contractors involved in building design or in the sale, installation and maintenance of energy systems and equipment. Such programs shall (A) enlist appropriate trade and professional organizations in the development and financing of this program; and (B) shall also include training workshops, practice manuals, and testing for each area of energy efficiency technology. Designers and contractors who have successfully completed a training course operated pursuant to this section shall be presented a certificate of completion at the end of such course.

SEC. 6505. ENERGY EDUCATION AND TEACHER TRAINING.—Section 363 of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended by adding the following new subsection:

"(f) ENERGY EDUCATION GRANTS.—(1) The Secretary shall provide competitive grants to supplement state program activities conducted pursuant to section 362(d)(4) to support projects designed to increase public awareness and understanding of energy issues, or to train educators to use existing energy related information for teaching purposes. The Federal contribution toward such projects may not exceed 75 percent of their total cost.

"(2) There is authorized to be appropriated such sums as may be necessary to implement the provisions of this section."

SEC. 6506. TRIBAL GOVERNMENT ENERGY ASSISTANCE PROGRAM.—(a) FINANCIAL ASSISTANCE.—The Secretary, pursuant to the Federal Nonnuclear Energy Research and Development Policy Act (Pub. L. No. 93-577), may grant financial assistance to tribal governments, or private sector persons working in cooperation with tribal governments, to carry out projects to evaluate the feasibility of, develop options for, and encourage the adoption of energy efficiency and renewable energy projects on tribal lands. Such grants may include the costs of technical assistance in resource assessment, feasibility analysis, technology transfer, and the resolution of other technical, financial or management issues identified by the applicants for such grants.

(b) CONDITIONS.—Any applicant for financial assistance under this section must evidence coordination and cooperation with, and support from, local educational institutions and the affected local energy institutions.

(c) CONSIDERATIONS.—In determining the amount of financial assistance to be provided for a proposed project, the Secretary shall consider—

(1) the extent of involvement of local educational institutions and local energy institutions;

(2) the ease and costs of operation and maintenance of any project contemplated as a part of the project;

(3) whether the measure will contribute significantly to development or the quality of the environment of the affected tribal lands; and

(4) any other factors which the Secretary may determine to be relevant to a particular project.

(d) COST-SHARE.—The Secretary shall require at least 20 percent of the costs of any project under this section to be provided from non-Federal sources, unless the grant recipient is a for-profit private sector institution, in which case the Secretary shall require at least 50 percent of the costs of any project to be provided from non-Federal sources.

(e) DEFINITION.—For the purposes of this Section, the term "tribal government" shall include Native Alaskan governments.

SEC. 6507. STATE ENERGY CONSERVATION PLAN REQUIREMENT.—Section 362 (c)(5) of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended by striking the semicolon and the word "and" and inserting in lieu thereof the following:

"and to turn such vehicle left from a one-way street onto a one-way street at a red stop light after stopping; and"

Subtitle F—LIHEAP Options Pilot Program

SEC. 6601. SHORT TITLE.—This subtitle may be cited as the "Energy Options Study Act of 1991."

SEC. 6602. STUDY.—(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Energy, shall conduct a study of the potential use of LIHEAP funds to pur-

chase futures or options contracts for fuel through registered commodities brokers.

(1) The study shall examine any potential advantages of the use of such funds including—

(A) protection for Federal, State and local government entities which provide low-income fuel assistance from unanticipated surges in the price of fuel for residential use;

(B) more efficient use of such funds; and

(C) more fuel assistance for low-income persons without an increase in Federal expenditures.

(2) The study shall examine any potential disadvantages of the use of such funds including reduction in funds available for fuel assistance, and waste, fraud, or abuse.

(3) The study shall further examine—

(A) the extent to which new authority would be needed for the use of such funds;

(B) the extent to which the use of such funds would conflict with existing law governing the Federal budget;

(C) the extent to which the use of futures and options on futures could provide effective protection for consumer cooperatives (or any organization whose purpose is to purchase fuel in bulk for residential use) from unanticipated surges in the price of fuel; and

(D) how government entities and consumer cooperatives or other organizations referred to in subparagraph (C) of this section could be educated in the prudent use of futures and options on futures to maximize their purchasing effectiveness and protect themselves against unanticipated surges in the price of fuel for residential use.

(b) REPORT.—The Secretary, no later than 12 months after the date of enactment of this Act, shall transmit the study required in this section to the Committee on Labor and Human Resources of the United States Senate, the Committee on Energy and Natural Resources of the United States Senate, and the United States House of Representatives.

SEC. 6603. AUTHORITY FOR PILOT PROGRAMS.—(a) PILOT PROGRAM.—The Secretary, in consultation with the Secretary of Energy, may conduct a pilot program in cooperation with one or more governmental or tribal recipients of funds in which the recipient uses futures and options on futures in its fuel assistance program with the advice of the Secretary.

(b) EDUCATION.—The Secretary, in consultation with the Secretary of Energy, may conduct a pilot program to educate governmental entities and consumer cooperatives or other organizations referred to in subparagraph (a)(3)(C) of section 6602 of this subtitle on the prudent and effective use of futures and options on futures to increase their protection against unanticipated surges in the price of fuel and thereby increase the efficiency of their fuel purchase or assistance programs.

(c) AUTHORIZATION.—There is authorized to be appropriated for fiscal years 1992, 1993, and 1994, such sums as may be necessary to carry out the purposes of this section.

SEC. 6604. DEFINITIONS.—For purposes of this subtitle the terms—

(1) "Secretary" means the Secretary of Health and Human Services.

(2) "LIHEAP funds" means funds appropriated under the Low-Income Energy Assistance Act of 1981 (Pub. L. No. 97-35; 42 U.S.C. 8621 *et. seq.*)"

TITLE VII—OIL AND GAS LEASING IN THE ARCTIC NATIONAL WILDLIFE REFUGE

Subtitle A—Statement of Purpose and Definitions

SEC. 7101. PURPOSE AND POLICY.—The Congress hereby declares that it is the purpose and policy of this title—

(a) to authorize competitive oil and gas leasing and development to proceed on the Coastal Plain in a manner consistent with protection of the environment, maintenance of fish and wildlife and their habitat, and the interests of the area's subsistence users; and

(b) to provide a new source of funding for energy related programs and projects designed to enhance the Nation's energy security and reduce dependence on imported oil.

SEC. 7102. DEFINITIONS.—When used in this title the term—

(a) "Coastal Plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated August 1980, as referenced in section 1002(b) of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142(b)(1)) comprising approximately one million five hundred forty-nine thousand acres; and

(b) "Secretary" means the Secretary of the Interior or the Secretary's designee.

Subtitle B—Congressional Determination of Compatibility

SEC. 7201.—CONGRESSIONAL DETERMINATION.—Congress hereby determines that oil and gas activities authorized and conducted on the Coastal Plain pursuant to this title so as to result in no significant adverse effect on fish and wildlife, their habitat, and the environment, shall be deemed to be compatible with the major purposes for which the Arctic National Wildlife Refuge was established and no further findings or determinations of compatibility by the Secretary under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd(d)(1)(A)) are required to implement this Congressional determination.

Subtitle C—Coastal Plain Competitive Leasing Program

SEC. 7301. LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN.

(a) The Congress hereby authorizes and directs the Secretary and other appropriate Federal officers and agencies to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain. Activities pursuant to such program shall be undertaken:

(1) in accordance with the standards for protection of the environment as required by subtitle D of this title; and

(2) in a manner to ensure the receipt of fair market value by the public for the mineral resources to be leased.

(b) This title shall be the sole authority for leasing on the Coastal Plain.

(c) The Coastal Plain shall be considered "Federal land" for the purposes of the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. No. 97-451, as amended; 30 U.S.C. 170 *et seq.*).

SEC. 7302. RULES AND REGULATIONS.

(a) **PROMULGATION.**—The Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this title, including rules and regulations relating to protection of the environment of the Coastal Plain, as required by subtitle D of this title. Such rules and

regulations shall be promulgated within nine months after the date of enactment of this title and shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this title and all operations on the Coastal Plain related to the exploration, development and production of oil and gas.

(b) **CONSIDERATION OF VIEWS AND CONSULTATION.**—In the formulation and promulgation of rules and regulations under this title, the Secretary shall request and give due consideration to the views of appropriate officials of the State of Alaska and the Government of Canada. The Secretary shall also consult with the Environmental Protection Agency and the Army Corps of Engineers in developing rules and regulations relating to the environment.

(c) **REVISION OF REGULATIONS.**—The Secretary shall periodically review and, if appropriate, revise the rules and regulations issued under subsection (a) of this section to reflect any significant biological, environmental, or engineering data which come to the Secretary's attention.

SEC. 7303. ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT.

(a) **IN GENERAL.**—The "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142), and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), is hereby found by the Congress to be adequate to satisfy the legal requirements under the National Environmental Policy Act of 1969 with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this title prior to conducting the first lease sale.

(b) **APPLICABILITY OF NEPA.**—Except as provided in subsection (a) of this section, nothing in this title shall be considered or construed as otherwise limiting or affecting in any way the applicability of section 102(2)(C) of the National Environmental Policy Act of 1969 to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by this title, nor shall anything in this title be considered or construed as in any way limiting or affecting the applicability of any other Federal or State law relating to the protection of the environment.

SEC. 7304. LEASE SALES.

(a) **ELIGIBILITY.**—Lands may be leased pursuant to the provisions of this title to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended (30 U.S.C. 181).

(b) **PROCEDURES.**—The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion from, a lease sale;

(2) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale;

(3) review by the State of Alaska and local governments in Alaska which may be impacted by the proposed leasing; and

(4) periodic consultation with the State of Alaska and local governments in Alaska, oil and gas lessees, and representatives of other individuals or organizations engaged in activity in or on the Coastal Plain including

those involved in subsistence uses and recreational activities.

(c) **LEASE SALES ON COASTAL PLAIN.**—The Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process provided for in subsection (b) of this section. For the first lease sale, the Secretary shall, consistent with the requirements set forth in subtitle D of this title, offer for lease those acres receiving the greatest number of nominations, but not to exceed a total of three hundred thousand acres. If the total acreage nominated is less than three hundred thousand acres, he shall include in such sale any other acreage which he believes has the highest resource potential, but in no event shall more than three hundred thousand acres of the Coastal Plain be offered in such sale. Thereafter, no more than three hundred thousand acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease sale shall be held thirty-six months after the initial sale, with additional sales conducted every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

(d) **EXCLUSION OF ENVIRONMENTALLY SENSITIVE AREAS.**—Areas of the Coastal Plain deemed by the Secretary to be of particular environmental sensitivity may be excluded from leasing by the Secretary. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives ninety days in advance of excluding any such areas from leasing. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, the Secretary shall, consistent with the provisions of subsection (c) of this section, offer such lands for leasing.

SEC. 7305. GRANT OF LEASES BY THE SECRETARY.

(a) **IN GENERAL.**—The Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.

(b) **COMPLIANCE WITH PRIOR LEASE REQUIREMENTS.**—The Secretary shall not issue a lease or leases or approve the assignment or sublease of any lease or leases under the terms of this title to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established for any prior oil and gas lease to which such requirements and standards applied under this or any other Federal law. Prior to making such determination with respect to any such entity the Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial ap-

peal is pending. Once the entity has complied with the reclamation requirement or other standard concerned, the Secretary may issue an oil and gas lease to the entity under this title.

(c) **ANTITRUST REVIEW.**—(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease would create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse to accept an otherwise qualified bid for such lease, or refuse to issue such lease, notwithstanding subsection (a) of this section; or

(B) modify or impose terms or conditions on the lease, consistent with advice provided by the Attorney General.

(4) The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if the Secretary makes specific findings that approval of the lease is necessary to carry out the purposes of this title, that approval is consistent with the public interest, and that there are no reasonably available alternatives that would have significantly less anticompetitive effects. In such event, the Secretary must notify the lessee and the Attorney General of such findings.

(5) Nothing in this subsection shall restrict the authority of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(d) **SECRETARY'S APPROVAL FOR SALE, EXCHANGE, ASSIGNMENT, OR OTHER TRANSFER OF LEASES.**—No lease issued under this title may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

(e) **NO ANTITRUST IMMUNITY OR DEFENSES.**—Nothing in this title shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(f) **DEFINITIONS.**—As used in this section, the term—

(1) "antitrust review" shall be deemed an "antitrust investigation" for the purposes of the Antitrust Civil Process Act (15 U.S.C. 1311); and

(2) "antitrust laws" means those Acts set forth in section 1 of the Clayton Act, 15 U.S.C. 12, as amended.

SEC. 7306. LEASE TERMS AND CONDITIONS.

An oil and gas lease issued pursuant to this title shall—

(a) be for a tract consisting of a compact area not to exceed two thousand five hundred sixty acres, or four surveyed or protracted sections, whichever is larger, which shall be as compact in form as possible; *Provided*, That the Secretary is authorized to lease on a case-by-case basis units of up to three thousand eight hundred forty acres when necessary to consolidate partial tracts adjacent to the external boundaries of the Coastal Plain;

(b) be for an initial period of ten years and shall be extended for so long thereafter as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or for so long as drilling or reworking operations, as approved by the Secretary, are conducted on the lease or unit area;

(c) require the payment of royalty as provided for in section 7305 of this title;

(d) require approval of an exploration plan, as provided for in section 7307 of this title;

(e) require approval of a development and production plan, as required in section 7307 of this title;

(f) require posting of bond required by section 7308 of this title;

(g) provide for the suspension of the lease during the initial lease term or thereafter pursuant to section 7309 of this title;

(h) provide for the cancellation of the lease during the initial lease term or thereafter pursuant to section 7310 of this title;

(i) contain the terms and conditions relating to protection of fish and wildlife, their habitat, and the environment, as required by subtitle D of this title;

(j) forbid the flaring of natural gas from any well unless the Secretary finds that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations;

(k) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(l) contain such other provisions as the Secretary determines necessary to ensure compliance with the provisions of this title and the regulations issued thereunder.

SEC. 7307. EXPLORATION AND DEVELOPMENT AND PRODUCTION PLANS.

(a) **EXPLORATION PLANS.**—All exploration activities pursuant to any lease issued or maintained under this title shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this title, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with the provisions of this title and other applicable law.

(b) **OIL AND GAS DEVELOPMENT AND PRODUCTION PLANS.**—All development and produc-

tion pursuant to a lease issued or maintained pursuant to this title shall be conducted in accordance with an approved development and production plan. Prior to commencing development or production pursuant to any oil and gas lease issued or maintained under this title, the holder thereof shall submit a development and production plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with the provisions of this title and other applicable law.

(c) **REQUIREMENTS APPLICABLE TO EXPLORATION PLANS AND DEVELOPMENT AND PRODUCTION PLANS.**—Exploration plans and development and production plans shall include where applicable—

(1) the names and legal addresses of the following persons: the operator, contractors, subcontractors and the owners or lessees other than the operator;

(2) a map or maps showing: (A) the location of a point of reference selected by the operator within the area covered by the plan of operations showing, in relation to that point, existing and proposed access routes or roads within the area, the boundaries of proposed surface disturbance and location of all survey lines; (B) the location of proposed drilling sites, wellsite layout, and all surface facilities; (C) sources of construction materials within the area including but not limited to gravel; and (D) the location of ancillary facilities including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips. A point of reference selected by the operator within the area of operations shall be marked with a ground monument;

(3) a description of: (A) all surface and ancillary facilities, including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips; and (B) the major equipment to be used in the operations, including but not limited to equipment and methods for the transport of all waters used in or produced by operations, and of the proposed method of transporting such equipment within the area covered by the plan of operations including to and from the site;

(4) an estimated schedule for any phase of operations of which review by the Secretary is sought and the anticipated date of operation completion;

(5) the nature and extent of proposed operations;

(6) plans for reclamation, including:

(A) the anticipated reclamation work to be performed;

(B) a proposed schedule of reclamation activities to be performed; and

(C) a detailed estimate of reclamation costs;

(7) methods for disposal of all wastes and hazardous and toxic substances;

(8) an affidavit stating that the operations planned will be in compliance with all applicable Federal, State, and local laws and regulations;

(9) contingency plans in case of spills, leaks, or other accidents; and

(10) such additional information as may be required by the Secretary to ensure that the proposed activities are consistent with this title, as well as other applicable Federal and State environmental laws.

(d) **PROCEDURES FOR PLAN APPROVAL.**—(1) After an exploration or development and pro-

duction plan is submitted for approval, the Secretary shall promptly publish notice of the submission and availability of the text of the proposed plan in the Federal Register and a newspaper of general circulation in the State of Alaska and provide an opportunity for written public comment.

(2) Within one hundred twenty days after receiving an exploration or development and production plan, the Secretary shall determine, after taking into account any comment received under paragraph (1) of this subsection, whether the activities proposed in the plan are consistent with this title and other applicable provisions of Federal and State law. If that determination is in the affirmative, the Secretary shall return the plan along with a statement of any modifications necessary for its approval. The Secretary, as a condition of approving any plan under this section—

(A) may require modifications to the plan that the Secretary considers necessary or appropriate to make it consistent with this title and other applicable law. The Secretary shall assess reasonable fees or charges for the reimbursement of all necessary and reasonable research, administrative, monitoring, enforcement, and reporting costs associated with reviewing the plan and monitoring its implementation; and

(B) shall require such periodic reports regarding the carrying out of the drilling and related activities as may be necessary or appropriate for purposes of determining the extent to which the plan is being complied with and the effectiveness of the plan in ensuring that the drilling and related activities are consistent with this title and other applicable provisions of Federal and State law.

(e) **MODIFICATION OF PLANS.**—If at any time while activities are being carried out under a plan approved under this section, the Secretary, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish or wildlife, their habitat, or the environment, the Secretary, after consultation with the lessee shall—

(1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect;

(2) temporarily suspend part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid such significant adverse effect; or

(3) terminate and cancel the plan where actions under paragraphs (1) or (2) will not avoid the significant adverse effect.

SEC. 7308. BONDING REQUIREMENTS.

(a) **REQUIREMENT FOR BOND, SURETY, OR OTHER FINANCIAL ARRANGEMENT.**—The Secretary shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. Such bond, surety, or financial arrangement is in addition to and not in lieu of any bond, surety, or financial arrangement required by any other regulatory authority or required by any other provision of law.

(b) **AMOUNT OF BOND, SURETY, OR OTHER FINANCIAL ARRANGEMENT.**—The bond, surety, or financial arrangement shall be in an amount:

(1) to be determined by the Secretary to provide for reclamation of the lease site in accordance with an approved or revised exploration or development and production plan; plus

(2) an amount set by the Secretary consistent with the type of operations proposed, to provide the means for rapid and effective cleanup, and to minimize damages resulting from an oil spill, the escape of gas, refuse, domestic wastewater, hazardous or toxic substances, or fire caused by oil and gas activities.

(c) **ADJUSTMENT OF BOND TO CONFORM TO REVISED PLAN.**—In the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond, surety, or other financial arrangement to conform to such modified plan.

(d) **DURATION OF BOND, SURETY, OR OTHER FINANCIAL ARRANGEMENT.**—The responsibility and liability of the lessee and its surety under the bond, surety, or other financial arrangement shall continue until such time as the Secretary determines that there has been compliance with the terms and conditions of the lease and all applicable law.

(e) **TERMINATION OF LIABILITY.**—Within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary, after consultation with affected Federal and State agencies, shall notify the lessee that the period of liability under the bond, surety, or other financial arrangement has been terminated.

SEC. 7309. LEASE SUSPENSION.

The Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this title: (1) in the interest of conservation of the resource; (2) where there is no available system to transport the resource; or (3) where there is a threat of a significant adverse effect upon fish or wildlife, their habitat or the environment. If such a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

SEC. 7310. LEASE CANCELLATION.

(a) **CANCELLATION OF NONPRODUCING LEASE.**—Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this title, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this title, such lease may be canceled by the Secretary if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at the lease owner's record post office address.

(b) **CANCELLATION OF PRODUCING LEASE.**—Whenever the owner of any producing lease fails to comply with any of the provisions of this title, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this title, such lease may be forfeited and canceled by any appropriate proceeding brought by the Secretary in any United States district court having jurisdiction under the provisions of this title.

(c) **ADDITIONAL PROVISIONS.**—(1) In addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be canceled at any time, if the Secretary determines, after a hearing, that—

(A) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment, or is likely to result in serious harm or damage to human life, to property, or to the national security or defense; and

(B) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or the threat of harm or damage will not disappear or decrease to any acceptable extent within a reasonable period of time.

(2) Such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

(3) Cancellation under this subsection shall entitle the lessee to receive such compensation as the lessee demonstrates to the Secretary to be equal to the lesser of (A) the fair market value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including the costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oil spill or spill of other hazardous or toxic materials, fines, damages, penalties, or removal costs assessed pursuant to section 7315 of this title, and all other costs reasonably anticipated on the lease; or (B) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to the date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee (exclusive of any fines, damages, penalties, or removal costs assessed pursuant to section 7315 of this title or other State or Federal environmental laws, and any fees paid pursuant to section 7503 of this title) after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement).

(d) **EFFECT OF CANCELLATION ON RECLAMATION OBLIGATIONS.**—Cancellation of a lease under this section shall in no way release the owner of the lease from the obligation to provide for reclamation of the lease site.

SEC. 7311. ASSIGNMENT OR SUBLETTING OF LEASES.

No lease issued under the authority of this title shall be assigned or sublet, except with the consent of the Secretary.

SEC. 7312. RELINQUISHMENT.

The lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this title. The Secretary shall accept the relinquishment by the lessee of any lease issued under this title where there has not been surface disturbance on the lands covered by the lease.

SEC. 7313. UNITIZATION.

For the purpose of conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof and in order to avoid the unnecessary duplication of facilities, to protect the environment of the Coastal Plain, and to protect correlative rights, the Secretary shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or

unit plan of development for operation of such pool, field, or like area, or any part thereof. The Secretary is also authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage.

SEC. 7314. OIL AND GAS INFORMATION.

(a) IN GENERAL.—(1) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this title shall provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(2) If interpreted information provided pursuant to paragraph (1) of this subsection is provided in good faith by the lessee or permittee, such lessee or permittee shall not be responsible for any consequence of the use or of reliance upon such interpreted information.

(3) Whenever any data or information is provided to the Secretary, pursuant to paragraph (1) of this subsection—

(A) by a lessee or permittee, in the form and manner of processing which is utilized by such lessee or permittee in the normal conduct of business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(B) by a lessee or permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information.

(b) REGULATIONS.—The Secretary shall prescribe regulations to: (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained; and (2) set forth the time periods and conditions which shall be applicable to the release of such information.

SEC. 7315. REMEDIES AND PENALTIES.

(a) IN GENERAL.—Except as provided in section 7316 of this title, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under this title. Proceedings may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located.

(b) ACTIONS FOR RELIEF.—At the request of the Secretary, the Attorney General or a United States Attorney shall institute a civil action in the district court of the United States for the district in which any defendant resides or may be found, or in the judicial district in which the Coastal Plain is located, for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this title, any regulation or order issued under this title, or any term of a lease issued pursuant to this title.

(c) CIVIL PENALTIES.—If any person fails to comply with any provision of this title, or any term of a lease issued pursuant to this title, or any regulation or order issued under this title, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary may assess, collect and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

(d) CRIMINAL PENALTIES.—Any person who knowingly and willfully: (1) violates any provision of this title, any term of a lease issued pursuant to this title, or any regulation or order issued under the authority of this title designed to protect health, safety, or the environment or conserve natural resources; (2) makes any false statement, representation, or certification in any application, record, report or other document filed or required to be maintained under this title; (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this title; or (4) reveals any data or information required to be kept confidential by this title, shall, upon conviction, be punished by a fine pursuant to Title 18 of the United States Code, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

(e) LIABILITY OF CORPORATE OFFICERS AND AGENTS FOR VIOLATIONS BY CORPORATION.—Whenever a corporation or other entity is subject to prosecution under subsection (d) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (d) of this section.

(f) CONCURRENT AND CUMULATIVE NATURE OF PENALTIES.—The remedies and penalties prescribed in this title shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this title shall be in addition to any other remedies and penalties afforded by any other law or regulation.

(g) REMOVAL COSTS AND LIABILITY FOR DAMAGES.—Notwithstanding any other provision of law, if any discharge or substantial threat of discharge of oil, hazardous or toxic substances, or any other pollutant has occurred in any area of the Coastal Plain or adjacent waters, each responsible party shall be jointly, severally, and strictly liable for the removal costs and damages specified in this subsection that result from such incident. The Secretary shall make a determination with respect to such liability after notice to the responsible party and an opportunity for hearing. Upon failure of the responsible party adequately to control and remove the discharge or threat, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with the responsible party, or both, shall have the right to accomplish the control and removal at the expense of the responsible party. Funds contained in the Coastal Plain Liability and Reclamation Fund, provided for by section 7503 of this title, may be used to accomplish such control and removal until such time as sufficient funds can be recovered from the responsible party. The removal costs and damages referred to in this subsection are the following—

(1) all necessary removal costs as determined by the Secretary;

(2) damages for injury to, destruction of, loss of, and reclamation of natural resources, including the reasonable costs of assessing such injury, destruction, loss or reclamation; and

(3) damages for economic loss resulting from injury to, or destruction of, real or per-

sonal property or natural resources, and loss of subsistence use of natural resources by local residents. Nothing in this section shall affect or limit the applicability of any other provision of law relating to the discharge of oil, hazardous or toxic substances, or any other pollutant.

SEC. 7316. EXPEDITED JUDICIAL REVIEW.

Any complaint filed seeking judicial review of an action of the Secretary in promulgating any regulation under this title may be filed only in the United States Court of Appeals for the District of Columbia, and such complaint shall be filed within ninety days from the date of such promulgation, or after such date if such complaint is based solely on grounds arising after such ninth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Any complaint seeking judicial review of any other actions of the Secretary under this title may be filed in any appropriate district court of the United States, and such complaint must be filed within ninety days from the date of the action being challenged, or after such date if such complaint is based solely on grounds arising after such ninth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Action of the Secretary with respect to which review could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

SEC. 7317. ANNUAL REPORT TO CONGRESS.

On March 1st of each year following the date of enactment of this title, the Secretary shall prepare and submit to the Congress an annual report on the leasing program authorized by this title.

SEC. 7318. INTERESTS OF THE INUPIAT ESKIMO PEOPLE.

(a) OUTSIDE OF THE COASTAL PLAIN.—The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge, but outside the Coastal Plain, are hereby repealed.

(b) WITHIN THE COASTAL PLAIN.—The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Inupiat Eskimo people within the Coastal Plain are hereby repealed as of the day after the first lease sale is held pursuant to this title. With respect to the lands and interests therein described in this subsection, no exploratory drilling activities shall be authorized until the day after such lease sale.

(c) APPLICABILITY OF ENVIRONMENTAL REGULATIONS.—The substantive provisions of the final regulations issued pursuant to this title which establish environmental stipulations, terms and conditions for oil and gas leasing on the Coastal Plain shall apply to the exploration and development of all subsurface property interests owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge: *Provided*, That prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in subsection (a), shall be governed by the stipulations set forth in Appendix 2 of the August 9,

1983 agreement between the Arctic Slope Regional Corporation and the United States.

(d) LITIGATION OF CLAIMS.—Any claims for money damages or other available relief brought by Arctic Slope Regional Corporation or Kaktovik Inupiat Corporation alleging that the provisions of this title constitute a taking of contract or property rights under the Fifth Amendment to the Constitution of the United States may be brought within 120 days of its enactment. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceedings in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any claim whether in a proceeding instituted prior to or on or after the date of enactment of this title. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

Subtitle D—Coastal Plain Environment Protection

SEC. 7401. NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.

(a) IN GENERAL.—The Secretary shall administer the provisions of this title through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions that ensure the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, and that shall require the application of the best commercially available technology for oil and gas exploration, development, and production, on all new exploration, development, and production operations, and whenever practicable, on existing operations.

(b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—The Secretary shall also require, with respect to any proposed drilling and related activities, that—

(1) a site-specific analysis be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment;

(2) a mitigation plan be implemented to avoid, minimize and compensate (in that order and to the extent practicable) any significant adverse effect assessed under paragraph (1) of this subsection; and

(3) the development of the mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

SEC. 7402. REGULATIONS TO PROTECT THE COASTAL PLAIN'S FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS, AND THE ENVIRONMENT.

(a) IN GENERAL.—Prior to implementing the leasing program authorized by subtitle C of this title, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken in the Coastal Plain authorized by this title are conducted in a manner consistent with the purposes and environmental requirements of this title.

(b) COMPLIANCE WITH FEDERAL AND STATE ENVIRONMENTAL LAWS AND OTHER REQUIREMENTS.—The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by subtitle C of this title shall require compliance with all applicable provisions of Federal and State environmental law and shall also require:

(1) as a minimum, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) that exploration activities, except for surface geological studies, be limited to the period between approximately November 1 and May 1 and that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods; *Provided*, That such exploration activities may be permitted at other times if the Secretary determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and he finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain;

(4) design safety and construction standards for all pipelines and any access and service roads that—

(A) minimize, to the maximum extent possible, adverse effects upon the passage of migratory species such as caribou; and

(B) minimize adverse effects upon the flow of surface water by requiring the use of culverts, bridges and other structural devices;

(5) prohibitions on public access and use on all pipeline access and service roads;

(6) stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this title, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations; *Provided*, That the Secretary may exempt those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate prohibitions or restrictions on access by all modes of transportation;

(8) appropriate prohibitions or restrictions on sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate prohibitions or restrictions on use of explosives;

(11) avoidance, to the extent practicable, of springs, streams and river system; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) fuel storage and oil spill contingency planning;

(15) research, monitoring and reporting requirements;

(16) field crew environmental briefings;

(17) avoidance of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users;

(18) compliance with applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archeological resources; and

(21) all other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

(c) CONSIDERATIONS.—In preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider:

(1) the environmental protection standards which governed the initial Coastal Plain seismic exploration program (50 C.F.R. 37.31-33);

(2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in Appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States; and

(3) the operational stipulations for Koniag ANWR Interest lands contained in the draft Agreement between Koniag, Inc. and the United States of America on file with the Secretary on December 1, 1987.

SEC. 7403. SADLEROCHIT SPRING SPECIAL AREA.

(a) DESIGNATION AS SPECIAL AREA.—(1) The Sadlerochit Spring area, comprising approximately four thousand acres as depicted on the map referenced in section 7102 of this title, is hereby designated to be a Special Area. Such Special Area shall be managed so as to protect and preserve the area's unique and diverse character including its fish, wildlife, and subsistence resource values.

(2) Pursuant to subsection (d) of section 7304 of this title, the Secretary may exclude the Sadlerochit Spring Special Area from leasing.

(3) In the event that the Secretary leases the Sadlerochit Spring Special Area, or any part thereof, for purposes of oil and gas exploration, development, production, and related activities, there shall be no surface occupancy of the lands comprising the Special Area.

(b) DESIGNATION OF OTHER AREAS.—The Secretary is authorized to designate other areas of the Coastal Plain as Special Areas if the Secretary determines that they are of unique character and interest so as to require such special protection. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives of the Secretary's intent to designate such areas ninety days in advance of making such designations. Any such areas designated as Special Areas shall be managed in accordance with the standards set forth in subsection (a) of this section.

SEC. 7404. FACILITY CONSOLIDATION PLANNING.

(a) IN GENERAL.—The Secretary shall, after providing for public notice and comment, prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of

Coastal Plain oil and gas resources. This plan shall have the following objectives:

- (1) avoiding unnecessary duplication of facilities and activities;
- (2) encouraging consolidation of common facilities and activities;
- (3) locating or confining facilities and activities to areas which will minimize impact on fish and wildlife, their habitat, and the environment;
- (4) utilizing existing facilities wherever practicable; and
- (5) enhancing compatibility between wildlife values and development activities.

(b) **SUPPLEMENT TO ANILCA CONSERVATION PLANS.**—The plan prepared under this section shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2394).

SEC. 7405. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.—Notwithstanding Title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.), the Secretary is authorized to grant under section 28 of the Mineral Leasing Act (30 U.S.C. 185) rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication of roads and pipelines. The regulations issued pursuant to this title shall include provisions regarding the granting of rights-of-way across the Coastal Plain.

SEC. 7406. ENVIRONMENTAL STUDIES.—In addition to any other environmental studies required by law, subsequent to exploring or developing of any area or region of the Coastal Plain, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary, and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide information which can be used for comparison with any previously-collected data for the purpose of identifying any effects on fish or wildlife and their habitat and any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such effects or changes.

SEC. 7407. ENFORCEMENT OF SAFETY AND ENVIRONMENTAL REGULATIONS.—(A) **RESPONSIBILITY OF THE SECRETARY.**—The Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this title.

(b) **RESPONSIBILITIES OF HOLDERS OF LEASE.**—It shall be the responsibility of any holder of a lease under this title to—

- (1) maintain all operations within such lease area in compliance with regulations intended to protect persons and property on, and fish and wildlife, their habitat, and the environment of, the Coastal Plain; and
- (2) allow prompt access at the site of any operations subject to regulation under this title to any appropriate Federal or State inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) **ONSITE INSPECTION OF FACILITIES.**—The Secretary shall promulgate regulations to provide for—

(1) scheduled onsite inspection by the Secretary, at least twice a year, of each facility on the Coastal Plain which is subject to any environmental or safety regulation promulgated pursuant to this title or such provisions contained in any lease issued pursuant to this title to assure compliance with such environmental or safety regulations; and

(2) periodic onsite inspection by the Secretary at least once a year without advance notice to the operator of such facility to assure compliance with all environmental or safety regulations.

SEC. 7408. FUNDING FOR ENVIRONMENTAL MONITORING AND ENFORCEMENT.—Beginning with the first full fiscal year following the first lease sale pursuant to section 7304 of this title, and continuing annually thereafter until the tenth full fiscal year after oil and gas exploration, production and development activities on the Coastal Plain have ceased, there is hereby authorized to be appropriated to the Administrator of the Environmental Protection Agency (Administrator) the sum of \$5,000,000. The Administrator shall distribute annually to the State of Alaska not less than 25 percent of such amount. These moneys shall be used for activities, or in support of activities, within the State of Alaska by the Environmental Protection Agency and the State of Alaska for monitoring compliance with, and enforcing, all Federal environmental laws within their jurisdiction applicable to oil and gas exploration, development and production under this title, and monitoring compliance with, and enforcing, all such laws, with respect to owners, operators, and other persons having business in connection with leases granted pursuant to this title. For purposes of this section, all such Federal environmental laws shall include, but are not limited to, the Clean Air Act (42 U.S.C. 7401-7642), the Solid Waste Disposal Act (42 U.S.C. 6901-6987); the Federal Water Pollution Control Act (33 U.S.C. 1251-1376); the Comprehensive Environmental Response, Compensation, and Liability Act (26 U.S.C. 4611 et seq. and 42 U.S.C. 9601-9675); and the Safe Drinking Water Act (42 U.S.C. 300f-300j-9). The Administrator and the State of Alaska shall enter into a cooperative agreement to coordinate their responsibilities under this section. The Administrator shall consult with the U.S. Department of Transportation and the State of Alaska on the appropriate role of the State of Alaska in monitoring and enforcing the Hazardous Materials Transportation Act (49 App. U.S.C. 1801-1814). The Administrator shall submit annually a report to the Congress on the amount of funds expended and activities carried out pursuant to this section.

Subtitle E—Land Reclamation and Reclamation Liability Fund

SEC. 7501. LAND RECLAMATION.—The holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the leaseholder's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary.

SEC. 7502. STANDARD TO GOVERN LAND RECLAMATION.—The standard to govern the rec-

lamation of lands required to be reclaimed under this title, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and related activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary; except that in the case of roads, drill pads and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible using the best commercially available technology. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

SEC. 7503. COASTAL PLAIN LIABILITY AND RECLAMATION FUND.

(a) **ESTABLISHMENT.**—Within six months of a commercial discovery within the Coastal Plain, the Coastal Plain Liability and Reclamation Fund (the "Reclamation Fund") is hereby directed to be established by the Secretary.

(b) **COLLECTION OF FEES.**—The Secretary shall collect from the operator a fee of 5 cents per barrel on commercially produced crude oil or natural gas liquids from the Coastal Plain at the time and point where such crude oil or natural gas liquids first leave the Coastal Plain. The collection of the fee shall cease when \$50,000,000 has been accumulated in the Reclamation Fund, and it shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below \$45,000,000.

(c) **INVESTMENT OF FUND MONEYS.**—All revenues collected under subsection (b) shall be paid into the Reclamation Fund. The reasonable costs of administration of the Reclamation Fund shall be paid from the revenues in the Reclamation Fund. All sums not needed for administration of the Reclamation Fund or making authorized payments out of the Reclamation Fund shall be invested by the Secretary of the Treasury, at the request of the Secretary, in public debt securities with maturities suitable to the needs of the Reclamation Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Income from such securities shall be added to the principal of the Reclamation Fund.

(d) **USE OF FUND MONEYS.**—The revenues in the Reclamation Fund shall be available, to the extent provided in annual appropriations acts and with the approval of the Secretary, for the following purposes:

- (1) to compensate promptly any person or entity, public or private, for any damages caused by oil and gas exploration, development and production activities on or in the vicinity of the Coastal Plain;
- (2) to reclaim any area of the Coastal Plain not reclaimed in accordance with the standard set forth in section 7502 of this title, by the operator or the holder of a lease or leases;
- (3) up to \$15,000,000 annually to reclaim and restore:

(A) any area of the Arctic National Wildlife Refuge or other North Slope Federal lands affected by past and future oil and gas exploration, development, or production; and

(B) North Slope non-Federal lands affected by future exploration, development, or pro-

duction on the Coastal Plain, which are not reclaimed and restored in accordance with applicable Federal and State law;

(4) up to \$2,000,000 annually to the Director of the Fish and Wildlife Service to monitor and conduct research on fish and wildlife species which utilize the land and water resources of the Coastal Plain; and

(5) to reclaim at the conclusion of the period of exploration, development and production, any area of the Coastal Plain and related lands which have not been properly reclaimed by the operator or lease holder.

(e) **RECOVERY OF FUNDS.**—The United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover any funds expended under paragraphs (1), (2), (3) and (5) of this subsection due to a failure by the responsible party to reclaim such area as required by this title: *Provided*, That such right of recovery shall not be available against any Alaska Natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

(f) **TERMINATION OF FUND.**—Any moneys remaining in the Reclamation Fund fifty years after the period of active oil and gas exploration, development, production and reclamation has been concluded in the Coastal Plain shall be paid into the general fund of the United States Treasury.

Subtitle F—Disposition of Oil and Gas Revenues

SEC. 7601. DISTRIBUTION OF REVENUES.

Notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees (other than those collected pursuant to section 7307(d)(2)(A) or section 7503(b) of this title), interest charges or other income derived from the leasing of oil and gas resources within the Arctic National Wildlife Refuge, Alaska shall be distributed as follows:

- (a) 50 per centum to the State of Alaska; and
- (b) 50 per centum to the United States.

SEC. 7602. ENERGY SECURITY FUND.

(a) **IN GENERAL.**—(1) Revenues distributed to the United States pursuant to subsection 7601(b) of this title shall be deposited into a special account in the Treasury which shall be known as the Energy Security Fund. Revenues deposited in the Energy Security Fund may be expended solely for the purposes and in the manner provided for in this subtitle. Funds credited to the Energy Security Fund shall remain available until expended.

(2) The Secretary of the Treasury shall invest funds credited to the Energy Security Fund in public debt securities with maturities suitable to the needs of the Energy Security Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Income from such securities shall be added to the principal of the Energy Security Fund.

(b) **ENERGY SECURITY PROJECTS LIST.**—(1) Not later than 30 days after the date of enactment of this title, the Secretary of Energy shall initiate a process to identify and prepare a list, in descending order of priority, of energy-related projects or programs to enhance the Nation's energy security and reduce dependence on imported oil (hereinafter in this subtitle referred to as "the list"). In preparing the list, the Secretary of Energy shall consult with such govern-

mental or non-governmental entities or individuals as the Secretary deems necessary.

(2) Following notice and comment, the initial list shall be transmitted to the Congress as part of the first budget submitted by the President following the initial deposit of funds in the Energy Security Fund.

(3) Thereafter, annual revisions of the list shall be prepared and transmitted in accordance with paragraph 2.

(c) **PROJECTS.**—The list shall consist of specific projects or programs (including an estimate of the costs thereof) identified by the Secretary of Energy relating to: energy efficiency and conservation, energy efficiency in transportation, energy research, development demonstration and commercialization; fossil energy, including clean coal technology and oil and gas extraction, electrical energy transmission and generation; and renewable energy resources, such as solar, geothermal, and hydroelectric power.

(d) **CONSIDERATIONS.**—In identifying projects or programs for inclusion on the list, the Secretary of Energy shall give special consideration to those which—

- (1) minimize or reduce reliance on imported oil;
- (2) reduce energy costs to consumers;
- (3) enhance reliability of energy supplies and national security;
- (4) foster the commercialization of new energy technologies;
- (5) increase the efficient use of nonrenewable resources such as coal, natural gas, and oil;
- (6) have the least potential social costs and adverse impacts on the environment; and
- (7) enhance the diversification of the Nation's domestic energy supply.

(e) **NOTIFICATION.**—The Secretary of the Treasury shall notify the Congress and the Secretary of Energy on an annual basis as to the amounts available for allocation from the Energy Security Fund.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—Beginning with the first full fiscal year after funds are initially deposited into the Energy Security Fund pursuant to subsection (b), there are hereby authorized to be appropriated from the Energy Security Fund, such sums as may be necessary to carry out projects identified on the list.

SEC. 7603. FUNDING FOR ARCTIC RESEARCH PROGRAMS.

(a) **IN GENERAL.**—There is hereby authorized to be appropriated from the Energy Security Fund, for a period of five fiscal years commencing with the first full fiscal year after funds are initially deposited in the Energy Security Fund, not to exceed \$20,000,000 annually to be used to fund high priority arctic research projects and programs related to, among other things, understanding the long and short term effects of energy development and production activities on the arctic environment. To be eligible for funding under this section, the project or program must be identified in accordance with subsection (b).

(b) **ARCTIC RESEARCH PROJECTS LIST.**—(1) Not later than two years after the date of enactment of this title, the Chairman of the Interagency Arctic Research Policy Committee shall, with the concurrence of the Arctic Research Commission, prepare a list of arctic research projects and programs as described in subsection (a) which will be eligible for funding under this section.

(2) The list referred to in paragraph (1) shall be transmitted to the Congress as part of the first budget submitted by the President following the initial deposit of funds in the Energy Security Fund. Thereafter, revi-

sions of the list shall be prepared in accordance with paragraph (1) and transmitted to the Congress as part of the President's budget submission.

Subtitle G—Export Restrictions

SEC. 7701. CRUDE OIL EXPORT RESTRICTIONS.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, no crude oil produced from lands in the Coastal Plain (except any such crude oil which (1) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in subsection (b)(1)(B) of this section, (2) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and re-enters the United States, or (3) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under paragraphs (1) and (2), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to subsection (b) of this section.

(b) **EXCEPTIONS.**—Crude oil subject to the prohibition contained in subsection (a) may be exported only if—

(1) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(A) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(B) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(C) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(D) are clearly necessary to protect the national interest; and

(E) are in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.); and

(2) the President includes such findings in his recommendation to the Congress, and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(c) **EXPORT AGREEMENTS.**—Notwithstanding any other provision of this section or any other provision of law, the President may export oil produced from lands in the Coastal Plain to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such Nation before June 25, 1979, or to meet obligations of the United States under the International Energy Program in accordance with voluntary agreements or plans of action under section 252 of the Energy Policy and Conservation Act.

Subtitle H—Outer Continental Shelf Leasing
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Sec. 7801. PROHIBITION OF LEASING AND PRELEASING
ACTIVITY.

The Secretary shall not prepare for or conduct any preleasing or leasing activity under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), with respect to the area seaward from the State of California and the State of New Jersey until after January 1, 2000.

TITLE VIII—ADVANCED NUCLEAR
REACTOR COMMERCIALIZATION

SEC. 8101. SHORT TITLE.—This title may be cited as the "Civilian Advanced Nuclear Reactor Commercialization Act of 1991."

SEC. 8102. FINDINGS, PURPOSES, AND DEFINITIONS.—(a) FINDINGS.—Congress finds that—

(1) energy generated from nuclear fission now supplants the burning of fossil fuels in an economical fashion and contributes substantially to safe and reliable supplies of electricity while reducing the rate and scope of environmental pollution and reducing dependence on foreign energy sources; and

(2) it is in the national interest for the Federal Government to provide leadership in encouraging advanced nuclear reactor technologies so that such technologies may be adopted as needed.

(b) PURPOSES.—The purposes of this title are to—

(1) require the Secretary to carry out the Department's civilian nuclear programs in a way that will lead toward commercialization of advanced nuclear reactor technologies; and

(2) authorize such activities to ensure the timely availability of advanced nuclear reactor technologies, including technologies that utilize standardized designs or exhibit passive safety features.

(c) DEFINITIONS.—For purposes of this title, the term—

(1) "advanced nuclear reactor technologies" means—

(A) advanced light water reactors that may be commercially available in the near-term, including but not limited to mid-sized, passively-safe reactors, for the generation of commercial electric power from nuclear fission;

(B) other advanced nuclear reactor technologies that may require prototype demonstration prior to commercial availability in the mid- or long-term, including but not limited to high-temperature, gas-cooled reactors and liquid metal reactors, for the generation of commercial electric power from nuclear fission.

(2) "Commission" means the Nuclear Regulatory Commission;

(3) "Department" means the Department of Energy;

(4) "standardized design" means a design for a nuclear power plant that may be utilized for a multiple number of units or a multiple number of sites; and

(5) "certification" means approval by the Commission of a standardized design for a nuclear power plant.

SEC. 8103. PROGRAM, GOALS, AND PLAN.—(a) PROGRAM.—The Secretary shall carry out a comprehensive program in accordance with the provisions of this title to encourage the deployment of advanced nuclear reactor technologies that to the maximum extent practicable—

(1) are cost-effective in comparison to alternative sources of commercial electric power of comparable availability and reliability, including consideration of the impact on the rate and scope of global climate change;

(2) utilize modular construction techniques;

(3) facilitate design, licensing, construction, and operation of a nuclear power plant using a standardized design;

(4) exhibit enhanced safety features; and

(5) incorporate features that advance the objectives of the Nuclear Nonproliferation Act by discouraging diversion of fissile material for use in nuclear weapons.

(b) GOALS.—(1) The program authorized under subsection (a) shall be designed to accomplish the following goals—

(A) completion of necessary research and development and first-of-a-kind engineering on advanced light water reactor technologies that will support commercialization of these technologies by 1995;

(B) development and submission for certification by the Commission by 1995 of completed standardized designs for advanced light water reactor technologies that the Secretary determines exhibit some or all of the characteristics set forth in subsection (a);

(C) completion of necessary research and development on high-temperature gas-cooled reactor technology and liquid metal reactor technology that will support selection in 1996 of one or both of these two technologies, as appropriate, for prototype demonstration pursuant to section 8105; and

(D) commercialization of advanced reactor technologies capable of providing commercial electric power to a utility grid as soon as practicable but no later than the year 2010.

(2) The program authorized under subsection (a) shall be carried out to the maximum extent possible through cost-shared programs with the private sector.

(c) PROGRAM PLAN.—(1) Within 90 days after the date of enactment of this title, the Secretary shall prepare and submit to Congress a detailed five-year program plan to carry out the purposes of this title. The plan shall include schedule milestones, Federal funding requirements, and requirements for private sector cost-sharing necessary for meeting the goals of subsection (b).

(2) In preparing the plan, the Secretary shall take into consideration—

(A) the need for, and the potential for adoption in the future by electric utilities or other entities, of advanced nuclear reactor technologies that are available or under development for the generation of energy from nuclear fission;

(B) how the Federal Government, acting through the Secretary, can be effective in ensuring the availability of these advanced nuclear reactor technologies when they may be needed;

(C) how the Federal Government can work most effectively in cooperation with the private sector toward accomplishment of the goals laid out in subsection (b); and

(D) potential alternative funding sources for carrying out the purposes of this title.

(3) The plan under this section shall be updated annually, if necessary, to reflect any schedule slippage, funding shortfalls, or other circumstances that might impact the ability of the Secretary to fulfill the goals outlined in subsection (b).

(4) In preparing the plan required under this section, the Secretary shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Commission and other interested parties.

SEC. 8104. COMMERCIALIZATION OF ADVANCED LIGHT WATER REACTOR TECHNOLOGY.—(a) CERTIFICATION OF DESIGNS.—In order to

achieve the goal of certification of completed standardized designs by the Commission by 1995 as set forth in section 8103(b), the Secretary—

(1) shall conduct a program of technical and financial assistance to encourage the development and submission for certification of advanced light water reactor designs which, in the judgment of the Secretary, can be certified by the Commission by no later than the end of calendar year 1995;

(2) may enter into cooperative agreements with one or more private parties who agree to seek certification by the Commission of advanced light water reactor designs which further the purposes of section 8103(a); and

(3) may support through cost-shared agreements the engineering and research and development necessary to achieve certification of advanced light water reactor designs which further the purposes of section 8103(a).

(b) SECRETARY'S REPORT TO CONGRESS.—The Secretary shall transmit to Congress with its annual budget request a report describing progress in implementing this section and plans for the current and subsequent fiscal years.

(c) REPORT TO CONGRESS FROM THE COMMISSION.—The Commission shall transmit to Congress with its annual budget request a report describing progress in the certification of standardized advanced light water reactor designs, plans for the current and subsequent fiscal years, and resource requirements necessary to comply with the schedules established by the Commission.

SEC. 8105. PROTOTYPE DEMONSTRATION OF ADVANCED NUCLEAR REACTOR TECHNOLOGY.—

(a) SOLICITATION OF PROPOSALS.—(1) Within three years after the date of enactment of this title, the Secretary shall solicit proposals to carry out the preliminary engineering design of one or more prototype advanced nuclear reactor technologies (other than an advanced light water reactor) necessary to support a decision on whether to recommend construction of a full-scale prototype demonstration utilizing such a technology to achieve the purposes of this title.

(2) The engineering design proposals under paragraph (1) shall be for prototype advanced nuclear reactors that—

(A) to the maximum extent practicable, exhibit the characteristics set forth in section 8103(a); and

(B) are of sufficient size to address the requirements for certification by the Commission of a completed standardized design for an advanced nuclear reactor technology.

(b) RECOMMENDATION.—(1) No later than January 31, 1996, the Secretary shall make a recommendation to Congress on whether to build one or more full-scale prototype demonstration reactors utilizing advanced nuclear technology developed by the Department under the program authorized by this title.

(2) Any recommendation to build a prototype demonstration reactor shall—

(A) specify a preferred technology or technologies;

(B) include detailed information on schedule milestones for licensing, construction, and operation; and

(C) estimate the funding requirements and specify the extent and nature of anticipated non-federal support which shall be not less than 50 percent of the costs of such demonstration.

(3) As part of the recommendation required under this section, the Secretary shall also submit to Congress any recommended changes in Federal statute or regulations that would improve the prospects of success-

ful and timely licensing of any prototype demonstration reactor.

(c) **SELECTION OF TECHNOLOGY.**—Any technology selected by the Secretary for recommendation for prototype demonstration shall to the maximum extent possible exhibit the characteristics set forth in section 8103(a).

(d) **OPPORTUNITY FOR PUBLIC COMMENT.**—In developing the recommendation required under this section, the Secretary shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Commission and other interested parties.

(e) **SOLICITATION OF PROPOSALS FOR DEMONSTRATION.**—At any time after 180 calendar days after submission of the recommendation to Congress required under subsection (b), the Secretary, subject to appropriations, may solicit proposals to implement the recommendation.

SEC. 8106. AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this title.

TITLE IX—NUCLEAR REACTOR LICENSING

SEC. 9101. SHORT TITLE.—This title may be cited as the "Nuclear Reactor Licensing Act of 1991."

SEC. 9102. COMBINED LICENSES.—Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by—

(1) adding "and Operating Licenses" after "Permits" in the catchline;

(2) adding a subsection designator "a." before "All"; and,

(3) adding the following new subsection:

"b. After holding a public hearing under section 189a.(1)(A) of this Act, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall satisfy itself that the prescribed acceptance criteria are met."

SEC. 9103. POST-CONSTRUCTION HEARINGS ON COMBINED LICENSES.—Section 189a.(1) of the Atomic Energy Act of 1954 is amended by:

(1) adding a subparagraph designator "(A)" before "In" and

(2) adding the following new subparagraph: "(B)(1) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as con-

structed complies, or on completion will comply, with the acceptance criteria of the license.

"(ii) A request for hearing under this subparagraph shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

"(iii) After receiving a request for a hearing under this subparagraph, the Commission expeditiously shall either deny or grant the request. If a hearing is held, commencement of plant operation shall not be delayed pending a decision unless the Commission determines, after considering petitioners' prima facie showing and any answers thereto, that petitioners are likely to succeed on the merits and that there will not be reasonable assurance of adequate protection of the public health and safety.

"(iv) A hearing under this subparagraph shall be informal, but parties shall be allowed to offer evidence, under oath or affirmation. Discovery and cross-examination of witnesses shall not be permitted, unless the Commission determines that discovery, cross-examination, or other procedure is necessary to the resolution of a substantial dispute of material fact.

"(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 120 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A)."

SEC. 9104. RULEMAKING.—The Nuclear Regulatory Commission shall propose regulations implementing this title within one year of the date of enactment of this Act.

SEC. 9105. AMENDMENT OF A COMBINED LICENSE PENDING A HEARING.—Section 189a. (2) of the Atomic Energy Act of 1954 is amended by inserting "or any amendment to a combined construction and operating license" after "any amendment to an operating license" each time it occurs.

SEC. 9106. CONFORMING AMENDMENT.—The table of contents of the Atomic Energy Act of 1954 is amended by amending the item relating to section 185 to read as follows: "Sec. 185. Construction Permits and Operating Licenses."

SEC. 9107. EFFECT ON PENDING PROCEEDINGS.—The provisions of this title apply to all proceedings involving a combined license for which an application was filed after May 8, 1991.

TITLE X—URANIUM

Subtitle A—Uranium Enrichment

SEC. 10101. SHORT TITLE.—This subtitle may be cited as the "Uranium Enrichment Act of 1991."

SEC. 10102. DELETION OF SECTION 161V.—Section 161v. of the Atomic Energy Act of 1954, as amended, is deleted and the remaining subsections are relettered accordingly.

SEC. 10103. REDIRECTION OF THE URANIUM ENRICHMENT ENTERPRISE OF THE UNITED STATES.—The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011-2296) is further amended by—

(a) inserting at the commencement thereof after the words "ATOMIC ENERGY ACT OF 1954":

"TITLE I—ATOMIC ENERGY"; and

(b) adding at the end thereof the following:

"TITLE II—UNITED STATES ENRICHMENT CORPORATION "CHAPTER 21. FINDINGS

"SEC. 1101. FINDINGS.—The Congress of the United States finds that:

"a. The enrichment of uranium is essential to the national security and energy security of the United States.

"b. A competitive, well-managed and efficient enrichment enterprise provides important economic benefits to the United States and contributes to a highly favorable foreign trade balance.

"c. A strong United States enrichment enterprise promotes United States non-proliferation policies by requiring accountability for United States enriched uranium.

"d. The operation of uranium enrichment facilities must meet high standards for environmental health and safety.

"e. The operation and management of a uranium enrichment enterprise requires a commercial business orientation in order to engender customer support and confidence, and customers, rather than the taxpayers at large, should bear the costs of commercial uranium enrichment services.

"f. The optimal level of expenditures for the uranium enrichment enterprise fluctuates and cannot be accurately predicted or efficiently financed if subject to annual authorization and appropriation.

"g. Flexibility is essential to adapt business operations to a competitive marketplace.

"h. The events of the recent past, including the emergence of foreign competition, have brought new and unforeseen forces to bear upon the management and operation of the Government's uranium enrichment enterprise.

"i. The present operation of the uranium enrichment enterprise must be changed so as to further the national interest in the enterprise and respond to the competitive demand placed upon it by market forces, while continuing to meet the paramount objective of ensuring the Nation's common defense and security.

"CHAPTER 22. DEFINITIONS, ESTABLISHMENT OF CORPORATION AND PURPOSES

"SEC. 1201. DEFINITIONS.—For the purpose of this title:

"a. The term 'Secretary' means the Secretary of Energy.

"b. The term 'Department' means the Department of Energy of the United States.

"c. The term 'Administrator' means the chief executive officer of the United States Enrichment Corporation.

"d. The term 'Corporation' means the United States Enrichment Corporation.

"e. The term 'Corporate Board' means the appointed members of the official advisory panel appointed by the President pursuant to section 1503 of this title.

"f. The term 'uranium enrichment' means the separation of uranium of a given isotopic content into two components, one having a higher percentage of a fissile isotope and one having a lower percentage.

"g. The term 'remedial action' has the same meaning as defined in section 120(24) of the Comprehensive Environmental Response, Compensation and Liability Act.

"h. The term 'decontamination and decommissioning' means those activities undertaken to decontaminate and decommission inactive facilities that have residual radioactive or mixed radioactive and hazardous chemical contamination.

"SEC. 1202. ESTABLISHMENT OF THE CORPORATION.—

"a. There is hereby created a body corporate to be known as the 'United States Enrichment Corporation'.

"b. The Corporation shall—

"(1) be established as a wholly owned Government corporation subject to the Government Corporation Control Act, as amended (31 U.S.C. 9101-9109), except as otherwise provided herein; and

"(2) be an agency and instrumentality of the United States.

"SEC. 1203. PURPOSES.—The Corporation is created for the following purposes:

"a. to acquire feed material for uranium enrichment, enriched uranium, the Department's uranium previously set aside for commercial purposes, and the Department's uranium enrichment and related facilities;

"b. to operate, and as required by business conditions, to expand or construct facilities for uranium enrichment or both;

"c. to market and sell enriched uranium and uranium enrichment and related services to—

"(1) the Department for governmental purposes; and

"(2) qualified domestic and foreign persons;

"d. to conduct research and development as required to meet corporate objectives for the purpose of identifying, evaluating, improving and testing processes for uranium enrichment;

"e. to operate, as a commercial enterprise, on a profitable and efficient basis; in order to maximize the long term economic value of the Corporation to the United States Government including the payment of dividends to the Treasury as a return on the United States Government investment;

"f. to conduct the business as a self-financing corporation and eliminate the need for appropriations or other sources of Government financing after enactment of this title;

"g. to maintain a reliable and economical domestic source of enrichment services;

"h. to conduct its activities in a manner consistent with the health and safety of the public;

"i. to continue to meet the paramount objectives of ensuring the Nation's common defense and security (including consideration of United States policies concerning non-proliferation of atomic weapons and other nonpeaceful uses of atomic energy); and

"j. to take all other lawful action in furtherance of the foregoing purposes.

"CHAPTER 23. CORPORATE OFFICES

"SEC. 1301. CORPORATE OFFICES.—The Corporation shall maintain an office for the service of process and papers in the District of Columbia, and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. The Corporation may establish offices in such other place or places as it may deem necessary or appropriate in the conduct of its business.

"CHAPTER 24. POWERS AND DUTIES OF THE CORPORATION

"SEC. 1401. SPECIFIC CORPORATE POWERS AND DUTIES.—The Corporation—

"a. shall perform uranium enrichment or provide for uranium to be enriched by others at facilities of the Corporation; contracts in existence as of the date of enactment of this title between the Department and persons under contract to perform uranium enrichment and related services at facilities of the Department shall continue in effect as if the Corporation, rather than the Department, had executed these contracts;

"b. shall conduct, or provide for the conduct of, research and development activities related to the isotopic separation of uranium

as the Corporation deems necessary or advisable for purposes of maintaining the Corporation as a continuing, commercial enterprise operating on a profitable and efficient basis;

"c. may acquire or distribute enriched uranium, feed material for uranium enrichment or depleted uranium in transactions with—

"(1) persons licensed under sections 53, 63, 103, or 104 of title I in accordance with the licenses held by such persons;

"(2) persons in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I; or

"(3) as otherwise authorized by law;

"d. may—

"(1) enter into contracts with persons licensed under section 53, 63, 103, or 104 of title I for such periods of time as the Corporation may deem necessary or desirable, to provide uranium or uranium enrichment and related services; and

"(2) enter into contracts to provide uranium or uranium enrichment and related services in accordance with, and within the period of, an agreement for cooperation arranged pursuant to section 123 of title I or as otherwise authorized by law;

"e. shall sell to the Department as provided in this title, and without regard to section 57e, of title I or the provisions of section 1535 of title 31, United States Code, such amounts of uranium or uranium enrichment and related services as the Department may determine from time to time are required: (1) for the Department to carry out Presidential direction and authorizations pursuant to section 91 of title I; and (2) for the conduct of other Department programs;

"f. may grant licenses, both exclusive and nonexclusive, for the use of patent and patent applications owned by the Corporation, and establish and collect charges, in the form of royalties or otherwise, for utilization of Corporation-owned facilities, equipment, patents, and technical information of a proprietary nature pertaining to the Corporation's activities.

"SEC. 1402. GENERAL POWERS OF THE CORPORATION.—In order to accomplish the purposes of this title, the Corporation—

"a. shall have perpetual succession unless dissolved by Act of Congress;

"b. may adopt, alter, and use a corporate seal, which shall be judicially noticed;

"c. may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings;

"d. may indemnify the Administrator, officers, attorneys, agents and employees of the Corporation for liabilities and expenses incurred in connection with their corporate activities;

"e. may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the power granted to it by law may be exercised and enjoyed;

"f. (1) may acquire, purchase, lease, and hold real and personal property including patents and proprietary data, as it deems necessary in the transaction of its business, and sell, lease, grant, and dispose of such real and personal property, as it deems necessary to effectuate the purposes of this title and without regard to the Federal Property and Administrative Services Act of 1949, as amended;

"(2) Purchases, contracts for the construction, maintenance, or management and operation of facilities and contracts for supplies or services, except personal services, made by the Corporation shall be made after ad-

vertising, in such manner and at such times sufficiently in advance of opening bids, as the Corporation shall determine to be adequate to insure notice and an opportunity for competition; Provided, that advertising shall not be required when the Corporation determines that the making of any such purchase or contract without advertising is necessary in the interest of furthering the purposes of this title, or that advertising is not reasonably practicable;

"g. with the consent of the agency or government concerned, may utilize or employ the services or personnel of any Federal Government agency, or any State or local government, or voluntary or uncompensated personnel to perform such functions on its behalf as may appear desirable;

"h. may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;

"i. may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and other provisions of law specifically applicable to wholly-owned Government corporations;

"j. notwithstanding any other provision of law, and without need for further appropriation, may use monies, unexpended appropriations, revenues and receipts from operations, amounts received from obligations issued and other assets of the Corporation in accordance with section 1505, without fiscal year limitation, for the payment of expenses and other obligations incurred by the Corporation in carrying out its functions under, and within the requirements of, this title; and shall not be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

"k. may settle and adjust claims held by the Corporation against other persons or parties and claims by other persons or parties against the Corporation;

"l. may exercise, in the name of the United States, the power of eminent domain for the furtherance of the official purposes of the Corporation;

"m. shall have the priority of the United States with respect to the payment of debts out of bankrupt, insolvent, and decedents' estates;

"n. may define appropriate information as 'Government Commercial Information' and exempt such information from mandatory release pursuant to section 552(b)(3) of title 5, United States Code, when it is determined by the Administrator that such information if publicly released would harm the Corporation's legitimate commercial interests or those of a third party;

"o. may request, and the Administrator of General Services, when requested, shall furnish the Corporation such services as he is authorized to provide agencies of the United States;

"p. may accept gifts or donations of services, or of property, real, personal, mixed, tangible or intangible, in aid of any purposes herein authorized; and

"q. may execute, in accordance with its bylaws, rules and regulations, all instruments necessary and appropriate in the exercise of any of its powers.

"r. shall pay any settlement or judgment entered against it from the Corporation's

own funds and not from the Judgment Appropriation (31 U.S.C. 1304). The provisions of the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671 et seq.) shall not apply to any claims arising from the activities of the Corporation after the effective date of this statute; Provided, That this subsection shall not apply to liability or claims arising from a nuclear incident, if such incident occurs prior to the licensing of the Corporation's existing Gaseous Diffusion Facilities under Section 1601 of this title.

"SEC. 1403. CONTINUATION OF CONTRACTS, ORDERS, PROCEEDINGS AND REGULATIONS.—

"a. Except as provided elsewhere in this title, all contracts, agreements, and leases with the Department, and licenses, and privileges that have been afforded to the Department prior to the date of the enactment of this title and that relate to uranium enrichment, including all enrichment services contracts, power purchase contracts and the December 18, 1987 Settlement Agreement with the Tennessee Valley Authority regarding payment of capacity charges under the Department's two power contracts with the Tennessee Valley Authority, shall continue in effect as if the Corporation had executed such contracts, agreements, or leases or had been afforded such licenses and privileges.

"b. As related to the functions vested in the Corporation by this title, all orders, determinations, rules, regulations and privileges of the Department shall continue in effect and remain applicable to the Corporation until modified, terminated, superseded, set aside or revoked by the Corporation, by any court of competent jurisdiction, or by operation of law unless otherwise specifically provided in this title.

"c. Except as provided in section 1404, the transfer of functions related to and vested in the Corporation by this title shall not affect proceedings judicial or otherwise, relating to such functions which are pending at the time this title takes effect, and such proceedings shall be continued with the Corporation, as appropriate.

"SEC. 1404. LIABILITIES.—Except as provided elsewhere in this title, all liabilities attributable to operation of the uranium enrichment enterprise prior to the date of the enactment of this title shall remain direct liabilities of the Government of the United States; with regard to any claim seeking to impose such liability, section 1403 shall not be applicable and the United States shall be represented by the Department of Justice.

"CHAPTER 25. ORGANIZATION, FINANCE AND MANAGEMENT

"SEC. 1501. ADMINISTRATOR.—

"a. The management of the Corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation. The Administrator shall be a person who, by reason of professional background and experience is specially qualified to manage the Corporation; Provided, however, That upon enactment of this title, the President shall appoint an existing officer or employee of the United States to act as Administrator until the office is filled.

"b. The Administrator—

"(1) shall be the chief executive officer of the Corporation and shall be responsible for the management and direction of the Corporation. The Administrator shall establish the offices, appoint the officers and employees of the Corporation (including attorneys), and define their responsibilities and duties. The Administrator shall appoint other offi-

cers and employees as may be required to conduct the Corporation's business;

"(2) shall serve a term of six years but may be reappointed;

"(3) shall, before taking office, take an oath to faithfully discharge the duties thereof;

"(4) shall have compensation determined by the President based upon the recommendation of the Secretary and the Corporate Board as provided in section 1503 d., except that in the absence of such determination compensation shall be set at Executive Level I, as prescribed in section 5312 of title 5, United States Code;

"(5) shall be a citizen of the United States;

"(6) shall designate an officer of the Corporation who shall be vested with the authority to act in the capacity of the Administrator in the event of absence or incapacity; and

"(7) may be removed from office only by the President and only for neglect of duty or malfeasance in office. The President shall communicate the reasons for any such removal to both Houses of Congress at least 30 days prior to the effective date of such removal.

"c. (1) The Secretary shall exercise general supervision over the Administrator only with respect to the activities of the Corporation involving—

"(A) the Nation's common defense and security; and

"(B) health, safety and the environment.

"(2) The Administrator shall be solely responsible for the exercise of all powers and responsibilities that are committed to the Administrator under this title and that are not reserved to the Secretary under paragraph (1), and, notwithstanding the provisions of section 9104(a)(4) of title 31, United States Code, including the setting of the appropriate amount of, and paying, any dividend under section 1506 c. and all other fiscal matters.

"SEC. 1502. DELEGATION.—The Administrator may delegate to other officers or employees powers and duties assigned to the Corporation in order to achieve the purposes of this title.

"SEC. 1503. CORPORATE BOARD.—

"a. There is hereby established a Corporate Board appointed by the President which shall consist of five members, one of whom shall be designated as chairman. Members of the Corporate Board shall be individuals possessing high integrity, demonstrated accomplishment and broad experience in management and shall have strong backgrounds in science, engineering, business or finance. At least one member of the Corporate Board shall be, or previously have been, employed on a full-time basis in managing an electric utility.

"b. (1) The specific responsibilities of the Corporate Board shall be to:

"(A) review the Corporation's policies and performance and advise the Administrator and the Secretary on these matters; and

"(B) advise the Administrator and the Secretary on any other such matters concerning the Corporation as may be referred to the Corporate Board.

"(2) The Board shall have the right to recommend removal of the Administrator. In the event such recommendation is made, it shall be transmitted to the President by the Secretary, together with the Secretary's own recommendation on removal of the Administrator.

"c. Members of the Board shall be provided access to all significant reports, memoranda, or other written communications generated

or received by the Corporation. At the request of the Board, the Corporation shall make available to the Board all financial records, reports, files, papers and memoranda of, or in use by, the Corporation.

"d. When appropriate, the Corporate Board may make recommendations to the Secretary concerning the compensation to be received by the Administrator and the ten officers of the Corporation who may receive compensation in excess of Executive Level II as provided in section 1504 b. The Secretary shall transmit such recommendations to the President together with the Secretary's own recommendations concerning compensation. In the event that less than three members of the Corporate Board are in office, recommendations concerning compensation may be made by the Secretary alone. The President shall have the power to enter into binding agreements concerning compensation to be received by the Administrator during his term of office and by the ten officers described in section 1504 b. during their term of employment, regardless of any recommendation received or not received under this title.

"e. Except for initial appointments, members of the Corporate Board shall serve five-year terms. Each member of the Corporate Board shall be a citizen of the United States. No more than three members of the Board shall be members of any one political party. Of those first appointed, the chairman shall serve for the full five-year term; one member shall serve for a term of four years; one shall serve for a term of three years; one shall serve for a term of two years; and one shall serve for a term of one year.

"f. Upon expiration of the initial term, each Corporate Board member appointed thereafter shall serve a term of five years. Upon the occurrence of a vacancy on the Board, the President shall appoint an individual to fill such vacancy for the remainder of the applicable term. Upon expiration of a term, a Board member may continue to serve up to a maximum of one year or until a successor shall have been appointed and assumed office, whichever occurs first.

"g. The members of the Corporate Board in executing their duties shall be governed by the laws and regulations regarding conflicts of interest, but exempted from other provisions and authority prescribed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

"h. The Corporate Board shall meet at any time pursuant to the call of the Chairman and as provided by the bylaws of the Corporation, but not less than quarterly. The Administrator or his representative shall attend all meetings of the Corporate Board.

"i. The Corporation shall compensate members of the Corporate Board at a per diem rate equivalent to Executive Level III, as defined in section 5314 of title 5, United States Code, in addition to reimbursement of reasonable expenses incurred when engaged in the performance of duties vested in the Corporate Board. Any Corporate Board member who is otherwise a Federal employee shall not be eligible for compensation above reimbursement for reasonable expenses incurred while attending official meetings of the Corporation.

"j. (1) The Corporate Board shall report at least annually to the Administrator on the performance of the Corporation and the issues that, in the opinion of the Board, require the attention of the Administrator. Any such report shall include such recommendations as the Board finds appropriate. A copy of any report under this sub-

section shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the Speaker of the House of Representatives.

"(2) Within ninety days after the receipt of any report under this subsection the Administrator shall respond in writing to such report and provide an analysis of such recommendations of the Board contained in the report. Such response shall include plans for implementation of each recommendation or a justification for not implementing such recommendation. A copy of any response under this subsection shall be transmitted promptly to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the Speaker of the House of Representatives.

"SEC. 1504. EMPLOYEES OF THE CORPORATION.—

"a. Officers and employees of the Corporation shall be officers and employees of the United States.

"b. The Administrator shall appoint all officers, employees and agents of the Corporation as are deemed necessary to effect the provisions of this title without regard to any administratively imposed limits on personnel, and any such officer, employee or agent shall only be subject to the supervision of the Administrator. The Administrator shall fix all compensation in accordance with the comparable pay provisions of section 5301 of title 5, United States Code, with compensation levels not to exceed Executive Level II, as defined in section 5313 of title 5, United States Code; *Provided*, That the Administrator may, upon recommendation by the Secretary and the Corporate Board as provided in section 1503 d. and approval by the President, appoint up to ten officers whose compensation shall not exceed an amount which is 20 per centum less than the compensation received by the Administrator, but not less than Executive Level II. The Administrator shall define the duties of all officers and employees and provide a system of organization inclusive of a personnel management system to fix responsibilities and promote efficiency. The Corporation shall assure that the personnel function and organization is consistent with the principles of section 2301(b) of title 5, United States Code, relating to merit system principles. Officers and employees of the Corporation shall be appointed, promoted and assigned on the basis of merit and fitness, and other personnel actions shall be consistent with the principles of fairness and due process but without regard to those provisions of title 5 of the United States Code governing appointments and other personnel actions in the competitive service.

"c. Any Federal employee hired before January 1, 1984, who transfers to the Corporation and who on the day before the date of transfer is subject to the Federal Civil Service Retirement System (5 U.S.C. chapter 83, subchapter III) shall remain within the coverage of such system unless he or she elects to be subject to the Federal Employees' Retirement System. For those employees remaining in the Federal Civil Service Retirement System, the Corporation shall withhold pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in chapter 83 of title 5, United States Code. Employment by the Corporation without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. Any employee of the

Corporation who is not within the coverage of the Federal Civil Service Retirement System shall be subject to the Federal Employees' Retirement System (5 U.S.C. chapter 84). The Corporation shall withhold pay and make such payments as are required under that retirement system. Further:

"(1) Any employee who transfers to the Corporation under this section shall not be entitled to lump sum payments for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Corporation with the unused annual leave at the time of transfer.

"(2) An employee who does not transfer to the Corporation and who does not otherwise remain a Federal employee shall be entitled to all the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Corporation of work substantially similar to that performed by the employee for the Department.

"d. This section does not affect a right or remedy of an officer, employee, or applicant for employment under a law prohibiting discrimination in employment in the Government on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicap conditions.

"e. Officers and employees of the Corporation shall be covered by chapter 73 of title 5, United States Code, relating to suitability, security and conduct.

"f. Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the Department or the executive branch of the Government of the United States shall continue to apply to officers and employees who transfer to the Corporation from other Federal employment until changed by the Corporation in accordance with the provisions of this title.

"g. The provisions of sections 3323(a) and 8344 of title 5, United States Code, or any other law prohibiting or limiting the reemployment of retired officers or employees or the simultaneous receipt of compensation and retired pay or annuities, shall not apply to officers and employees of the Corporation who have retired from or ceased previous government service prior to April 28, 1987.

"SEC. 1505. TRANSFER OF PROPERTY TO THE CORPORATION.—

"a. The Secretary, as requested by the Administrator, is authorized and directed to transfer without charge to the Corporation all of the Department's right, title, or interest in and to, real or personal properties owned by the Department, or by the United States but under control or custody of the Department, which are related to and materially useful in the performance of the functions transferred by this title, including but not limited to the following—

"(1) production facilities for uranium enrichment inclusive of real estate, buildings and other improvements at production sites and their related and supporting equipment; *Provided*, That facilities, real estate, improvements and equipment related to the Oak Ridge Gaseous Diffusion plant in Oak Ridge, Tennessee, and to the gas centrifuge enrichment program shall not transfer under this paragraph except for diffusion cascades and related equipment needed by the Corporation for replacement parts; *Provided further*, That any enrichment facilities retained by the Department shall not be used to enrich uranium in competition with the Cor-

poration. This paragraph shall not prejudice consideration of any site as a candidate site for future expansion or replacement of uranium enrichment capacity;

"(2) at such time subsequent to the year 2000 as the Secretary determines that the Oak Ridge Gaseous Diffusion Plant should be decommissioned or decontaminated, or both, the Secretary shall convey without charge equipment and facilities relating to the Oak Ridge Gaseous Diffusion Plant not transferred in paragraph (1) to the Corporation;

"(3) facilities, equipment, and materials for research and development activities related to the isotopic separation of uranium by the gaseous diffusion technology;

"(4) the Department's stocks of preproduced enriched uranium, but excluding stocks of highly enriched uranium; *Provided*, That approximately two metric tons of the Department's highly enriched uranium shall be loaned to the Corporation as required for working inventory;

"(5) the Department's stocks of feed materials for uranium enrichment except for the quantities allocated to the national defense activities of the Department as of the date of enactment;

"(A) the Department's stockpile of enrichment tails existing as of the date of enactment, shall remain with the Department; and

"(B) stocks of feed materials which remain the property of the Department under paragraph (5) shall remain in place at the enrichment plant sites. The Corporation shall have access to and use of these feed materials provided such quantities as are used are replaced, or credit given, if use by the Department is subsequently needed.

"(6) all other facilities, equipment, materials, processes, patents, technical information of any kind, contracts, agreements, and leases to the extent these items concern the Corporation's functions and activities, except those items required for programs and activities of the Department and those items specifically excluded by this subsection.

The transfer authorized by this section is not subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act.

"b. The Secretary is authorized and directed to grant to the Corporation without charge the Department's rights and access to the Atomic Vapor Laser Isotope Separation, hereinafter referred to as "AVLIS", technology and to provide on a reimbursable basis and at the request of the Corporation, the necessary cooperation and support of the Department to assure the commercial development and deployment of AVLIS or other technologies in a manner consistent with the intent of this title.

"c. The Secretary is authorized and directed to grant the Corporation without charge, to the extent necessary or appropriate for the conduct of the Corporation's activities, licenses to practice or have practiced any inventions or discoveries (whether patented or unpatented) together with the right to use or have used any processes and technical information owned or controlled by the Department.

"d. The Secretary is directed, without need of further appropriation, to transfer to the Corporation the unexpended balance of appropriations and other monies available to the Department (inclusive of funds set aside for accounts payable), and accounts receivable which are related to functions and activities acquired by the Corporation from the Department pursuant to this title, including all advance payments.

"e. The President is authorized to provide for the transfer to the Corporation of the use, possession, and control of such other real and personal property of the United States which is reasonably related to the functions performed by the Corporation. Such transfers may be made by the President without charge as he may from time to time deem necessary and proper for achieving the purposes of this title.

"f. Title to depleted uranium resulting from the enrichment services provided to the Department by the Corporation shall remain with the Department.

"SEC. 1506. CAPITAL STRUCTURE OF THE CORPORATION.—

"a. Upon commencement of operations of the Corporation, all liabilities then chargeable to unexpended balances of appropriations transferred under section 1505 shall become liabilities of the Corporation.

"b. (1) The Corporation shall issue capital stock representing an equity investment equal to the book value of assets transferred to the Corporation, as reported in the Uranium Enrichment Annual Report for fiscal year 1987, modified to reflect continued depreciation and other usual changes that occur up to the date of transfer. The Secretary of the Treasury shall hold such stock for the United States: Provided, That all rights and duties pertaining to management of the Corporation shall remain vested in the Administrator as specified in section 1501.

"(2) The capital stock of the Corporation shall not be sold, transferred, or conveyed by the United States unless such disposition is specifically authorized by Federal law enacted after enactment of this title.

"c. The Corporation shall pay into miscellaneous receipts of the Treasury of the United States or such other fund as provided by law, dividends on the capital stock, out of earnings of the Corporation, as a return on the investment represented by such stock. The Corporation shall pay such dividends out of earnings, unless there is an overriding need to retain these funds in furtherance of other corporate functions including but not limited to research and development, capital investments and establishment of cash reserves.

"d. The Corporation shall repay within a twenty-year period the amount of \$364,000,000 into miscellaneous receipts of the Treasury of the United States, or such other fund as provided by law with interest on the unpaid balance from the date of enactment of this title at a rate equal to the average yield on twenty-year Government obligations as determined by the Secretary of the Treasury on the date of enactment of this title. The money required to be repaid under this subsection is hereinafter referred to as the 'Initial Debt'.

"e. Receipt by the United States of the stock issued by the Corporation (including all rights appurtenant thereto) together with repayment of the Initial Debt shall constitute the sole recovery by the United States of previously unrecovered costs that have been incurred by the United States for uranium enrichment activities prior to enactment of this title.

"SEC. 1507. BORROWING.—

"a. (1) The Corporation is authorized to issue and sell bonds, notes, and other evidences of indebtedness (hereinafter collectively referred to as "bonds") in an amount not exceeding \$2,500,000,000 outstanding at any one time to assist in financing its activities and to refund such bonds. The principal of and interest on said bonds shall be payable from revenues of the Corporation.

"(2) Notwithstanding any other provision of law, the Corporation may pledge and use its revenues for payment of the principal of and interest on said bonds, for purchase or redemption thereof, and for other purposes incidental thereto, including creation of reserve funds and other funds which may be similarly pledged and used, to such extent and in such manner as it may deem necessary or desirable.

"(3) Notwithstanding any other provision of law, the Corporation is authorized to enter into binding covenants with the holders of said bonds—and with the trustee, if any—under any indenture, resolution, or other agreement entered into in connection with the issuance thereof with respect to the establishment of reserve funds and other funds, stipulations concerning the subsequent issuance of bonds, and such other matters, not inconsistent with this title, as the Corporation may deem necessary or desirable to enhance the marketability of said bonds.

"(4) Bonds issued by the Corporation hereunder shall not be obligations of, nor shall payments of the principal thereof or interest thereon be guaranteed by, the United States.

"b. Bonds issued by the Corporation under this section shall be negotiable instruments unless otherwise specified therein, shall be in such forms and denominations, shall be sold at such times and in such amounts, shall mature at such time or times not more than thirty years from their respective dates, shall be sold at such prices, shall bear such rates of interest, may be redeemable before maturity at the option of the Corporation in such manner and at such times and redemption premiums, may be entitled to such priorities of claim on the Corporation's revenues with respect to principal and interest payments, and shall be subject to such other terms and conditions, as the Corporation may determine: Provided, That at least fifteen days before selling each issue of bonds hereunder (exclusive of any commitment shorter than one year) the Corporation shall advise the Secretary of the Treasury as to the amount, proposed date of sale, maturities, terms and conditions and expected rates of interest of the proposed issue in the fullest detail possible. The Corporation shall not be subject to the provisions of section 9108 of title 31, United States Code. The Corporation shall be deemed part of an executive department or an independent establishment of the United States for purposes of the provisions of section 78c(c) of title 15, United States Code.

"c. Bonds issued by the Corporation hereunder shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States. The Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the bonds of the Corporation acquired by them under this section: Provided, That the Corporation shall not issue or sell any bonds to the Federal Financing Bank.

"SEC. 1508. PRICING.—

"a. For purposes of maximizing the long-term economic value of the Corporation to the United States Government, the Corporation shall establish prices for its products, materials and services provided to customers other than the Department on a basis that will, over the long term, allow it to recover its costs for providing the products, materials and services; repay the Initial Debt; re-

cover costs of decontamination, decommissioning and remedial action; and attain the normal business objectives of a profitmaking Corporation.

"b. The Corporation shall establish prices for low assay enrichment services and other products, materials, and services provided the Department on a basis that will allow it to recover its costs on a yearly basis for providing such low assay enrichment services, products, materials and services, including depreciation and the cost of decontamination, decommissioning and remedial action, but excluding repayment of the Initial Debt and profit. In establishing such prices, the base charge paid by the Department in any given year shall not exceed the average base charge paid by customers other than the Department: Provided, however, That if the imposition of such average base charges as a limitation on the base charge paid by the Department in a given year does not permit the Corporation to fully recover its costs for providing such products, materials and services to the Department then, in subsequent years, the Corporation shall include such unrecovered costs in its prices charged the Department. Base charge shall mean the amount paid by a customer per separate work unit for low assay enrichment services during a given year (exclusive of any credits received under a voluntary overfeeding program), less the portion of such amount which represents the cost of decontamination and decommissioning and remedial action. The average base charge paid by customers other than the Department shall be determined by dividing the estimated total dollar amount of low assay enrichment services sales to customers other than the Department during a given year by the estimated amount of separate work units sold to customers other than the Department during that year. Adjustments between estimated and actual amounts shall be made upon receipt of actual sales data.

"c. The Corporation shall establish prices to the Department for high assay enrichment services on a basis that will allow it to recover its costs, on a yearly basis, for providing the products, materials or services, including depreciation and the costs of decontamination, decommissioning, and remedial action concerning enrichment property, but excluding repayment of the Initial Debt and profit. If the Department does not request any enrichment services in a given year, the Department shall reimburse the Corporation for costs required to maintain the minimum level of operation of the high assay production facility.

"d. (1) In accordance with the cost responsibilities defined in paragraphs (3) and (4), the Corporation shall recover from its customers in the prices and charges established in accordance with subsection a., amounts that will be sufficient to pay for the costs of decommissioning, decontamination and remedial action for the various property of the Corporation, including property transferred under section 1505 a. at any time. Such costs shall be based on the point in time that such decommissioning, decontamination and remedial action are to be undertaken and accomplished: Provided, That by the year 2000 the Corporation shall have recovered and deposited in the Uranium Enrichment Decontamination and Decommissioning Fund 50 per centum of the estimated total costs of decontamination and decommissioning of all property transferred or to be transferred to the Corporation under section 1505, including the Oak Ridge Gaseous Diffusion Plant.

"(2) In order to meet the objective defined in paragraph (1), the Corporation shall peri-

odically estimate the anticipated or actual costs of decommissioning and decontamination. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including, but not limited to, any changes in applicable environmental requirements. Such estimates shall be reviewed at least every two years.

"(3) For purposes of enabling the Corporation to meet the objective defined in paragraph (1) with respect to the Oak Ridge Gaseous Diffusion Plant, the Secretary shall periodically estimate the anticipated costs of decontamination and decommissioning and the time at which such decontamination and decommissioning is to be accomplished. Such estimates shall reflect any changes in assumptions or expectations relevant to meeting such objective, including but not limited to, any changes in applicable environmental requirements. The Secretary shall review such estimates every two years and convey this information to the Corporation.

"(4) With respect to property that has been used in the production of low-assay separative work,

"(A) The costs of decommissioning, decontamination and remedial action that shall be recoverable from customers other than the Department in prices and charges shall be in the same ratio to the total costs of decommissioning, decontamination and remedial action for the property in question as the production of separative work over the life of such property for commercial customers bears to the total production of separative work over the life of such property.

"(B) All other costs of decommissioning, decontamination and remedial action for such property shall be recovered in prices and charges to the Department.

"(5) With respect to property that has been used solely in the production of high-assay separative work, all costs of decommissioning, decontamination and remedial action shall be recovered in prices and charges to the Department.

"SEC. 1509. AUDITS.—In fiscal years during which an audit is not performed by the Comptroller General in accordance with the provisions of section 9105 of title 31, United States Code, the financial transactions of the Corporation shall be audited by an independent firm or firms of nationally recognized certified public accountants who shall prepare such audits using standards appropriate for commercial corporate transactions. The fiscal year of the Corporation shall conform to the fiscal year of the United States. The General Accounting Office shall review such audits annually, and to the extent necessary, cause there to be a further examination of the Corporation using standards for commercial corporate transactions. Such audits shall be conducted at the place or places where the accounts of the Corporation are established and maintained. All books, financial records, reports, files, papers, memoranda, and other property of, or in use by, the Corporation shall be made available to the person or persons authorized to conduct audits in accordance with the provisions of this section.

"SEC. 1510. REPORTS.—

"a. The Corporation shall prepare an annual report of its activities. This report shall contain—

"(1) a general description of the Corporation's operations;

"(2) a summary of the Corporation's operating and financial performance, including an explanation of the decision to pay or not pay dividends; and

"(3) copies of audit reports prepared in conformance with section 1509 of this title and

the provisions of the Government Corporation Control Act, as amended.

"b. A copy of the annual report shall be provided to the President, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the appropriate committees of the House of Representatives. Such reports shall be completed not later than 90 days following the close of each fiscal year and shall accurately reflect the financial position of the Corporation at fiscal year end, inclusive of any impairment of capital or ability of the Corporation to comply with the provisions of this title.

"SEC. 1511. CONTROL OF INFORMATION.—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such terms appears in section 141 and subsections a. and b. of section 142 of title I.

"b. No contracts or arrangements shall be made, nor any contract continued in effect, under section 1401, 1402, 1403, or 1404, unless the person with whom such contract or arrangement is made, or the contractor or prospective contractor, agrees in writing not to permit any individual to have access to Restricted Data, as defined in section 11 y. of title I, until the Office of Personnel Management shall have made an investigation and report to the Corporation on the character, associations, and loyalty of such individual, and the Corporation shall have determined that permitting such person to have access to restricted data will not endanger the common defense and security.

"c. The restrictions detailed in subsections b., c., d., e., f., g., and h., of section 145 of title I shall be deemed to apply to the Corporation where they refer to the Commission or a majority of the members of the Commission, and to the Administrator where they refer to the General Manager.

"d. The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Corporation's activities. To the extent consistent with the other provisions of this section, the Corporation shall make available to any of such committees all books, financial records, reports, files, papers, memoranda, or other information possessed by the Corporation upon receiving a request for such information from the chairman of such committee.

"e. Whenever the Corporation submits to the President, or the Office of Management and Budget, any budget, legislative recommendation, testimony, or comments on legislation, prepared for submission to the Congress, the Corporation shall concurrently transmit a copy thereof to the appropriate committees of Congress.

"f. The Corporation shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

"SEC. 1512. PATENTS AND INVENTIONS.—

"a. The term 'Commission' shall be deemed to include the Corporation wherever such term appears in section 152 or 153 b.(1) of title I. The Corporation shall pay such royalty fees for patents licensed to it under section 153 b.(1) of title I as are paid by the Department under that provision. Nothing in title I or this title shall affect the right of the Corporation to require that patents granted on inventions, that have been conceived or first reduced to practice during the course of research or operations of, or financed by the Corporation, be assigned to the Corporation.

"b. The Department shall notify the Corporation of all reports heretofore or hereafter filed with it under subsection 151 c. of

title I and all applications for patents heretofore or hereafter filed with the Commissioner of Patents of which the Department has notice under subsection 151 d. of title I or otherwise, whenever such reports or applications involve matters pertaining to the functions or responsibilities of the Corporation in accordance with this title. The Department shall make all such reports available to the Corporation, and the Commissioner of Patents shall provide the Corporation access to all such applications. All reports and applications to which access is so provided shall be kept in confidence by the Corporation, and no information concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress.

"c. The Corporation, without regard for any of the conditions specified in paragraph 153 c.(1), (2), (3), or (4) of title I, may at any time make application to the Department for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent when such patent has not been declared to be affected with the public interest under subsection 153 b.(1) of title I and when use of such patent is within the Corporation's authority. Any such application shall constitute an application under subsection 153 c. of title I subject, except as specified above, to all the provisions of subsections 153 c., d., e., f., g., and h., of title I.

"d. With respect to the Corporation's functions under this title, section 158 of title I shall be deemed to include the Corporation within the phrase, 'any other licensee' in the first sentence thereof and within the phrase 'such licensee' in the second sentence thereof.

"e. The Corporation shall not be liable directly or indirectly for any damages or financial responsibility under section 183 of title 35, United States Code with respect to secrecy orders imposed under section 181 of such title.

"f. The Corporation shall not be liable or responsible for any payments made or awards under subsection 157 b.(3) of title I, or any settlements or judgments involving claims for alleged patent infringement except to the extent that any such awards, settlements or judgments are attributable to activities of the Corporation after the effective date of this title.

"g. The Corporation shall keep currently informed as to matters affecting its rights and responsibilities under chapter 13 of title I as modified by this section and shall take all appropriate action to avail itself of such rights and satisfy such responsibilities. The Department in discharging its responsibilities under chapter 13 of title I shall exercise diligence in informing the Corporation of matters affecting the responsibilities and jurisdiction of the Corporation and seeking and following as appropriate the advice and recommendation of the Corporation in such matters.

"CHAPTER 26. LICENSING, TAXATION, AND MISCELLANEOUS PROVISIONS

"SEC. 1601. LICENSING.—

"a. Notwithstanding any other provision of law, with respect solely to facilities, equipment and materials for activities related to the isotopic separation of uranium by the gaseous diffusion technology at facilities in existence as of the date of enactment of this title, the Corporation and its contractors are hereby exempted from the licensing requirements and prohibitions of sections 57, 62, 81 and other provisions of title I, to the same

extent as the Department and its contractors are exempt in regard to the Department's own functions and activities. Such exemption shall remain in effect unless and until the Corporation and its contractors receive all necessary licenses for such facilities, equipment and materials as are required under title I.

"b. Within two years of the enactment of this title, the Commission shall promulgate regulations or issue other regulatory guidance under title I for the licensing of facilities described in subsection a. that employ the gaseous diffusion technology.

"c. Within one year after the promulgation of regulations or the issuance of other regulatory guidance under subsection b., the Corporation and its contractors shall make necessary applications for and otherwise seek to obtain such licenses as will remove the exemption provided under subsection a. As part of its application, the Corporation shall submit an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act. The Commission shall adopt this statement to the extent practicable under the National Environmental Policy Act. In preparing such statement, the Corporation, and in making any licensing decision, the Commission, shall not consider the need for such facilities, alternatives to such facilities, or the costs compared to the benefits of such facilities. The Commission shall act on licensing requests by the Corporation in a timely manner.

"d. The Corporation shall not transfer or deliver any source, special nuclear or by-product materials or production or utilization facilities, as defined in title I, to any person who is not properly qualified or licensed under the provisions of title I.

"e. The Corporation shall be subject to the regulatory jurisdiction of the Commission and the Department of Transportation with respect to the packaging and transportation of source, special nuclear and byproduct materials.

"SEC. 1602. EXEMPTION FROM TAXATION AND PAYMENTS IN LIEU OF TAXES.—

"a. In order to render financial assistance to those states and localities in which the facilities of the Corporation are located, the Corporation is authorized and directed beginning in fiscal year 1997 to make payments to state and local governments as provided in this section. Such payments shall be in lieu of any and all state and local taxes on the real and personal property, activities and income of the Corporation. All property of the Corporation, its activities, and income are expressly exempted from taxation in any manner or form by any state, county, or other local government entity. The activities of the Corporation for this purpose shall include the activities of organizations pursuant to cost-type contracts with the Corporation to manage, operate and maintain its facilities. The income of the Corporation shall include income received by such organizations for the account of the Corporation. The income of the Corporation shall not include income received by such organizations for their own accounts, and such income shall not be exempt from taxation.

"b. Beginning in fiscal year 1997, the Corporation shall make annual payments, in amounts determined by the Corporation to be fair and reasonable, to the state and local governmental agencies having tax jurisdiction in any area where facilities of the Corporation are located. In making such determinations, the Corporation shall be guided by the following criteria:

"(1) Amounts paid shall not exceed the tax payments that would be made by a private

industrial corporation owning similar facilities and engaged in similar activities at the same location: *Provided, however,* That there shall be excluded any amount that would be payable as a tax on net income.

"(2) The Corporation shall take into account the customs and practices prevailing in the area with respect to appraisal, assessment, and classification of industrial property and any special considerations extended to large-scale industrial operations.

"(3) No amount shall be included to the extent that any tax unfairly discriminates against the class of taxpayers of which the Corporation would be a member if it were a private industrial corporation, compared with other taxpayers or classes of taxpayers.

"(4) Following the commencement of payments in fiscal year 1997, no payment made to any taxing authority for any period shall be less than the payments which would have been made to such taxing authority for the same period by the Department and its cost-type contractors on behalf of the Department with respect to property that has been transferred to the Corporation under section 1505 and which would have been attributable to the ownership, management operation, and maintenance of the Department's uranium enrichment facilities, applying the laws and policies prevailing immediately to the enactment of this title.

"c. Payments shall be made by the Corporation at the time when payments of taxes by taxpayers to each taxing authority are due and payable: *Provided,* That no payment shall be made to the extent that the tax would apply to a period prior to fiscal year 1997.

"d. The determination by the Corporation of the amounts due hereunder shall be final and conclusive.

"SEC. 1603. MISCELLANEOUS APPLICABILITY OF TITLE I.—

"a. Any references to the term 'Commission' or to the Department in sections 105 b., 161 c., 161 k., 161 q., 165 a., 221 a., 229, 230 and 232 of title I shall be deemed to include the Corporation.

"b. Section 188 of title I shall apply to licensed facilities of the Corporation. For purposes of applying such section to facilities of the Corporation:

"(1) The term 'Commission' shall be deemed to refer to the Secretary;

"(2) There shall be no requirement for payment of just compensation to the Corporation, and receipts from operation of the facility in question shall continue to accrue to the benefit of the Corporation; and

"(3) The Secretary shall have the discretion to determine how and by whom the facility in question will be operated.

"SEC. 1604. COOPERATION WITH OTHER AGENCIES.—The Corporation is empowered to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Corporation. Further, the Corporation may confer with and avail itself of the cooperation, services, records, and facilities of state, territorial, municipal or other local agencies.

"SEC. 1605. APPLICABILITY OF ANTITRUST LAWS.—

"a. The Corporation shall conduct its activities in a manner consistent with the policies expressed in the antitrust laws, except as required by the public interest.

"b. As used in this subsection, the term 'antitrust laws' means:

"(1) The Act entitled: 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890 (15 U.S.C. 1-7), as amended;

"(2) The Act entitled, 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914 (15 U.S.C. 12-27), as amended;

"(3) Sections 73 and 74 of the Act entitled, 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' approved August 27, 1894 (15 U.S.C. 8-9), as amended; and

"(4) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

"SEC. 1606. NUCLEAR HAZARD INDEMNIFICATION.—The Administrator shall have the same authority to indemnify the contractors of the Corporation as the Secretary has to indemnify contractors under section 170 d. of title I. Except that with respect to any licenses issued to the Corporation by the Commission, the Commission shall treat the Corporation and its contractors as its licensees for the purposes of Section 170 of this Act.

"SEC. 1607. INTENT.—It is hereby declared to be the intent of this title to aid the Corporation in discharging its responsibilities under this title by providing it with adequate authority and administrative flexibility to assure the maximum achievement of the purposes hereof as provided herein, and this title shall be construed liberally to effectuate such intent.

"SEC. 1608. REPORT.—

"a. Three years after enactment of this title, the Administrator shall submit to the President and to Congress an interim report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. Five years after enactment of this title, the Administrator shall submit to the President and the Congress a final report setting forth the views and recommendations of the Administrator regarding transfer of the functions, powers, duties, and assets of the Corporation to private ownership. If the Administrator, in the final report, recommends such transfers, the report shall include a plan for implementation of the transfers.

"b. Within one hundred and eighty days after receipt of the final report under subsection a., the President shall transmit to Congress his recommendations regarding the report, including a plan for implementation of any transfers recommended by the President and any recommendations for legislation necessary to effectuate such transfers.

"CHAPTER 27. DECONTAMINATION AND DECOMMISSIONING

"SEC. 1701. ESTABLISHMENT.—

"a. ESTABLISHMENT OF FUND.—(1) There is hereby established in the Treasury of the United States an account of the Corporation to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (hereinafter referred to in this chapter as the 'Fund'). In accordance with section 1402 j., such account and any funds deposited therein, shall be available to the Corporation for the exclusive purpose of carrying out the purposes of this chapter.

"(2) The Fund shall consist of:

"(A) Amounts paid into it by the Corporation in accordance with section 1702; and

"(B) Any interest earned under subsection b.(2).

"b. ADMINISTRATION OF FUND.—(1) The Secretary of the Treasury shall hold the Fund

and, after consultation with the Corporation, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

"(2) At the direction of the Corporation, the Secretary of the Treasury shall invest amounts contained within such Fund in obligations of the United States:

"(A) Having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Fund, as determined by the Corporation; and

"(B) Bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to such obligations.

"(3) At the request of the Corporation, the Secretary of the Treasury shall sell such obligations and credit the proceeds to the Fund.

"SEC. 1702. DEPOSITS.—Within sixty days of the end of each fiscal year, the Corporation shall make a payment into the Fund in an amount equal to the costs of decontamination and decommissioning that have been recovered during such fiscal year by the Corporation in its prices and charges established in accordance with section 1508 for products, materials, and services.

"SEC. 1703. PERFORMANCE AND DISBURSEMENTS.—

"a. When the Corporation determines that particular property should be decommissioned or decontaminated, or both, or with respect to the Oak Ridge Gaseous Diffusion Plant at such time as the plant is conveyed to the Corporation, the Corporation shall enter into a contract for the performance of such decommissioning and decontamination.

"b. The Corporation shall pay for the costs of such decommissioning and decontamination out of amounts contained within the Fund."

SEC. 10104. TREATMENT OF THE CORPORATION AS BEING PRIVATELY OWNED FOR PURPOSES OF THE APPLICABILITY OF ENVIRONMENTAL AND OCCUPATIONAL SAFETY LAWS.—The United States Enrichment Corporation shall be subject to Federal, State and local environmental laws and the Occupational Safety and Health Act (29 U.S.C. 651-678) to the same extent as is the Department of Energy as of the date of enactment. After four years from the date of enactment of this subtitle, the United States Enrichment Corporation shall become subject to such laws to the same extent as a privately-owned corporation, unless the President determines that additional time is necessary to achieve the purposes of title II of the Atomic Energy Act of 1954, as amended.

SEC. 10105. MISCELLANEOUS PROVISIONS.—(a) AMENDMENT OF GOVERNMENT CORPORATIONS CONTROL ACT.—Section 9101(3) of title 31, United States Code (relating to the definition of "wholly-owned Government corporation") is amended by adding at the end the following: "(N) United States Enrichment Corporation."

(b) OWNERSHIP OF ENRICHMENT PLANTS.—In subsection 41 a. of the Atomic Energy Act of 1954, as amended, the word "or" appearing before the numeral "(2)" is deleted, a semicolon is substituted for a period at the end of the subsection and the following new paragraph is added: "or (3) are owned by the United States Enrichment Corporation."

(c) TERMINATION OF AUTHORITY OF THE DEPARTMENT OF ENERGY.—In subsection 53 c. (1) of the Atomic Energy Act of 1954, as amended, the word "or" is inserted before the word

"grant" and the phrase "or through the provision of production or enrichment services" is deleted in both places where it appears in such subsection.

(d) EXEMPTION FROM DEFENSE NUCLEAR FACILITIES SAFETY BOARD OVERSIGHT.—The Atomic Energy Act of 1954, as amended, is further amended in section 318(1) by striking the period after "activities" and by adding the following:

"(D) any facility owned by the United States Enrichment Corporation."

(e) EXEMPTION FROM GRAMM-RUDMAN-HOLLINGS ACT.—Subsection 905(g)(1) of Title 2, United States Code, is amended to include "United States Enrichment Corporation" at the end thereof.

(f) REPEAL OF PROHIBITION ON CONSIDERATION OF PRIVATIZATION.—Section 306 of title III of the Energy and Water Development Appropriations Act, 1988, Pub. L. No. 100-202, is repealed.

SEC. 10106. LIMITATION ON EXPENDITURES.—For fiscal year 1991, total expenditures of the United States Enrichment Corporation shall not exceed total receipts.

SEC. 10107. SEVERABILITY.—If any provision of this subtitle, or the application of any provision to any entity, person or circumstance, shall for any reason be adjudged by a court of component jurisdiction to be invalid, the remainder of this title, or the application of the same shall not be thereby affected.

SEC. 10108. EFFECTIVE DATE.—Except as otherwise provided, all provisions of this subtitle shall take effect on the day following the end of the first full fiscal year quarter following the enactment of this title; Provided, however, That the Administrator or Acting Administrator of the United States Enrichment Corporation may immediately exercise the management responsibilities and powers of subsection 1501 a. of the Atomic Energy Act of 1954, as amended by this title.

SEC. 10109. PAYMENT OF COST OF TRANSFER.—(a) PAYMENT SUBJECT TO APPROPRIATION.—Notwithstanding section 1401j. of the Atomic Energy Act of 1954 as amended by section 10103 of this title, any expense incurred by the Secretary or the Corporation in the course of setting up the Corporation or transferring the property or assets of the Department to the Corporation shall be subject to appropriation.

(b) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to pay the costs of setting up the Corporation and transferring the property and assets of the Department to the Corporation under this title.

Subtitle B—Uranium

PART 1—SHORT TITLE, FINDINGS AND PURPOSE, DEFINITIONS

SEC. 10211. SHORT TITLE.—This subtitle may be cited as the "Uranium Security and Tailings Reclamation Act of 1991."

SEC. 10212. FINDINGS AND PURPOSE.—(a) FINDINGS.—The Congress finds for purposes of this subtitle that—

(1) the United States uranium industry has long been recognized as vital to United States energy independence and as essential to United States national security, but has suffered a drastic economic setback, including a 90 per centum reduction in employment, closure of almost all mines and mills, more than a 75 per centum drop in production, and a permanent loss of uranium reserves;

(2) during the remainder of this century approximately 20 per centum of United States electricity is expected to be produced

from uranium fueled powerplants owned by domestic electric utilities;

(3) the United States has been the leading uranium producing Nation and holds extensive proven reserves of natural uranium that offer the potential for secure sources of future supply;

(4) a variety of economic factors, policies of foreign governments, foreign export practices, the discovery and development of low cost foreign reserves, new Federal regulatory requirements, and cancellation of nuclear powerplants have caused most United States producers to close or suspend operations over the past six years and have resulted in the domestic uranium industry being found "not viable" by the Secretary under provisions of the Atomic Energy Act of 1954, as amended;

(5) providing assistance to the domestic uranium industry is essential to—

(A) preclude an undue threat from foreign supply disruptions that could hinder the Nation's common defense and security,

(B) assure an adequate long-term supply of domestic uranium for the Nation's nuclear power program to preclude an undue threat from foreign supply disruptions or price controls, and

(C) aid in the Nation's balance-of-trade payments through foreign sales;

(6) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901-7942)—

(A) was enacted to provide for the reclamation and regulation of uranium and thorium mill tailings; and

(B) did not provide for a Federal contribution for the reclamation of tailings at uranium and thorium processing sites which were generated pursuant to Federal defense contracts;

(7) the owners or licensees of active uranium and thorium sites and the Federal Government have each benefitted from uranium and thorium produced at the active sites, and it is equitable that they share in the costs of reclamation, decommissioning and other remedial actions at the commingled sites; and,

(8) the creation of an assured system of financing will greatly facilitate and expedite reclamation and remedial actions at active uranium and thorium processing sites.

(b) PURPOSE.—It is the purpose of parts 2 and 3 of this subtitle to—

(1) ensure an adequate long-term supply of domestic uranium for the Nation's common defense and security and for the Nation's nuclear power program;

(2) provide assistance to the domestic uranium industry; and

(3) establish, facilitate, and expedite a comprehensive system for financing reclamation and other remedial action at active uranium and thorium processing sites.

SEC. 10213. DEFINITIONS.—For purposes of this subtitle—(1) the term "active site" means—

(A) any uranium or thorium processing site, including the mill, containing by-product material for which a license (issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, as amended, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)) for the production at such site of any uranium or thorium derived from ore—

(i) was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(B) any other real property or improvement on such real property that is determined by the Commission to be—

(i) in the vicinity of such site; and
(ii) contaminated with residual by-product material;

(2) the term "byproduct material" has the meaning given such term in section 11e.(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(e)(2));

(3) the term "civilian nuclear power reactor" means any civilian nuclear powerplant required to be licensed under section 103 or section 104 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2133);

(4) the term "Corporation" means the United States Enrichment Corporation established under section 1202 of Title II of the Atomic Energy Act of 1954, as amended;

(5) the term "Department" means the Department of Energy;

(6) the term "domestic uranium" means any uranium that has been mined in the United States including uranium recovered from uranium deposits in the United States by underground mining, open-pit mining, strip mining, in situ recovery, leaching, and ion recovery, or recovered from phosphoric acid manufactured in the United States;

(7) the term "domestic uranium producer" means a person or entity who produces domestic uranium and who has, to the extent required by State and Federal agencies having jurisdiction, licenses and permits for the operation, decontamination, decommissioning, and reclamation of sites, structures and equipment;

(8) the term "enrichment tails" means uranium in which the quantity of the U-235 isotope has been depleted in the enrichment process;

(9) the term "reclamation, decommissioning, and other remedial action" includes work, including but not limited to disposal work, accomplished in order to comply with all applicable requirements, including but not limited to those established pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, as amended, or where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021). The term shall also include work at an active site prior to the date of enactment of this act accomplished in order to comply with the foregoing requirements;

(10) the term "Secretary" means the Secretary of Energy;

(11) the terms "source material" and "special nuclear material" have the meaning given such terms in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014); and

(12) the term "tailings" means the wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

PART 2—URANIUM REVITALIZATION

SEC. 10221. VOLUNTARY OVERFEED PROGRAM.—(a) ESTABLISHMENT.—The Corporation shall establish, for a period of not less than five years commencing at the beginning of fiscal year 1992, a voluntary overfeeding program which shall be made available to the Corporation's enrichment services customers. The term "overfeeding" means the use of uranium in the enrichment process in excess of the amount required at the transactional tails assay.

(b) FINANCIAL INCENTIVE.—The Corporation shall encourage its enrichment services customers to participate in the voluntary over-

feeding program as provided in this section. Uranium supplied by the enrichment customer shall be used by the Corporation for voluntary overfeeding in the enrichment process to reduce the amount of power required to produce the enriched uranium ordered by the enrichment services customer. The dollar savings resulting from the reduced power requirements shall be credited to the enrichment services customer.

(c) ADDITIONAL PARTICIPATION.—In the event an enrichment services customer does not elect to provide uranium for voluntary overfeeding to be used to process its enrichment order, the Corporation shall establish a method for such uranium to be voluntarily supplied by other enrichment services customer(s) which have expressed to the Corporation an interest in participating in such a program and the Corporation shall credit the resulting dollar savings realized from the reduced power requirements to the enrichment services customer(s) providing the uranium.

(d) USE OF DOMESTIC URANIUM.—An enrichment services customer providing uranium for voluntary overfeeding shall certify to the Corporation that such uranium is domestic uranium which has been actually produced by a domestic uranium producer after the enactment of this title or domestic uranium actually produced by a domestic uranium producer before the enactment of this title and held by it without sale, transfer or redesignation of the origin of such uranium on a DOE/NRC form 741.

(e) IMPLEMENTATION.—Within ninety days of the date of enactment of this title, the Corporation shall establish procedures to implement this program. Such procedures shall include, but not be limited to, delivery, reporting and certification requirements, and provisions for failure to comply with the requirements of the voluntary overfeeding program. The determination of the voluntary overfeeding credit and sufficient data to support such determination shall be available to the Corporation's enrichment services customers and to qualified domestic producers.

SEC. 10222. NATIONAL STRATEGIC URANIUM RESERVE.—There is hereby established the National Strategic Uranium Reserve under the direction and control of the Secretary. The Reserve shall consist of 50,000,000 pounds of natural uranium contained in stockpiles or inventories currently held by the United States for defense purposes. Effective on the date of enactment of this title, use of the Reserve shall be restricted to military purposes and government research. Use of the Department's stockpile of enrichment tails existing on the date of enactment of this title shall be restricted to military purposes.

SEC. 10223. RESPONSIBILITY FOR THE INDUSTRY.—(a) CONTINUING SECRETARIAL RESPONSIBILITY.—The Secretary shall have a continuing responsibility for the domestic uranium industry, and shall take any action, which he determines to be appropriate under existing law, to encourage the use of domestic uranium: Provided, however, That the Secretary, in fulfilling this responsibility, shall not use any supervisory authority over the Corporation. The Secretary shall report annually to the appropriate committees of Congress on action taken with respect to the domestic uranium industry, including action to promote the export of domestic uranium pursuant to subsection (b).

(b) ENCOURAGE EXPORT.—The Department, with the cooperation of the Department of Commerce, the United States Trade Representative and other governmental organizations, shall encourage the export of domes-

tic uranium. Within one hundred and eighty days of the date of enactment of this Act the Secretary shall develop recommendations and implement government programs to promote the export of domestic uranium.

SEC. 10224. GOVERNMENT URANIUM PURCHASES.—(a) USE OF DOMESTIC URANIUM.—After the date of enactment of this title, the United States of America, its agencies and instrumentalities, shall only have the authority to enter into contracts or orders for the purchase of uranium which is (1) of domestic origin and (2) is purchased from domestic uranium producers: Provided, That this section shall not affect purchases under a contract for delivery of a fixed amount of uranium entered into before the date of enactment of this title.

(b) TVA EXEMPTION.—Subsection (a) shall not apply to the Tennessee Valley Authority.

SEC. 10225. SECRETARY'S AUTHORITY TO MAKE REGULATIONS.—The Secretary shall issue appropriate regulations to implement the purposes of this subtitle.

PART 3—REMEDIAL ACTION FOR ACTIVE PROCESSING SITES

SEC. 10231. REMEDIAL ACTION PROGRAM.—(a) IN GENERAL.—Except as provided in subsection (b), the costs of decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity at such site which results or has resulted in the production of by-product material.

(b) REIMBURSEMENT.—(1) IN GENERAL.—The Secretary shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) for such portion of the reclamation, decommissioning and other remedial action costs described in such subsection as are—

(A) determined by the Secretary to be attributable to tailings generated as an incident of sales to the United States; and

(B) incurred by such licensee not later than December 31, 2002.

(2) AMOUNT.—

(A) TO INDIVIDUAL ACTIVE SITE URANIUM LICENSEES.—The amount of reimbursement paid to any licensee under paragraph (1) shall be determined by the Secretary in accordance with regulations issued pursuant to section 10232 and shall not exceed an amount equal to \$4.50 multiplied by the dry short tons of tailings located at the site as of the effective date of this subtitle and generated as an incident of sales to the United States.

(B) TO ALL ACTIVE SITE URANIUM LICENSEES.—Payments made under paragraph (1) to active site uranium licensees shall not in the aggregate exceed \$270,000,000.

(C) TO THORIUM LICENSEES.—Payments made under paragraph (1) to the licensee of the active thorium site shall not exceed \$30,000,000.

(D) INFLATION ESCALATION INDEX.—The amounts in subparagraphs (A), (B) and (C) shall be increased annually based upon an inflation index. The Secretary shall determine the appropriate index to apply.

(E) ADDITIONAL REIMBURSEMENT.—Provided however, That (i) the Secretary shall determine as of July 31, 2005, whether the amount authorized to be appropriated in section 10233, when considered with the \$4.50 per dry short ton limit on reimbursement, exceeds the total cost reimbursable to the licensees of active sites for reclamation, decommissioning and other remedial action; and (ii) if the Secretary determines there is an excess,

the Secretary may allow reimbursement in excess of \$4.50 per dry short ton on a pro-rated basis at such sites that reclamation, decommissioning and other remedial action costs for tailings generated as an incident of sales to the United States exceed the \$4.50 per dry short ton limitation.

SEC. 10232. REGULATIONS.—The Secretary shall issue regulations governing reimbursement under section 10231. An active uranium or thorium processing site owner shall apply for reimbursement hereunder by submitting a statement for the amount of reimbursement, together with reasonable documentation in support thereof, to the Secretary. Any such statement for reimbursement, supported by reasonable documentation, shall be approved by the Secretary and reimbursement therefor shall be made in a timely manner subject only to the limitations of section 10231.

SEC. 10233. AUTHORIZATION.—There is authorized to be appropriated for purposes of this part not more than \$300,000,000 increased annually as provided in section 10231 based upon an inflation index as determined by the Secretary.

PART 4—IMPORTS OF URANIUM, ENRICHED URANIUM, AND URANIUM ENRICHMENT SERVICES

SEC. 10241. FINDINGS AND PURPOSES.—(a) **FINDINGS.**—The Congress finds that—

(1) the domestic uranium industry and the economic viability of the Federal uranium enrichment enterprise may be threatened by exports of uranium and enriched uranium from non-market economy countries at prices which represent less than the cost of producing uranium or enriching uranium; and

(2) the national security and defense interests of the United States require that appropriate actions be taken to assure that the nuclear energy industry in the United States does not become unduly dependent on foreign sources of uranium or uranium enrichment services.

(b) **PURPOSES.**—The purposes of this part are to—

(1) determine whether any uranium or enriched uranium is being exported by non-market economy countries at prices which represent less than the cost of producing such commodities; and

(2) provide for appropriate actions to assure the viability of the domestic uranium industry and the Federal uranium enrichment enterprise in order to protect the national security and defense interests of the United States.

SEC. 10242. DEFINITIONS.—For purposes of this part, the term—

(1) "Administrator" means the Administrator of the Energy Information Administration;

(2) "Federal uranium enrichment enterprise" means the uranium enrichment activities of the Department of Energy or the United States Enrichment Corporation; and

(3) "utility regulatory authority" means any State agency or Federal agency that has ratemaking authority with respect to the sale of electric energy by any electric utility or independent power producer, except that for the purposes of this paragraph, the terms "electric utility", "State agency", "Federal agency", and "ratemaking authority" have the same meanings as the terms have under section 3 of the Public Utility Regulatory Policies Act of 1978.

SEC. 10243. UNITED STATES INTERNATIONAL TRADE COMMISSION INVESTIGATION.—(a) **INVESTIGATION.**—Within sixty days after the date of enactment of this part, the United

States International Trade Commission shall initiate an investigation to determine—

(1) the quantities of uranium or enriched uranium being exported from non-market economy countries;

(2) the amount and nature of uranium enrichment services being offered by non-market economy countries; and

(3) whether such uranium, enriched uranium or enrichment services are being offered at prices which represent less than the cost of producing such uranium or enriched uranium or providing such uranium enrichment services.

(b) **COOPERATION.**—The Secretary, the Administrator, and the Secretary of Commerce shall cooperate fully with the International Trade Commission in the investigation and shall furnish them all records, analyses and information in their possession regarding the production costs, sales costs and exports of uranium and enriched uranium, or the provision of uranium enrichment services, by non-market economy countries.

(c) **REPORT.**—(1) Within one year after the date of enactment of this part and annually thereafter, the International Trade Commission shall furnish a report containing the results of the investigation and its determination under paragraph (a)(3) to the President, for the use of the Secretary and Secretary of Commerce, and the Congress.

(2) If the International Trade Commission determines that any non-market economy country is exporting uranium or enriched uranium, or providing enrichment services, at prices which represent less than the cost of production, the President, or his designee, within 120 days of receipt of the report from the International Trade Commission, shall transmit to the Congress a report on what actions are being taken by the Federal Government to discourage or end such pricing practices, including the status of any negotiations with such country to end such pricing practices.

(d) **CONFIDENTIALITY.**—The International Trade Commission shall take such steps as, in its judgment, are necessary, including the classification of information, to assure appropriate protection of any confidential information.

SEC. 10244. URANIUM PURCHASE REPORTS.—(a) **ANNUAL REPORTS.**—By January 1 of each year, the owner or operator of any civilian nuclear power reactor shall report to the Secretary, acting through the Administrator, for activities of the previous fiscal year—

(1) the country of origin and the seller of any uranium or enriched uranium purchased or imported into the United States either directly or indirectly by such owner or operator; and

(2) the country of origin and the seller of any enrichment services purchased by such owner or operator.

(b) **CONGRESSIONAL ACCESS.**—The information provided to the Secretary pursuant to this section shall be made available to the Committee on Energy and Natural Resources of the United States Senate and appropriate committees of the United States House of Representatives by March 1 of each year.

(c) **COUNTRY OF ORIGIN.**—For the purposes of this section, the term "country of origin" means,

(1) with respect to uranium, that country where the uranium was mined, or

(2) with respect to enriched uranium, that country where the uranium was mined and enriched; or

(3) with respect to enrichment services, that country where the enrichment services were performed.

SEC. 10245. REGULATORY TREATMENT OF URANIUM PURCHASES.—(a) **ENCOURAGEMENT.**—The Secretary shall encourage States and utility regulatory authorities to take into consideration the achievement of the objectives and purposes of this part, including the national need to avoid dependence on imports, when considering whether to allow the owner or operator of any electric power plant to recover in its rates and charges to customers any cost of purchase of domestic uranium, enriched uranium, or enrichment services from a non-affiliated seller greater than the cost of non-domestic uranium, enriched uranium or enrichment services.

(b) **REPORT.**—Within one year of the date of enactment of this part, and annually thereafter, the Secretary shall report to Congress on his progress in encouraging actions by State regulatory authorities pursuant to subsection (a). Such report shall include detailed information on programs initiated by the Secretary to encourage appropriate State regulatory action and recommendations, if any, on further action that could be taken by the Secretary, other Federal agencies, or the Congress in order to further the purposes of this part.

(c) **DEFINITION OF NON-AFFILIATE.**—As used in this section, a seller is "non-affiliated" if it does not control, and is not controlled by or under common control with the buyer.

SEC. 10246. UNITED STATES PURCHASE OF ENRICHED URANIUM.—(a) **AUTHORIZATION.**—Subject to the limitations of subsection (b), the Secretary or the United States Enrichment Corporation is authorized to purchase enriched uranium from other sources of enriched uranium at prices below the production costs of the Department of Energy or the Corporation, respectively, if such purchases are necessary to reduce production costs and maintain competitive prices.

(b) **USE OF URANIUM.**—If enriched uranium purchased by the Secretary or the United States Enrichment Corporation is used to supply enrichment customers, any uranium provided by such customers to the Secretary or the United States Enrichment Corporation as feed material may only be used for rebuilding uranium inventory or for over-feeding purposes.

TITLE XI—NATURAL GAS

SEC. 11101. OPTIONAL CERTIFICATE PROCEDURES.—(a) **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.**—Section 7 of the Natural Gas Act, (15 U.S.C. 717f) is amended—

(1) by adding a new subparagraph (c)(1)(G) as follows—

"(G) Upon application the Commission shall issue a certificate of public convenience and necessity for the construction, extension and operation of facilities for the transportation or sale of natural gas without requiring a hearing or further proof that the public convenience and necessity would be served by those facilities; *Provided*, That, subject to the provisions of subsection (k) of this section, the requirements of subsections (i) and (j) of this section are met. Such a certificate shall be non-exclusive and non-prejudicial to any other authorization under the Natural Gas Act or the Natural Gas Policy Act of 1978."

(2) by adding the following three subsections after subsection (h)—

"(i) For the purposes of subparagraph (c)(1)(G) of this section—

"(1) The Commission shall issue a certificate of public convenience and necessity only if it finds that the construction, extension and operation of facilities shall not impair any certificate holder's ability to render adequate service to its customers, and only

if, in addition to any other terms the Commission may attach, the following terms and conditions are attached to such certificate to satisfy the following requirements—

“(A) No costs or expenses incurred in relation to the construction, extension and operation of facilities, or the sale of such facilities, covered by a certificate issued pursuant to subparagraph (c)(1)(G) of this section may be included in the rates and charges of any other rate schedule filed with the Commission under this Act or the Natural Gas Policy Act of 1978.

“(B) The holder of a certificate issued pursuant to subparagraph (c)(1)(G) of this section shall not be required to credit any revenues received in relation to providing service under such certificate, or the sale of facilities authorized under such certificate, when determining the rates and charges of any other rate schedule filed with the Commission under this Act or the Natural Gas Policy Act of 1978.

“(C) Notwithstanding section 15(a) of this Act, the holder of a certificate issued under subparagraph (c)(1)(G) of this section shall not participate in any proceedings (other than those it may subsequently initiate) for the construction, extension or operation of facilities that would serve the same market served by the facilities authorized by the holder's certificate issued under subparagraph (c)(1)(G) of this section.

“(D) Under such rules and regulations as the Commission may prescribe, the holder of a certificate issued under subparagraph (c)(1)(G) of this section shall file with the Commission within such time and in such form as the Commission may prescribe, and shall keep open in convenient form and place for public inspection, copies of all agreements required to be filed with the Commission pursuant to subsection (j) of this section.

“(E) The holder of a certificate issued under subparagraph (c)(1)(G) of this section shall maintain a separate system of books, accounts and records for the facilities and services authorized under such certificate.

“(2) The Commission shall assure that all agreements between the certificate holder and all persons, including affiliates of the certificate holder, contracting for transportation or sales service utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section are negotiated at arms length.

“(3) The Commission shall provide reasonable public notice of the application for the issuance of a certificate of public convenience and necessity pursuant to subparagraph (c)(1)(G) of this section.

“(j) For purposes of subparagraph (c)(1)(G) of this section—

“(1) Not later than 60 days prior to the commencement of transportation or sales service pursuant to a certificate issued under subparagraph (c)(1)(G) of this section, or at such time as the Commission may find necessary and reasonable, the certificate holder shall file with the Commission copies of all agreements between the certificate holder and all persons, including affiliates of the certificate holder, contracting for transportation or sales service utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section. Subsequent to the commencement of transportation or sales service utilizing facilities operated under a certificate issued under subparagraph (c)(1)(G) of this section, the certificate holder shall file with the Commission not later than ten days prior to the initiation of any new service utilizing facilities

authorized under such certificate a copy of any new or amended agreement entered into by the certificate holder and any person, including any affiliate of the certificate holder, contracting for transportation or sales service utilizing facilities authorized under such certificate. The Commission shall keep and make available for public inspection all agreements required to be filed with the Commission pursuant to this paragraph.

“(2) The rates, charges, classifications or practices for the transportation or sale of natural gas contained in the agreements filed with the Commission pursuant to paragraph (j)(1) of this section shall be presumed to be just and reasonable. If, however, the Commission, after a hearing held upon the petition of a person who has made a bona fide offer to enter into a contract, or who has entered into a contract, for the transportation or sale of natural gas utilizing facilities authorized in a certificate issued under subparagraph (c)(1)(G) of this section, finds that the failure to provide a requested rate, charge, classification, or practice in connection with the requested transportation or sale of natural gas through facilities constructed, extended or operated under a certificate issued under subparagraph (c)(1)(G) of this section is unjust, unreasonable, unduly discriminatory or preferential, the Commission, considering all relevant factors, shall determine the rates, charges, classification or practices which are not unjust, unreasonable, unduly discriminatory or preferential to be observed and in force with respect to the transportation or sale of natural gas to be provided to the petitioner, and shall fix the same by order; *Provided*, That the Commission may not order the requested service to the extent that it finds that capacity is not available. Unless the Commission issues a final order on a petition filed pursuant to this paragraph within one hundred and twenty days after it is filed, such petition shall be deemed denied.

“(k) In any case where a certificate providing for construction or extension of facilities under subparagraph (c)(1)(G) of this section is opposed by a local distribution company on grounds that such certificate would result in the displacement of a sale or transportation service being provided by such local distribution company, the Commission shall promptly set the matter for a hearing on the record and shall decide by final order on rehearing issued within 90 days of the filing of such opposition whether such construction or extension of facilities pursuant to the certificate would displace a sale or transportation service being provided by such local distribution company. If the Commission finds that such construction or extension of facilities would result in the displacement of a sale or transportation service being provided by such local distribution company, the application for a certificate of public convenience and necessity filed pursuant to subparagraph (c)(1)(G) of this section shall, at the option of the applicant, be deemed filed for consideration pursuant to subparagraph (c)(1)(A) of this section. For purposes of this subsection, the term “local distribution company” shall have the same meaning as in section 2(17) of the Natural Gas Policy Act of 1978, and a holder of a service area determination under section 7(f) of this Act shall be considered a local distribution company.”; and

(3) by adding at the end of subsection (b) the following: “This subsection does not apply to any facility or service certificated pursuant to subparagraph (c)(1)(G) of this section.”.

(b) NON-APPLICABILITY OF NATURAL GAS ACT SECTION 4 PROCEDURES.—Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding the following after subsection (e)—

“(f) Subsections (c), (d) and (e) of this section do not apply to the transportation or sale of natural gas through facilities authorized by a certificate of public convenience and necessity issued under section 7(c)(1)(G) of this Act.”.

(c) NON-APPLICABILITY OF NATURAL GAS ACT SECTION 5 PROCEDURES.—Section 5(a) of the Natural Gas Act (15 U.S.C. 717d(a)) is amended by adding the following after the period:

“This subsection does not apply to any rate, charge, classification or practice by a natural-gas company in connection with the transportation or sale of natural gas through facilities authorized by a certificate issued under section 7(c)(1)(G) of this Act.”.

SEC. 11102. TRANSPORTATION OF NATURAL GAS UNDER THE NGPA.—Section 311 of the Natural Gas Policy Act of 1978 (15 U.S.C. 3371) is amended by—

(a) striking “AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION” and inserting in lieu thereof “AUTHORIZATION OF CERTAIN SALES, TRANSPORTATION AND CONSTRUCTION”;

(b) striking “Commission Approval of Transportation” and inserting in lieu thereof “Commission Approval of Transportation and Construction”;

(c) striking paragraph (a)(1), and inserting in lieu thereof the following:

“(1) INTERSTATE PIPELINES.—

“(A) IN GENERAL.—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

“(i) any intrastate pipeline,

“(ii) any local distribution company, or

“(iii) any other person including the interstate pipeline itself.

“(B) JUST AND REASONABLE RATES.—The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).

“(C) NON-DISCRIMINATORY TRANSPORTATION.—Any transportation authorized under subparagraph (A) shall not be unjust, unreasonable, unduly discriminatory or preferential (within the meaning of the Natural Gas Act).

“(D) CONSTRUCTION.—Upon sixty days notification to the affected state commission, an interstate pipeline may construct facilities for transportation service provided under this subsection: *Provided*, That construction under this subsection shall not occur in the event such construction would result in the displacement of a sale or transportation service being provided by a local distribution company, unless such local distribution company consents thereto. In any case where such construction is opposed by a local distribution company on grounds that such construction would result in the displacement of a sale or transportation service being provided by such local distribution company, the Commission shall promptly set the matter for hearing on the record and shall decide by a final order on rehearing issued within 90 days of the filing of such opposition whether the construction would displace a sale or transportation service being provided by such local distribution company. If the Commission finds that such construction would result in the displacement of a sale or transportation service being provided by such local distribution company, the interstate

pipeline may file an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authority to construct or extend such facilities. Activities authorized under this paragraph are not subject to State regulation. For purposes of this subparagraph, a holder of a service area determination under section 7(f) of the Natural Gas Act shall be considered a local distribution company."

(d) striking subparagraph (a)(2)(A), and inserting in lieu thereof the following:

"(A) IN GENERAL.—The commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

- "(i) any interstate pipeline,
- "(ii) any local distribution company served by an interstate pipeline, or
- "(iii) any other person, including the intrastate pipeline itself, in interstate commerce (within the meaning of the Natural Gas Act)."

SEC. 11103. NEPA COMPLIANCE.—(a) MAJOR FEDERAL ACTION.—Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by adding the following after paragraph (2):

"(3)(A) For purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable environmental laws, the authorization of construction of facilities by issuance of a certificate of public convenience and necessity by the Commission is the only Federal action that may be considered a major Federal action requiring a detailed statement on the environmental impact of the proposed action in connection with the construction or extension of facilities. The Commission may set reasonable time limits for consultation with the other Federal and State agencies and departments which participate in the review of a proposed facility, and may set reasonable time limits for those agencies and departments to complete their review and submit comments to the Commission.

"(B) Where environmental documents are prepared in connection with applications for authority to construct, extend or operate facilities under this Act, the Commission shall permit, at the election of the applicant, a contractor, consultant or other person funded by the applicant to prepare such environmental document. The Commission shall permit the applicant to select a contractor, consultant or other person from among a list of such individuals or companies determined by the Commission to be qualified to do such work. The Commission shall establish the scope of work and procedures to assure that the contractor, consultant or other person has no financial or other potential conflict of interest in the outcome of the proceeding. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

"(C) Where an environmental assessment is prepared in connection with applications for authority to construct, extend or operate facilities under this Act, the Commission shall permit an applicant, or a contractor, consultant or other person selected by the applicant, to prepare such environmental assessment. The Commission shall institute procedures, including pre-application consultations, to advise potential applicants of studies or other information foreseeably required by the Commission. The Commission shall allow the filing of such applicant-prepared environmental assessments as part of the application. Nothing herein shall affect the Commission's responsibility to comply with the National Environmental Policy Act of 1969.

"(D) The Commission shall not infer any control or responsibility over nonjurisdictional activities for purposes of carrying out its environmental responsibilities under the National Environmental Policy Act of 1969."

(b) COMMUNICATIONS WITH THE COMMISSION.—The Federal Energy Regulatory Commission, within 12 months of the date of enactment of this Act, shall amend its rules governing ex parte communications to clarify that the prohibitions contained in such rules do not apply to communications between the Commission's environmental advisory staff and other Federal and State agencies that are cooperating agencies for purposes of compliance with title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331-35); *Provided*, That an accurate public record of all such communications shall be kept and made available, and any party to the proceeding with respect to which such communication was made may respond in writing to such communication.

SEC. 11104. RATES AND CHARGES.—(a) NOTICE OF CHANGES.—The first and third sentences of section 4(d) of the Natural Gas Act (17 U.S.C. 717c(d)) are amended by striking "thirty days' notice" and inserting in lieu thereof "sixty days' notice".

(b) JOINT RATES.—Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding the following subsection after subsection (f), added by this title—

"(g) Under such rules and regulations as the Commission may prescribe to preclude anticompetitive conduct, natural-gas companies may jointly file with the Commission rates for the sequential transportation of natural gas through their facilities."

(c) GAS RESEARCH INSTITUTE SURCHARGE.—

(1) Nothing in this Act amends or modifies the Federal Energy Regulatory Commission's authority to allow recovery, in advance, of expenditures for research, development and demonstration expenses by natural-gas companies for projects in the areas of exploration, production, transmission, distribution and use of natural gas.

(2) The Federal Energy Regulatory Commission is authorized pursuant to section 4 of the Natural Gas Act to allow recovery, in advance, of expenses by natural-gas companies for research, development and demonstration activities by the Gas Research Institute for projects on the use of natural gas in motor vehicles and on the use of natural gas to control emissions from the combustion of other fuels; *Provided*, That the Commission finds that the benefits, including environmental benefits, to both existing and future ratepayers resulting from such activities exceed all direct costs to both existing and future ratepayers.

(d) REPORTS TO CONGRESS.—

(1) REPORTS BY THE FERC.—Within six months of the date of enactment of this Act, the Federal Energy Regulatory Commission shall report to the Senate Committee on Energy and Natural Resources and the House of Representatives on the following—

(A) NATURAL GAS TRANSPORTATION.—The goals, objectives and results of the Commission's program for open access transportation of natural gas, the schedule for the program's complete implementation, and the Commission's criteria for—

- (i) rate design reform;
- (ii) comparability of service;
- (iii) authorizing pipeline abandonment and defining pipeline service obligation; and
- (iv) treatment of gas purchase contract buyout and buydown costs.

(B) PIPELINE MERCHANT FUNCTION.—The Commission's regulation under the Natural

Gas Act (15 U.S.C. 717-17v) of interstate pipeline sale for resale activities (the merchant function) including—

(i) the implementation of gas inventory charges and the as-billed recovery of producer demand charges; and

(ii) the criteria for finding that market-based rates for interstate pipeline sales for resale can be deemed to be just and reasonable in circumstances where such sales are made in workably competitive markets, and given such a finding, the criteria for finding that profits and losses occasioned by such sales for resale should not be taken into account in setting the seller's rates for other services.

(C) NATURAL GAS RATEMAKING.—The Commission's criteria for establishing just and reasonable rates under section 4 of the Natural Gas Act—

(i) where the Commission finds that workable competition exists and comparable third-party transportation exist, including criteria for the establishment of market-based rates;

(ii) on a basis other than historical cost, including the criteria for incentive rates; and

(iii) to ensure that all throughput, under both long-term and short-term arrangements, is taken into account in the Commission's determination of used and useful plant for purposes of possible inclusion in rate base.

(e) NATURAL GAS IMPORTS.—

(1) TRANSFER OF AUTHORITY.—Within thirty days of the date of enactment of this Act, the Secretary of Energy shall issue an order delegating to the Federal Energy Regulatory Commission authority to administer the provisions of section 3 of the Natural Gas Act (15 U.S.C. 717b).

(2) NATURAL GAS ACT AMENDMENT.—Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended by adding the following at the end of the section: "The Commission shall condition any import authorization pursuant to this section to redress any anti-competitive impacts on United States' natural-gas producers including, but not limited to, competitive disparities resulting from different rate designs applied to the pipeline transportation of domestic natural gas and the pipeline transportation of imported natural gas."

(3) REPORT BY THE DEPARTMENT OF JUSTICE.—Within six months of the date of enactment of this Act, the Department of Justice, in consultation with the Department of Energy, the Federal Energy Regulatory Commission and the Office of the United States Trade Representative, shall report to the Senate Committee on Energy and Natural Resources and the House of Representatives regarding the authority of the Department of Energy and the Federal Energy Regulatory Commission under applicable law to address and remedy regulatory advantages that may be conferred on imported natural gas.

SEC. 11105. UTILIZATION OF RULEMAKING PROCEDURES.—The first sentence of section 403(c) of the Department of Energy Organization Act (42 U.S.C. 7173(c)) is amended to read as follows: "Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or to the establishment of rates and charges, the issuance of a certificate of public convenience and necessity, or the abandonment of facilities and services under the Natural Gas Act may be conducted by rulemaking procedures."

SEC. 11106. REVIEW OF COMMISSION ORDERS.—(a) NATURAL GAS ACT AMENDMENTS.—

(1) REHEARING.—Section 19(a) of the Natural Gas Act (15 U.S.C. 717r(a)) is amended by striking "Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." and inserting in lieu thereof "Unless the Commission issues a final order on the application for rehearing within sixty days after it is filed, such application shall be deemed denied: *Provided*, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days."

(2) COURT REVIEW.—Section 19(b) of the Natural Gas Act (15 U.S.C. 717r(b)) is amended by striking the first and second sentences and inserting the following in lieu thereof: "Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within thirty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

(b) NATURAL GAS POLICY ACT AMENDMENTS.—

(1) REHEARING.—Section 506(a)(2) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(a)(2)) is amended by striking "Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied." and inserting in lieu thereof "Unless the Commission issues a final order on the application for rehearing within 60 days after it is filed, such application shall be deemed denied: *Provided*, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days."

(2) COURT REVIEW.—Section 506(a)(4) of the Natural Gas Policy Act (15 U.S.C. 3416(a)(4)) is amended by striking the first three sentences and inserting the following in lieu thereof: "Any person who is a party to a proceeding under this Act aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 30 days after the final action of the Commission on the application for rehearing required under paragraph (2). The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commis-

sion and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

(c) FEDERAL POWER ACT AMENDMENTS.—

(1) REHEARING.—Section 313(a) of the Federal Power Act (16 U.S.C. 825l(a)) is amended by striking "Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." and inserting in lieu thereof "Unless the Commission issues a final order on the application for rehearing within sixty days after it is filed, such application shall be deemed denied: *Provided*, That the Commission may, for good cause, extend the period for rehearing an additional ninety days or, in the case of a rulemaking proceeding, an additional one hundred and twenty days."

(2) COURT REVIEW.—Section 313(b) of the Federal Power Act (16 U.S.C. 825l(b)) is amended by striking the first and second sentences and inserting the following in lieu thereof: "Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within thirty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. The petition shall set forth specifically the ground or grounds upon which such petition is based. A copy of such petition shall forthwith be transmitted by the clerk of the court to the chairman of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SEC. 11107. LIMITED ANTITRUST RELIEF FOR INDEPENDENT GAS PRODUCER COOPERATIVES.—

(a) DEFINITIONS. For the purposes of this section, the term—

(1) "antitrust laws" shall mean the Federal laws defined in section 2(37) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301(37));

(2) "independent producer" means any person whose natural gas production does not exceed 6 million cubic feet per day: *Provided*, That any person who is an interstate pipeline, intrastate pipeline or local distribution company, as defined in sections 2(15), (16), and (17) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301(15), (16), (17)), or who is an affiliate of such person, as defined in section 2(27) of the Natural Gas Policy Act of 1978, (15 U.S.C. 3301(27)), may not be considered an independent producer for the purposes of this section; and

(3) "independent producer cooperative" shall mean any group of independent producers formed and operated for the purpose of pooling natural gas to enable the cooperative members to bargain effectively for the sale of the natural gas to any person: *Provided*, That such group is not formed or operated for the purpose of raising prices.

(b) LIMITED ANTITRUST RELIEF.

(1) In any civil action under the antitrust laws, the formation or operation of an independent producer cooperative shall not be deemed illegal per se, but shall be illegal only if the anticompetitive effects substantially outweigh the procompetitive effects.

(2) Nothing in this section shall affect the ability of the United States, any State or a private party to obtain an injunction against an independent producer cooperative for conduct that is proven to be illegal under the standard set forth in paragraph (1).

(c) SCOPE.—Nothing in this section shall be construed to make it unlawful for an operator or working interest owner of a well, lease, field, plant or producing unit to market, on behalf of other working interest and royalty owners, the natural gas produced from such well, lease, field, plant or producing unit.

SEC. 11108. VEHICULAR NATURAL GAS JURISDICTION.—(a) NATURAL GAS ACT AMENDMENTS.—

(1) Section 1 of the Natural Gas Act (15 U.S.C. 717) is amended to add the following after subsection (c)—

"(d) The provisions of this Act shall not apply to any person by reason of, or with respect to, any sale or transportation of Vehicular Natural Gas if such person is (i) not otherwise a natural-gas company, or (ii) primarily subject to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of Vehicular Natural Gas."

(2) Section 2 of the Natural Gas Act (15 U.S.C. 717a) is amended to add the following after subsection (9)—

"(10) 'Vehicular Natural Gas' means natural gas that is ultimately used as a fuel in a motor vehicle."

(b) STATE LAWS AND REGULATIONS.—The transportation of natural gas in closed containers, or the sale of natural gas, by any person who is not otherwise a public utility to any person for use by such person as a fuel in a vehicle shall not be deemed to be a transportation or sale of natural gas within the meaning of any State law, regulation or order in effect prior to January 1, 1989. The provisions of this section shall not apply to any State law, regulation or order that protects the public safety.

(c) NON-APPLICABILITY OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.—

(1) A company shall not be considered to be a gas utility company under section 2(a)(4) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(4)) ("Act") solely because it owns or operates facilities used for the distribution at retail of vehicular natural gas.

(2) Notwithstanding section 11(b)(1) of the Act (15 U.S.C. 79k(b)(1)), a company registered under such Act solely by reason of direct or indirect ownership of voting securities of one or more gas utility companies, or any subsidiary of such company, may acquire or retain, in any geographic area, any interest in any company that is not a public utility company and which, as a primary business, is involved in the sale of vehicular natural gas or the manufacture, sale, installation, servicing, or financing of equipment related to the sale or consumption of vehicular natural gas.

(3) The sale or transportation of vehicular natural gas by a company, or any subsidiary of such company, shall not be taken into consideration in determining whether under section 3 of the Act (15 U.S.C. 79c) such company is exempt from registration.

(4) "Vehicular natural gas" means natural or manufactured gas that is ultimately used as a fuel in a motor vehicle.

SEC. 11109. STREAMLINED CERTIFICATE PROCEDURES.—(a) Opposed Applications.—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by:

(1) redesignating subparagraph (B) as subparagraph (C); and

(2) inserting after subparagraph (A) the following new subparagraph:

"(B) In any case not described in the proviso of subparagraph (A), the Commission shall file notice in the Federal Register of the proposed certificate of public convenience and necessity as soon as the required information in connection therewith has been received by the Commission. If no party has filed a protest or objection in response to such notice within 60 days after publication of such notice, the certificate of public convenience and necessity shall be deemed to be issued: Provided, That notwithstanding the filing of a protest or objection a certificate shall be deemed issued if all protests and objections are withdrawn."

(b) EXPEDITED PROCEDURE FOR PROTESTS.—Within 90 days of the date of enactment of this Act, the Commission shall institute a rulemaking to establish a procedure for dealing expeditiously with protests which do not raise material issues of fact necessitating an evidentiary hearing.

(c) CERTIFICATE NOT REQUIRED FOR REPLACEMENT FACILITIES.—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by adding at the end the following new subparagraph:

"(D) The term 'facilities' as used in this subsection shall exclude facilities which constitute the replacement or repair of existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable, provided (1) that such replacement or repair does not result in a reduction or abandonment of service by means of such facilities, (2) that such replacement or repair has substantially equivalent designed delivery capacity as the particular facilities being replaced or repaired, and (3) that the cost of such replacement or repair shall not exceed \$20 million dollars per project, as adjusted pursuant to the Implicit Price Deflator for GNP. Nothing herein shall preclude a natural-gas company from repairing or replacing facilities as may be necessary to meet the requirements of the Natural Gas Pipeline Safety Act of 1968."

(d) CONCLUSIVE EVIDENCE OF NEED.—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by adding at the end thereof the following new subparagraph:

"(E) In such hearing under subparagraph (C), proof of binding contractual commitments by bona fide shippers for firm natural gas service to be rendered utilizing the facilities proposed to be constructed or extended shall be conclusive evidence of the need for such proposed service and facilities, and shall be sufficient to dismiss any claim of mutual exclusivity by another applicant."

(e) PHASED CERTIFICATE PROCEDURES.—Section 7(c)(1) of the Natural Gas Act (15 U.S.C. 717f(c)(1)) is amended by adding at the end thereof the following new subparagraph:

"(F) In such hearing under subparagraph (C), the Commission, where appropriate, may phase its consideration of issues raised in connection with the application and may issue an initial order containing preliminary findings with respect to such issues. Notwithstanding the preliminary findings in such initial order, the issuance of a certificate of public convenience and necessity will be subject to a final order based upon the complete record of the hearing under subparagraph (C)."

SEC. 11110. GAS DELIVERY INTERCONNECTION.—Section 7(a) of the Natural Gas Act (15 U.S.C. 717f(a)) is amended by—

(a) redesignating subsection (a) as paragraph (a)(1); and

(b) inserting at the end the following new paragraph—

"(2) Upon the petition of any person, the Commission by order may direct an interstate pipeline as defined in section (2)(15) of the Natural Gas Policy Act of 1978, for the sole purpose of receiving natural gas from the petitioner, to establish, at petitioner's expense, and upon such reasonable terms as the Commission may prescribe, physical connection of the interstate pipeline's transportation facilities with the petitioner's production or gathering facilities, the petitioner's intrastate pipeline as defined in section 2(16) of the Natural Gas Policy Act of 1978 (limited to the production area as defined by the Commission), or the petitioner's pipeline certificated pursuant to subparagraph (c)(1)(G) of this section (limited to the production area as defined by the Commission); Provided, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel an interstate pipeline to establish physical connection when to do so would impair its ability to render adequate service to its customers."

SEC. 11111. DEREGULATION OF PIPELINE SALES OF NATURAL GAS.—Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding the following after subsection (g), as added by this title—

"(h) After a hearing held upon the application of a natural-gas company, if the Commission finds that the natural-gas company provides transportation for natural gas owned by any other person comparable to the transportation provided by the natural-gas company for natural gas that it sells for resale and finds that the market that the natural-gas company is authorized to serve is competitive, the Commission may issue an order finding that the natural gas cost component of rates and charges made, demanded, or received by the natural-gas company for the sale for resale of natural gas are exempt from the jurisdiction of the Commission under this Act."

SEC. 11112. COMMISSION POLICY MAKING.—Section 401 of the Department of Energy Organization Act (42 U.S.C. 7171) is amended by adding the following after subsection (j)—

"(k) For the purposes of this Act or any other Act, discussions by all members of the Commission on matters of general policy shall not be considered a meeting."

TITLE XII—OUTER CONTINENTAL SHELF

SEC. 12101. COASTAL STATE AND COMMUNITY OUTER CONTINENTAL SHELF IMPACT ASSISTANCE.—The Outer Continental Shelf Lands Act (43 U.S.C. 1331-1356) is amended by designating the existing provisions as Title I and adding a new Title II at the end thereof as follows:

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'Coastal State and Community Outer Continental Shelf Impact Assistance Act'.

"SEC. 202. DEFINITIONS.

"For purposes of this title the term—

"(1) 'coastal State' means any State of the United States bordering on the Atlantic Ocean, the Pacific Ocean, the Arctic Ocean, or the Gulf of Mexico;

"(2) 'coast line' has the meaning given such term under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*);

"(3) 'Secretary' means the Secretary of the Interior; and

"(4) 'new revenues' means:

(A) all bonuses paid as a result of lease sales conducted pursuant to the Outer Con-

tinental Shelf Lands Act on or after February 5, 1991;

(B) all rents and other moneys other than royalties payable to the Secretary on or after February 5, 1991, related to a lease issued pursuant to the Outer Continental Shelf Lands Act; and

(C) all royalties attributable to a well or mining operation from which production commenced on or after February 5, 1991, and payable to the Secretary under the Outer Continental Shelf Lands Act; plus interest thereon.

"SEC. 203. COASTAL STATE AND COMMUNITY OUTER CONTINENTAL SHELF IMPACT ASSISTANCE FUND.

"(a) ESTABLISHMENT.—There is established an interest bearing special account in the Treasury of the United States to be known as the Coastal State and Community Outer Continental Shelf Impact Assistance Fund (hereinafter in this Act referred to as "the Fund"). All payments made by the Secretary to carry out the provisions of this title shall be paid from the Fund, only to the extent provided for in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this title shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. The Fund shall be available to the Secretary without fiscal year limitation as a special account for the purposes of carrying out this title.

"(b) PAYMENTS TO FUND.—Beginning in fiscal year 1992, the Secretary shall pay into the Fund not later than 60 days after the end of the preceding fiscal year, an amount equal to 37.5 percent of all new revenues, as defined herein, derived during the preceding fiscal year which are attributable to an Outer Continental Shelf lease any part of which is within 200 geographical miles of the coast line.

"SEC. 204. DISPOSITION OF FUND.

"(a) STATE IMPACT ASSISTANCE.—(1) Subject to appropriation, the Secretary shall transmit to the coastal State annually the revenues payable to such coastal State pursuant to this title, plus interest thereon.

"(2) Subject to paragraph (3), the amounts to be paid to coastal States under this subsection shall be, with respect to any such State for any fiscal year, the sum of the amounts calculated, with respect to such State, pursuant to subparagraphs (A), (B), and (C):

"(A) An amount which bears, to one-half of the amount appropriated for such fiscal year, the same ratio that the amount of Outer Continental Shelf acreage which is adjacent to such state and which is newly leased by the Federal Government in the immediately preceding fiscal year bears to the total amount of Outer Continental Shelf acreage which is newly leased by the Federal Government in such preceding year.

"(B) An amount which bears, to one-quarter of the amount appropriated for such fiscal year, the same ratio that the volume of oil and natural gas produced in the immediately preceding fiscal year from the Outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in such year from all of the Outer Continental Shelf acreage which is leased by the Federal Government.

"(C) An amount which bears, to one-quarter of the amount appropriated for such fiscal year, the same ratio that the volume of oil and natural gas produced from Outer Continental Shelf acreage leased by the Federal Government which is first landed in such

state in the immediately preceding fiscal year bears to the total volume of oil and natural gas produced from all Outer Continental Shelf acreage leased by the Federal Government which is first landed in all of the coastal States in such year.

"(3)(A)(i) After making the calculations required under paragraph (2) for any fiscal year, the Secretary shall—

"(I) with respect to any coastal State which, based on such calculations, would receive an amount which is less than 2 per centum of the amount appropriated for such fiscal year, increase the amount payable to such coastal State to 2 per centum of such appropriated amount; and

"(II) with respect to any coastal State which, in such fiscal year, would not receive a payment under paragraph (2), make a payment to such coastal State in an amount equal to 2 per centum of the total amount appropriated for making payments to all States under paragraph (2) in such fiscal year if any other coastal State in the same region will receive a payment under such paragraph in fiscal year, except that a coastal State shall not receive a payment under this clause unless the Secretary determines that it is being or will be impacted by activities conducted pursuant to a lease issued pursuant to the Outer Continental Shelf Lands Act.

"(i) For purposes of this subparagraph—

"(I) the States of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia, (the Atlantic coastal states) shall constitute one 'region';

"(II) the States of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one 'region';

"(III) the States of California, Hawaii, Oregon, and Washington (the Pacific coastal states) shall constitute one 'region'; and

"(IV) the State of Alaska shall constitute one 'region'.

"(B) If, after the calculations required under subparagraph (A), the total amount of funds appropriated for making payments to coastal states in any fiscal year pursuant to this subsection is less than the total amount of payments payable to all coastal states in such fiscal year, there shall be deducted from the amount payable to each coastal State which will receive more than 2 per centum of the amount of funds so appropriated an amount equal to the product of—

"(i) the amount by which the total amount of payments payable to all coastal states in such fiscal year exceeds the total amount of funds appropriated for making such payments; multiplied by

"(ii) a fraction, the numerator of which is the amount of payments payable to such coastal State in such fiscal year reduced by an amount equal to 2 per centum of the total amount appropriated for such fiscal year and the denominator of which is the total amount of payments payable to coastal states which, in such fiscal year, will receive more than 2 per centum of the amount of funds so appropriated, reduced by an amount equal to the product of 2 per centum of the total amount appropriated for such fiscal year multiplied by the number of such coastal states.

"(C)(i) If, after the calculations required under subparagraph (B) for any fiscal year, any coastal state would receive an amount which is greater than 37.5 per centum of the amount appropriated for such fiscal year, the Secretary shall reduce the amount payable to such coastal state to 37.5 per centum of such appropriated amount.

"(ii) Any amount not payable to a coastal state in a fiscal year due to a reduction under clause (i) shall be payable proportionately to all coastal states which are to receive more than 2 per centum and less than 37.5 per centum of the amount appropriated for such fiscal year, except that in no event shall any coastal state receive more than an additional 3 per centum of such appropriated amount under this clause.

"(iii) For purposes of this subparagraph, the term "payable proportionately" means payment in any fiscal year in accordance with the provisions of paragraph (2), except that in making calculations under such paragraph the Secretary shall only include those coastal states which are to receive more than 2 per centum and less than 37.5 per centum of the amount appropriated for such fiscal year.

"(4) For purposes of making calculations under paragraph (2), Outer Continental Shelf acreage is adjacent to a particular coastal State if such acreage lies on that State's side of the extended lateral seaward boundaries of such State. The extended lateral seaward boundaries of a coastal State shall be determined as follows:

"(A) If lateral seaward boundaries have been clearly defined or fixed by an interstate compact, agreement, or judicial decision (if entered into, agreed to, or issued before the date of the enactment of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to so define or fix them in such compact, agreement, or decision.

"(B) If no lateral seaward boundaries, or any portion thereof, have been clearly defined or fixed by an interstate compact, agreement, or judicial decision, lateral seaward boundaries shall be determined according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and the Contiguous Zone, and extended on the basis of such principles.

"(C) If, after the date of enactment of this paragraph, two or more coastal states enter into or amend an interstate compact or agreement in order to clearly define or fix lateral seaward boundaries, such boundaries shall thereafter be extended on the basis of the principles of delimitation used to so define or fix them in such compact or agreement.

"(b) COUNTY AND COMMUNITY IMPACT ASSISTANCE.—The revenues paid by the Secretary to a coastal State under subsection (a) shall be used by such state and its subdivisions, as the legislature of the state may direct, giving priority to those subdivisions of the state socially, environmentally, or economically impacted by development of minerals on the Outer Continental Shelf, for (i) planning, (ii) construction and maintenance of public facilities, (iii) environmental activities, and (iv) provision of public services.

"SEC. 205. RELATIONSHIP TO OTHER LAW.

"The payment of funds pursuant to this title shall be in addition to any payments made to a State under any other provision of this Act or any other provision of law."

SEC. 12102. REPORT ON THE AVAILABILITY OF THE OUTER CONTINENTAL SHELF FOR LEASING.—(a) REPORT TO CONGRESS.—Within six months after the date of enactment of this Act, the President shall submit a report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate containing the President's recommendations and findings regarding the

availability of areas of the Outer Continental Shelf for oil and gas leasing, development and production.

(b) REPORT CONTENTS.—Such report shall contain but not be limited to the following findings and information:

(1) oil and gas production potential on the Outer Continental Shelf by region;

(2) historical data regarding oil and gas production on the Outer Continental Shelf by region;

(3) the extent to which production from areas of the Outer Continental Shelf currently under (A) moratoria as a result of the decision of the President announced June 26, 1990, or (B) legislative moratoria would reduce United States dependence on oil from the Middle East and on oil produced by members of the Organization of Petroleum Exporting Countries;

(4) a comparison by Outer Continental Shelf region and on a national basis of the number of oil spills and amount of spilled oil resulting from Outer Continental Shelf production and the number of oil spills and amount of spilled oil caused by vessels transporting imported oil to the United States;

(5) an estimate by region and on a national basis of the net change in the oil spill risk as imports of oil decrease in response to production from new leases on the Outer Continental Shelf;

(6) at least one proposal for an alternative to the current Outer Continental Shelf process that would provide for a staged requirement for environmental information and public comment thereon at critical points in the leasing process and during the post-leasing exploration and development phases. Any such proposal shall assume that a potential lessee will be offered full rights to exploration and development at the time of lease sale subject to cancellation. Any proposal under this paragraph shall specify the criteria to be used for cancellation based on environmental considerations;

(7) an analysis of the compensation criteria for OCS lease cancellation under current law, recommended changes thereto, and recommendations for any changes in such compensation under any proposal under paragraph (6); and

(8) identification of gas prone areas under administrative or legislative moratoria.

TITLE XIII—RESEARCH, DEVELOPMENT, DEMONSTRATION AND COMMERCIALIZATION ACTIVITIES

SEC. 13101. ENERGY RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION PRIORITIES.—The Secretary shall establish priorities for research, development, demonstration, and commercialization activities. These priorities shall include consideration of the following criteria—

(1) the potential to increase the Nation's energy independence and thus reduce reliance on imported oil;

(2) the projected cost-effectiveness of the energy or energy efficiency resource to be produced or saved, including an evaluation of the likelihood of the activities contributing to the achievement of commercialization of new energy technologies;

(3) the comparative environmental and public health impacts of the energy to be produced or saved by the specific activities;

(4) the national security impact of the energy produced or saved, including its projected contribution to the reduction of oil imports and to the diversity of the domestic energy resource mix;

(5) the obstacles inherent in private industry's development of new energy technologies and steps necessary for establishing

or maintaining technological leadership in the area of energy and energy efficiency resource technologies, including, but not limited to, solar, fuel cells, fusion, superconductivity, nuclear fission, electric power, clean coal technologies, oil shale, oil and natural gas recovery and utilization, and hydrogen;

(6) the contribution of a given activity to fundamental scientific knowledge;

(7) the anticipated impact of the results of activities on targeted industries and industrial and manufacturing processes; and

(8) the contribution to United States competitiveness.

SEC. 13102. MANAGEMENT PLAN.—(a) **PLAN PREPARATION.**—The Secretary, in consultation with the Energy Advisory Board to the Secretary, shall prepare a management plan for the conduct of research, development, demonstration, and commercialization of energy technologies that is consistent with the purposes of this Act and guided by the priorities set forth in section 13101.

(b) **PROPOSALS.**—The management plan under subsection (a) shall contain proposals for—

(1) investigation of promising energy and energy efficiency resource technologies that have been identified as potentially significant future contributors to national energy security;

(2) development of contingency energy and energy efficiency resource technologies that have the potential to reduce energy supply vulnerability, and to minimize adverse impacts on the environment, the global climate, and the economy; and

(3) creation of opportunities for export of energy and energy efficiency resource technologies from the United States that can enhance the Nation's competitiveness;

(c) **PLAN SUBMISSION.**—Within one year after the date of enactment of this section, the Secretary shall submit the first management plan under this section to Congress. Thereafter, the Secretary shall submit a revised management plan biennially at the time of submittal of the President's annual budget submission to the Congress.

SEC. 13103. NATURAL GAS END-USE TECHNOLOGIES.—(a) **PROGRAM.**—The Secretary shall carry out a program to promote the development and commercialization of new and advanced natural gas utilization technologies including, but not limited to, the following areas—

(1) stationary source emissions control and efficiency improvements including combustion systems, industrial processes, natural gas heating and cooling, cogeneration, and cofiring natural gas with coal and waste fuels;

(2) natural gas storage including increased deliverability from existing gas storage facilities and new capabilities for storage near demand centers and on-site storage at major energy consuming facilities;

(3) transportation fuel alternatives and emissions controls including natural gas vehicle commercialization and infrastructure development (including home and commercial compressors for natural gas vehicles) and advanced engines and propulsion concepts; and

(4) electrochemical energy conversion including the commercialization of molten carbonate fuel cells and phosphoric acid fuel cells and the development of advanced natural gas-fired fuel cell technologies.

(b) **COOPERATIVE AGREEMENTS.**—The Secretary shall solicit proposals and may enter into cooperative agreements under this section.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13104. NATURAL GAS SUPPLY ENHANCEMENT.—(a) **PROGRAM.**—The Secretary shall carry out a program of research, development and demonstration to increase the recoverable natural gas resource base including, but not limited to, the following areas—

(1) more intensive recovery of natural gas from discovered conventional resources;

(2) economic recovery of unconventional natural gas resources, including gas from tight sands, eastern shales, and gas from less permeable formations, coal-bed methane and geopressurized reservoirs;

(3) surface gasification of coal; and

(4) recovery of methane from biofuels including municipal solid waste.

(b) **COOPERATIVE AGREEMENTS.**—The Secretary shall solicit proposals and may enter into cooperative agreements under this section.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993 and 1994 to carry out the purposes of this section.

SEC. 13105. HIGH EFFICIENCY HEAT ENGINES.—(a) **PROGRAM.**—The Secretary shall carry out a program of research, development, demonstration, and commercialization on high efficiency heat engines, emphasizing advanced gas turbine cycles, and the incorporation of energy efficient materials in advanced gas turbine cycles for high efficiency electric and automotive power generation, such as—

(1) advanced combined cycle turbines;

(2) steam-injected gas turbines; and

(3) intercooled steam-injected gas turbines.

(b) **JOINT VENTURES.**—The Secretary may enter into joint ventures with appropriate parties to construct and demonstrate high efficiency heat engines.

(c) **AUTHORIZATION.**—There is authorized to be appropriated not more than \$25,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13106. OIL SHALE RESEARCH AND DEVELOPMENT.—(a) **PROGRAM.**—(1) The Secretary shall carry out a research and devel-

opment program on oil shale that includes applied research on eastern oil shale, in cooperation with universities and the private sector, that may have the potential to decrease United States dependence on energy imports.

(2) As part of the program authorized in this section, the Secretary shall consider the potential benefits of including in that program applied research carried out in cooperation with universities and other private sector entities that are now engaged in research on eastern oil shale retorting and associated processes.

(b) **COST-SHARING.**—The program carried out under this section shall be cost-shared with universities and the private sector to the maximum extent possible.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13107. WESTERN OIL SHALE RESEARCH AND DEVELOPMENT.—(a) **PROGRAM.**—The Secretary shall carry out a program of research on extracting oil from western oil shales that includes, if appropriate, establishment and utilization of at least one field testing center for the purpose of testing, evaluating, and developing improvements in oil shale technology at the field test level. In establishing such a center, the Secretary shall consider sites with existing oil shale mining and processing infrastructure and facilities.

(b) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13108. HIGH-TEMPERATURE SUPERCONDUCTING ELECTRIC POWER SYSTEM.—(a) **PROGRAM.**—The Secretary shall carry out a program of research, development, and demonstration of a high-temperature superconducting electric power system. Elements of the program shall include, but are not limited to, the following—

(1) the development of prototypes, where appropriate, of the major elements of a superconducting electric power system, such as motors, generators, transmission lines, transformers, and magnetic energy storage systems;

(2) development of prototypes based on high-temperature superconducting wire and refrigeration systems using cryocoolers or liquid cryogenics such as nitrogen, with such prototype wires operating at temperatures between 20 degrees Kelvin and 77 degrees Kelvin (-423 degrees Fahrenheit and -320 degrees Fahrenheit), or higher if material developments permit; and

(3) development of prototypes that are of sufficient operational capabilities to demonstrate the technology application and facilitate dual-use application in both the civilian commercial sector and the defense sector.

(b) COOPERATIVE AGREEMENTS.—In order to carry out the programs under this section, the Secretary shall solicit proposals and may enter into cooperative agreements under this section. The Secretary is also encouraged to expedite government, industry, and university collaborative agreements under existing mechanisms at the Department of Energy, in coordination with other Federal agencies.

(c) COST-SHARING.—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13109. RENEWABLE ENERGY RESEARCH AND DEVELOPMENT PROGRAMS.—Section 4(c) of the Renewable Energy and Energy Efficiency Technology Competitiveness Act (Pub. L. No. 101-218) is amended by striking all after the first paragraph and inserting in lieu thereof the following:

"(1) such sums as may be necessary for fiscal year 1992;

"(2) such sums as may be necessary for fiscal year 1993; and

"(3) such sums as may be necessary for fiscal year 1994.

"Each of the President's annual budget requests submitted to Congress after the date of enactment of this Act shall include as separate line items each of the categories of renewable energy programs described in this subsection."

SEC. 13110. ENERGY EFFICIENCY RESEARCH AND DEVELOPMENT PROGRAMS.—Section 5 of the Renewable Energy and Energy Efficiency Technology Competitiveness Act (Pub. L. No. 101-218) is amended by striking all after the first paragraph and inserting in lieu thereof the following:

"(1) such sums as may be necessary for fiscal year 1992;

"(2) such sums as may be necessary for fiscal year 1993; and

"(3) such sums as may be necessary for fiscal year 1994."

SEC. 13111. NATURAL GAS AND ELECTRIC HEATING AND COOLING TECHNOLOGIES.—(a) PROGRAM.—(1) The Secretary shall expand the program of research, development, and demonstration for natural gas and electric heating and cooling technologies for residential and commercial buildings.

(2) The natural gas heating and cooling program shall increase research on thermally-activated heat pumps including absorption heat pumps and engine-driven heat pumps.

(3) The electric heating and cooling program shall increase research on—

(A) advanced heat pumps;

(B) thermal storage; and

(C) advanced electrically driven HVAC (heating, ventilating, and air conditioning) and refrigeration systems that utilize replacements for chlorofluorocarbons, including HCFC-22.

(b) COST-SHARING.—(1) The Secretary shall require at least 50 percent of the costs di-

rectly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(c) AUTHORIZATION.—There is authorized to be appropriated not more than \$15,000,000 for each of the fiscal years 1992, 1993, and 1994 for purposes of this section in addition to current authorizations.

SEC. 13112. FUSION.—(a) PROGRAM.—The Secretary shall carry out a research, development, and demonstration program on fusion energy that is structured in a way that will lead to commercial demonstration of the technological feasibility of fusion energy for the production of electricity after the year 2010.

(b) COMPREHENSIVE MANAGEMENT PLAN.—(1) Within 180 days after the date of enactment of this section, the Secretary shall prepare a comprehensive management plan for research, development, and demonstration of fusion energy, including milestones and schedules for technology development and estimates of budget and program management resource requirements.

(2) As part of the plan required under paragraph (1), the Secretary shall evaluate the status of international fusion programs and evaluate whether the Federal Government should make efforts to strengthen existing international cooperative agreements in fusion energy or enter into new cooperative agreements to accomplish the purposes of this section.

(3) The plan shall also evaluate to what extent university or private sector participation is appropriate or necessary in order to carry out the purposes of this section.

(c) COST-SHARING.—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13113. ELECTRIC VEHICLE, ELECTRIC-HYBRID VEHICLE, AND ASSOCIATED EQUIPMENT RESEARCH AND DEVELOPMENT.—(a) GENERAL.—The Secretary shall conduct, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920), a research and development program on electric vehicles, electric-hybrid vehicles, and associated equipment. Such program shall be conducted in cooperation with the electric utility industry, the automobile industry, battery manufacturers, and such other persons as the Secretary considers appropriate.

(b) COOPERATIVE AGREEMENTS.—The Secretary, consistent with the comprehensive

plan under subsection (c), may enter into cooperative agreements to conduct research and development projects with industry in such areas of technology development as—

(1) high efficiency electric power trains, including advanced motors, motor controllers, and hybrid power trains for electric vehicle range improvement and light-weight body structures for electric vehicle weight reduction; and

(2) advanced batteries with high energy density and power density, and improved range or recharging cycles for a given unit weight for electric vehicle application.

(c) COMPREHENSIVE PLAN.—(1) The Secretary shall prepare a comprehensive five-year program plan for carrying out the purposes of this section. Such program plan shall be updated annually for a period of not less than ten years after the date of enactment of this Act.

(2) The program plan under paragraph (1) shall be prepared in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Secretary of Commerce, the heads of other appropriate Federal agencies, representatives of the electric utility industry, electric vehicle and electric-hybrid vehicle manufacturers, the United States automobile industry, and such other persons as the Secretary deems appropriate.

(3) The comprehensive plan shall include—

(A) a prioritization of research areas critical to the commercialization of electric vehicles and electric-hybrid vehicles, including advanced battery technology;

(B) the program elements, management structure, and activities, including program responsibilities of individual agencies and departments;

(C) the program strategies, including technical milestones to be achieved toward specific goals during each fiscal year of the comprehensive plan for all major activities and projects;

(D) the estimated costs of individual program elements, including estimated costs for each of the fiscal years of the plan for each of the participating agencies or departments;

(E) a description of the methods of technology transfer;

(F) the proposed participation by non-Federal entities in the planning and implementation of the plan; and

(G) such other information as the Secretary deems appropriate.

(4) Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit the comprehensive program plan to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such plan shall be updated annually as specified in subsection (c)(1).

(d) SOLICITATION OF PROPOSALS.—(1) Within one year after the date of enactment of this Act, the Secretary shall solicit proposals for cooperative agreements for research and development under subsection (b).

(2) Thereafter, the Secretary may solicit additional proposals for cooperative agreements under subsection (b) if, in the judgment of the Secretary, such cooperative agreements could contribute to the development of electric vehicles or electric-hybrid vehicles and associated equipment.

(e) COST-SHARING.—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreement under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(f) DEPLOYMENT.—(1) The Secretary shall conduct a program designed to accelerate deployment of advanced energy storage systems, including advanced battery technologies, for use with electric vehicles and electric-hybrid vehicles.

(2) In carrying out the program authorized by this subsection, the Secretary shall—

(A) undertake an inventory and assessment of advanced energy storage systems, including advanced battery technologies, electric vehicle technologies and electric-hybrid technologies and their commercial capability; and

(B) develop a Federal industry information exchange program to improve the deployment or use of such technologies. The information exchange program may consist of workshops, publications, conferences, and a data base for use by the public and private sectors.

(g) COMPLIANCE WITH EXISTING LAW.—Nothing in this section shall be deemed to convey to any person, partnership, corporation, or other entity immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this section, "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

(h) DEFINITIONS.—For purposes of this section, the term—

(1) "advanced battery" means an electrochemical storage device, including fuel cells, and associated technology necessary to charge, discharge, recharge or regenerate such electro-chemical storage device, for use as a source of power for an electric vehicle, an electric-hybrid vehicles, and any other associated equipment of an electric vehicle;

(2) "associated equipment" means that equipment necessary for the regeneration, refueling or recharging of batteries or other forms of electric energy used to power an electric vehicle and, in the case of electric-hybrid vehicles, that equipment necessary for the application or use of the non-electric source of power in such vehicles;

(3) "electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current; and

(4) "electric-hybrid vehicle" means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electrical source of power.

(1) AUTHORIZATION.—There is authorized to be appropriated to the Secretary (in addition to any amounts made available pursuant to other law) for each of the fiscal years 1992, 1993, and 1994 such sums as may be necessary to carry out the purposes of this section.

SEC. 13114. ADVANCED OIL RECOVERY RESEARCH, DEVELOPMENT AND DEMONSTRATION.—(a) PROGRAM.—The Secretary shall carry out a national program of research, development and demonstration to increase the economic recoverability of domestic oil resources. Such program shall address both advanced secondary oil recovery and tertiary oil recovery and shall include but not be limited to the following areas—

(1) transfer of proven recovery technologies to producers and operators of wells

that would otherwise be likely to be abandoned in the near term due to declining production;

(2) development, field testing, and transfer of recovery technologies to operators of wells in high priority reservoirs ranked primarily on the basis of oil recovery potential and risk of abandonment; and

(3) the identification and development of new recovery techniques.

(b) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with producers, service companies, and technical support organizations for field demonstration projects to be undertaken on a cost-shared basis under this section.

(c) COST-SHARING.—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 13115. TAR SANDS.—(a) POLICY.—It is the policy of the United States to promote the development and production, by all means consistent with sound engineering and environmental practices, of deposits of tar sands.

(b) DEFINITION.—The term "tar sand" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise; or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying.

(c) STUDY.—The Secretary, in consultation with the Secretary of the Interior, shall submit a study to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate within one year from the date of enactment of this Act. Such study shall identify and evaluate the development potential of sources of tar sands in the United States. The study shall also identify and evaluate processes for extracting oil from the identified tar sands sources, including existing tar sands waste tailings, and evaluate the environmental benefits of, and the potential for co-production of minerals and metals from, such processes.

(d) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 and 1993 to carry out the purposes of this section.

SEC. 13116. TELECOMMUTING STUDY.—(a) STUDY.—The Secretary, in consultation with the Secretary of Transportation, shall conduct a study of the potential costs and benefits to the energy and transportation sectors of telecommuting. The study shall include—

(1) an estimation of the amount and type of reduction of commuting by form of transportation type and numbers of commuters;

(2) an estimation of the potential number of lives saved;

(3) an estimation of the reduction in environmental pollution, in consultation with the Environmental Protection Agency;

(4) an estimation of the amount and type of reduction of energy use and savings by form of transportation type; and

(5) an estimation of the social impact of widespread use of telecommuting.

(b) This study shall be completed no more than 180 days after the date of enactment of this Act. A report, summarizing the results of the study, shall be transmitted to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no more than 60 days after completion of this study.

SEC. 13117. STUDY OF MINIMIZATION OF NUCLEAR WASTE.—(a) STUDY.—The Secretary shall conduct a study of the potential for minimizing the volume and toxic lifetime of nuclear waste, including an analysis of viability of existing technologies for this purpose and an assessment of the extent of research and development required for new technologies.

(b) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 13118.—NUCLEAR WASTE MANAGEMENT PLAN.—(a) PREPARATION AND SUBMISSION OF REPORT.—The Secretary, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (Pub. L. No. 97-425; 42 U.S.C. 10101 *et seq.*) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of enactment of this Act. The Secretary shall prepare this report for submission to the President and the Congress within a year after the date of enactment of this Act. The report shall examine any new relevant issues related to management of spent fuel and high-level nuclear waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent fuel or high-level waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

(b) OPPORTUNITY FOR PUBLIC COMMENT.—In preparation of the report required under subsection (a), the Secretary shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

(c) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SEC. 13119. MATH AND SCIENCE EDUCATION PROGRAM.—(a) PROGRAM.—The Secretary shall enter into contracts with existing qualified entities to conduct science and mathematics education programs that supplement the Special Programs for Students from Disadvantaged Backgrounds carried out by the Secretary of Education under sections 417A through 417F of Pub. L. No. 89-329, as amended (20 U.S.C. 1070d through 1070d-1d).

(b) PURPOSE.—(1) The purpose of the programs shall be to provide support to Federal, State, and private programs designed to promote the participation of low-income and first generation college students as defined in section 417A of Pub. L. No. 89-329, as

amended (20 U.S.C. 1070d-d), in post-secondary science and mathematics education.

(2) Support activities may include—

- (A) the development of educational materials;
- (B) the training of teachers and counselors;
- (C) the establishment of student internships;
- (D) the development of seminars on mathematics and science;
- (E) tutoring in mathematics and science;
- (F) academic counseling;
- (G) the development of opportunities for research; and

(H) such other activities that may promote the participation of low-income and first generation college students in post-secondary science and mathematics education.

(c) SUPPORT.—(1) In carrying out the purpose of this section, the entities may provide support under subsection (b)(2) to—

(A) low-income and first generation college students; and

(B) institutions of higher education, public and private agencies and organizations, and secondary and middle schools that principally benefit low-income students.

(2) The qualified entities shall, to the extent practicable, coordinate support activities under this section with the Secretary of Education and the Secretary.

(d) COOPERATION WITH QUALIFIED ENTITIES.—The Secretary shall cooperate with qualified entities and, to the extent practicable, make available to the entities such personnel, facilities, and other resources of the Department of Energy as may be necessary to carry out the duties of the entities.

(e) REPORT.—Not later than October 1 of each year, the entities shall report to the Secretary, the Secretary of Education, and the Congress on—

(1) The progress made to promote the participation of low-income and first generation college students in post-secondary science and mathematics education by—

- (A) the qualified entities;
- (B) other mathematics and science education programs of the Department of Energy; and

(C) the Special Programs for Students from Disadvantaged Backgrounds of the Department of Education; and

(2) recommendations for such additional actions as may be needed to promote the participation of low-income students in post-secondary science and mathematics education.

(f) EFFECT ON EXISTING PROGRAMS.—The programs in this section shall supplement and be developed in cooperation with the current mathematics and science education programs of the Department of Energy and the Department of Education but shall not supplant them.

(g) DEFINITION.—For purposes of this section, the term "qualified entity" means a non-profit corporation, association, or institution that has demonstrated special knowledge of, and experience with, the education of low-income and first generation college students and whose primary mission is the operation of national programs that focus on low-income students and provide training and other services to educators.

(h) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE XIV—COAL, COAL TECHNOLOGY AND ELECTRICITY

Subtitle A—Coal and Coal Technology

SEC. 14101. COAL RESEARCH, DEVELOPMENT AND DEMONSTRATION PROGRAM.—(a) ESTAB-

LISHMENT.—(1) The secretary, in consultation with the National Coal Council and other representatives of the public as the Secretary deems necessary, shall, in accordance with the Federal Nonnuclear Energy Research and Development Policy Act of 1974 (42 U.S.C. 5901-5920), conduct a research, development, and demonstration program within the Department of Energy for advanced coal-based technologies with the goals and objectives of—

(A) achieving the control of sulfur oxides, oxides of nitrogen, or air toxics at levels of proficiency greater than currently available commercial technology;

(B) achieving the cost competitive conversion of coal into energy forms usable in the transportation sector;

(C) demonstrating the conversion of coal to synthetic gaseous, liquid, and solid fuels; and

(D) demonstrating, in cooperation with other Federal and State agencies, the use of coal-derived fuels in mobile equipment, with opportunities for industrial cost-sharing participation.

(2) The coal technology development program shall also be designed to assure the timely development of cost-effective technologies or energy production processes or systems utilizing coal which achieve greater efficiency in the conversion of coal to useful energy when compared to currently available commercial technology for the use of coal and the control of emissions from the combustion of coal. Such program shall be designed to assure the availability for commercial use of such technologies by the year 2010. As part of such program, the Secretary shall consider the potential benefits of conducting additional solicitations pursuant to the Clean Coal Program established by Pub. L. 98-473 and is authorized to carry out such additional solicitations.

(b) REPORT.—Within two hundred and forty days after the date of enactment of this Act the Secretary shall transmit to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report which shall include—

(1) a detailed description of ongoing research and development activities regarding advanced coal-based technologies undertaken by the Department of Energy, other Federal or State government departments or agencies and, to the extent such information is publicly available, other public or private organizations in the United States and other countries;

(2) a listing and analysis of current Federal and State government regulatory and financial incentives that could further the goals of the program established by this section;

(3) recommendations, if any, regarding the manner in which the cost-sharing demonstrations conducted pursuant to the Clean Coal Program established by Pub. L. No. 98-473 might be modified and extended in order to assure the timely demonstrations of advanced coal-based technologies by the year 2010 and assure that the goals established by this section are achieved; and

(4) a detailed plan for conducting the research, development and demonstration program to achieve the goals and objectives of subsection (a) of this section, which plan shall include a description of—

(A) the program elements and management structure to be utilized; and

(B) the technical milestones to be achieved with respect to each of the advanced coal-based technologies included in the plan.

(c) ANNUAL REPORT.—Within twelve months after submittal of the report de-

scribed in subsection (b) of this section, and every twelve months thereafter for a period of five years, the Secretary shall submit to the Congress a report that provides a detailed description of the status of development of the advanced coal-based technologies and the research, development, and demonstration activities undertaken to carry out the program required by this section.

(d) DEFINITION.—As used in this section, the term "advanced coal-based technologies" means, but is not limited to, the following—

(1) advanced integrated gasification combined cycle;

(2) pressurized fluidized bed combustion technology capable of achieving higher thermal conversion efficiency than can be achieved through ongoing demonstration projects;

(3) direct and indirect coal-fired turbines;

(4) coal refining processes, including coke production, capable of (A) efficiently producing or utilizing the energy contained in coal and coal byproducts, (B) upgrading gaseous, liquid and solid coal byproducts into products with higher economic value, and (C) utilizing the products and byproducts of such processes;

(5) magnetohydrodynamics;

(6) molten carbonate and solid oxide fuel cells;

(7) coking coal with non-coal fuels including natural gas;

(8) coal liquefaction processes; and

(9) other coal-based technologies or processes or systems that are capable of achieving thermal conversion efficiencies equal to or greater than fifty percent.

(e) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14102. NON-FUEL USE OF COAL.—(a) PLAN.—Not later than one hundred and twenty days after the date of enactment of this Act, the Secretary shall submit to Congress a plan for research, development, and demonstration with respect to technologies for non-fuel use of coal, including—

(1) production of coke and other carbon products derived from coal;

(2) production of coal-derived, carbon-based chemical intermediates that are precursors of value-added chemicals and polymers;

(3) production of chemicals from coal-derived synthesis gas;

(4) coal treatment processes, including methodologies such as solvent-extraction techniques that produce low ash, low sulfur, coal-based chemical feedstocks; and

(5) waste utilization, including recovery, processing, and marketing of products derived from sulfur, carbon dioxide, nitrogen, and ash from coal.

(b) JOINT VENTURES.—As part of the plan under subsection (a), the Secretary may propose specific joint ventures to accelerate the development and commercialization of technologies for non-fuel uses of coal.

(c) PLAN CONTENTS.—The plan under subsection (a) shall address and evaluate—

(1) the known and potential products and processes for the use of coal for products in the chemical, utility, fuel, steel, and carbon-based materials industries;

(2) the costs, benefits and economic feasibility of using coal products in the chemical and materials industries, including value-added chemicals, carbon-based products, coke, and waste derived from coal;

(3) the economics of the refining of coal and coal byproducts to produce non-fuel products;

(4) the economics of co-production of products from coal in conjunction with production of electric power, thermal energy, and fuel;

(5) the economics of coal utilization in comparison with other feedstocks that might be used for the same purposes;

(6) the steps that can be taken by the public and private sectors to bring about commercialization of research results produced by the research program recommended; and

(7) the past development, current status, and future potential of coal products and processes associated with non-fuel use of coal.

(d) **RESEARCH AND DEVELOPMENT.**—The Secretary shall conduct a program of research and development under the plan under subsection (a).

(e) **FINANCIAL ASSISTANCE.**—The Secretary may provide financial assistance for a research project under this section to the extent the Secretary finds that such project—

(1) furthers achievement of the goals and purposes of this Act;

(2) offers promise for commercial application; and

(3) has a reasonable prospect of support in at least 50 percent of its direct costs from non-Federal funds.

(f) **CONSULTATION.**—In preparing the plan and carrying out research under this section, including evaluating the technical progress, feasibility, and most effective means for utilizing the results of research, the Secretary shall consult with the private sector.

(g) **AUTHORIZATION.**—There is authorized to be appropriated a total of \$20,000,000 for fiscal years 1992 through 1994 to carry out the purposes of this section.

SEC. 14103. COAL REFINING PROGRAM.—(a) **PROGRAM.**—The Secretary, in consultation with the National Coal Council, shall, in accordance with the Federal NonNuclear Energy Research and Development Policy Act of 1974 (42 U.S.C. 5901-5920), conduct a research, development, demonstration, and commercialization program for coal refining technologies, including technologies for refining high sulfur coals, low sulfur coals, sub-bituminous coals and lignites to produce clean-burning transportation fuels, or compliance boiler fuels, or both, fuel additives, lubricants, chemical feedstocks, and carbon-based manufactured products, either alone or along with electricity, more economically and efficiently than can be produced utilizing currently available commercial technology. The goals of the coal refining technology development program shall be designed to assure—

(1) the timely development of technologies, including direct and indirect liquefaction processes and other energy production processes or systems to produce coal-derived fuels and coproducts;

(2) the capability to produce a range of coal-derived transportation fuels, including oxygenated hydrocarbons, boiler fuels, turbine fuels, and coproducts, which can reduce dependence on imported oil by displacing conventional petroleum in the transportation sector and other sectors of the economy;

(3) reduction in the cost of producing such coal-derived fuels and coproducts;

(4) the control of emissions from the combustion of coal-derived fuels, and;

(5) the availability for commercial use of such technologies by the year 2000.

(b) **REPORT AND PLAN.**—Within one hundred and twenty days after the date of enactment

of this Act the Secretary shall transmit to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report which shall include—

(1) a detailed description of ongoing research and development activities regarding coal refining technologies undertaken by the Department of Energy, other Federal or State government departments or agencies and, to the extent such information is publicly available, other public or private organizations in the United States and other countries;

(2) a detailed plan for conducting the research, development, demonstration, and commercialization program to achieve the goals and objectives of subsection (a) of this section, which plan shall include a description of—

(A) the program elements and management structure to be utilized; and

(B) the technical milestones to be achieved with respect to each of the coal refining technologies included in the plan;

(c) **DEMONSTRATION PROJECTS.**—Within twelve months after the submittal of the report described in subsection (b) of this section, the Secretary shall solicit proposals from appropriate parties and may thereafter enter into agreements with such parties to undertake commercial scale demonstration projects of coal refining processes. In designing the solicitation under this subsection, and taking into consideration the goals of subsection (a) of this section, the Secretary shall—

(1) establish technology classes for the various coal refining processes;

(2) enter into agreements for the construction of not more than one project per technology class, but in no event less than two commercial scale projects for the program in total;

(3) require that each project has a reasonable prospect of commencing operation by January 1, 2000.

(d) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(e) **ANNUAL REPORT.**—Within twelve months after the date of enactment of this Act, and every twelve months thereafter for a period of five years, the Secretary shall submit to the Congress a report that provides a detailed description of the status of development of coal refining technologies and the research, development, demonstration, and commercialization activities undertaken to carry out the program required by this section.

(f) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14104. UNDERGROUND COAL GASIFICATION.—(a) **PROGRAM.**—The Secretary shall conduct a research, development, and demonstration program for underground coal gasification technology for in-situ conversion of coal to a cleaner burning, easily

transportable gaseous fuel. The goal and objective of this program shall be to accelerate the development and commercialization of underground coal gasification. In carrying out this program, the Secretary shall give equal consideration to all ranks of coal.

(b) **DEMONSTRATION PROJECTS.**—As part of the program authorized in subsection (a), the Secretary shall solicit proposals for at least one demonstration project of underground coal gasification technology and may provide financial assistance for any project that has a reasonable expectation to fulfill the goal and objective of subsection (a).

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14105. LOW-RANK COAL RESEARCH AND DEVELOPMENT.—(a) **PROGRAM.**—The Secretary shall pursue a program of research and development with respect to the technologies needed to expand the use of low-rank coals which take into account the unique properties of lignites and sub-bituminous coals, including, but not limited to the following areas—

(1) high value-added carbon products;

(2) fuel cell applications;

(3) emissions control and combustion efficiencies;

(4) coal water fuels and underground coal gasification;

(5) distillates; and

(6) any other technologies which will assist in the development of niche markets for lignites and sub-bituminous coals.

(b) **IMPLEMENTATION.**—In carrying out this program, the Secretary shall enter into contracts, cooperative agreements and jointly sponsored research programs with, and provide grants to, qualified persons and use any other means deemed appropriate by the Secretary.

(c) **AUTHORIZATION.**—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14106. MAGNETOHYDRODYNAMICS.—(a) **PROGRAM.**—The Secretary shall carry out a proof-of-concept program in magnetohydrodynamics. The purpose of this program shall be to prove the adequacy of the engineering and design information required to successfully design, construct, and operate an MHD retrofit plant based upon conceptual designs of a "MHD Retrofit System to a Coal Fired Generating Plant," which have been completed under Department of Energy contracts.

(b) **SOLICITATION OF PROPOSALS.**—In order to carry out the program authorized in subsection (a), the Secretary shall solicit proposals from the private sector and seek to enter into an agreement with appropriate parties.

(c) **COST-SHARING.**—(1) The Secretary shall require at least 50 percent of the costs di-

rectly and specifically related to any demonstration project under this section, including cash, personnel, services, equipment, and other resources, to be provided from non-Federal sources.

(2) The Secretary may reduce the amount of costs required to be provided by any non-Federal person under paragraph (1) upon application if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this section.

(d) EXTENSION OF PROGRAM.—The Secretary may extend if necessary the completion date for the proof-of-concept program to September 30, 1995.

(e) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14107. COAL FIRED LOCOMOTIVES.—(a) The Secretary shall conduct a research, development, and demonstration program for utilizing "ultra-clean coal-water slurry" in diesel locomotive engines. The program shall address, but not be limited to, the following—

- (1) required engine retrofit technology;
- (2) coal-fuel production technology;
- (3) emission control requirements;
- (4) the testing of low-Btu highly reactive fuels;
- (5) fuel delivery and storage systems requirements; and
- (6) other infrastructure required to support commercial deployment.

(b) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14108. COAL EXPORTS.—(a) PLAN.—Within one hundred and eighty days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the United States Trade Representative, shall submit to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, a plan for expanding the export of United States coal.

(b) PLAN CONTENTS.—Such plan shall include—

- (1) identification of the location, size and projected growth in potential foreign markets for coal produced in the United States;
- (2) identification by country of the existence of barriers to United States coal exports, including foreign coal production and utilization subsidies, tax treatment, labor practices, tariffs, quotas, and other non-tariff barriers;
- (3) recommendations and an action plan for addressing any such barriers;
- (4) an evaluation of existing United States infrastructure, and any new infrastructure requirements within the United States to support an expansion of United States coal exports, including ports, vessels, rail lines, and any other supporting infrastructure; and
- (5) identification of opportunities for blending United States coal exports with coal indigenous to the importing country to enhance energy efficiency and environmental performance.

(c) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14109. CLEAN COAL TECHNOLOGY EXPORT COORDINATING COUNCIL.—(a) ESTABLISHMENT.—There shall be established a Clean Coal Technology Export Coordinating Council (hereinafter "Council") which shall seek to facilitate and expand the export and use of clean coal technologies. The Council shall place a priority on the export and use of clean coal technologies in lesser-developed countries.

(b) MEMBERSHIP.—The Council shall consist of the Secretary, who shall serve as its chairperson, the Secretary of Commerce, the Secretary of State (including a designee from each of the Agency for International Development and the Trade and Development Program), the Administrator of the Environmental Protection Agency, the Secretary of the Treasury, the President and Chairman of the Export-Import Bank and the President and Chief Executive Officer of the Overseas Private Investment Corporation.

(c) CONSULTATION.—In undertaking its responsibilities, the Council shall consult with representatives from the United States coal industry, the electric utility industry, manufacturers of equipment utilizing clean coal technology, members of organizations formed to further the goals of environmental protection or to promote the development and use of clean coal technologies, and other appropriate interested members of the public.

(d) DUTIES.—In furthering the purposes of this section, the Council shall, through the Department and other member agencies, exercise such authorities as may be available to it to—

(1) facilitate the establishment of technical training for the consideration, planning, construction and operation of clean coal technologies by local users and international development personnel;

(2) cause to be established within existing departments and agencies financial assistance programs, including grants, loan guarantees, and no interest and low-interest loans, to support pre-feasibility and feasibility studies for projects that will utilize clean coal technologies and loan guarantee programs, grants, and no interest and low-interest loans, designed to facilitate access to capital and credit in order to finance such clean coal technology projects;

(3) develop and execute programs, including the establishment of financial incentives, to encourage and support private sector efforts to export clean coal technologies that are developed, manufactured or controlled by United States firms;

(4) encourage the training and understanding of clean coal technologies by representatives of foreign companies or countries intending to use coal or clean coal technologies by providing technical or financial support for training programs, workshops and other educational programs sponsored by United States firms;

(5) educate loan officers of the World Bank and other international lending institutions, commercial and energy attaches at embassies of the United States, and such other personnel as the Council deems appropriate, for the purposes of providing information about clean coal technologies to foreign governments or potential project sponsors of clean coal technologies;

(6) augment budgets for trade and development programs supported by member agencies of the Council for the purpose of supporting financially pre-feasibility or feasibility studies for projects that will utilize clean coal technologies;

(7) review ongoing clean coal technology projects and review and approve planned

clean coal technology projects, which are sponsored abroad by any Federal Government agency to determine whether such projects are consistent with the overall goals and objectives of this section;

(8) coordinate the activities of the member agencies of the Council in order to assure that policies of the Council are implemented in a timely fashion; and

(9) undertake such other actions or activities, consistent with existing law and regulations, as may, in the judgment of the Secretary, be necessary to achieve the purposes of this section.

(e) DATA AND INFORMATION.—The Council shall be responsible for the development of a comprehensive data base and information dissemination system relating to the availability of clean coal technologies and an ongoing assessment of the potential need for such technologies particularly in lesser developed countries. The Council shall provide a country-by-country assessment of the potential for the use of clean coal technology. Such assessment shall include an analysis of the financing requirements to install such clean coal technology and whether such clean coal project is dependent upon foreign financial assistance, the availability of other fuel or energy resources that may be available to meet the energy requirements intended to be met by the clean coal technology, the priority of environmental considerations in the selection of the electric generating technology and the technical competence of those entities likely to be involved in the planning and operation of the electric generating facility. The Council shall make such information available to industry, Federal and international financing organizations, non-governmental organizations, officials in countries where such clean coal technologies might be utilized and such others as the Council deems necessary. In developing this data base and ongoing assessment, the Council shall consult with the Committee on Renewable Energy Commerce and Trade.

(f) PLAN.—Within one hundred and eighty days after the Secretary submits the report to the Congress as required by section 409 of Pub. L. No. 101-549, the Council, in consultation with those persons referenced in subsection (c) of this section, shall provide to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a plan which details actions to be taken in order to address those recommendations and findings made in the report submitted pursuant to section 409 of Pub. L. No. 101-549. As a part of the plan required by this subsection, the Secretary shall specifically address the adequacy of financial assistance available from Federal departments and agencies and international financing organizations to aid in the financing of pre-feasibility and feasibility studies and projects that would utilize a clean coal technology in lesser developed countries.

(g) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14110. COAL FUEL MIXTURES.—Within one year following the date of enactment of this Act, the Secretary shall submit a report to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the status of technologies for combining coal with other materials, such as oil or water fuel mixtures. The report shall include—

(1) a technical and economic feasibility assessment of such technologies;

(2) projected developments in such technologies;

(3) an assessment of the market potential of such technologies, including the potential to displace imported crude oil and refined petroleum products;

(4) identification of barriers to commercialization of such technologies; and

(5) recommendations for addressing barriers to commercialization.

SEC. 14111. NATIONAL CLEARING HOUSE.—(a) ESTABLISHMENT OF CLEARING HOUSE.—(1) The Secretary shall establish a national clearing house for the exchange and dissemination of technical information on technology relating to coal and coal-derived fuels.

(2) In establishing a clearing house pursuant to this section, the Secretary shall, among other things:

(A) collect information and data on technology relating to coal, and coal-derived fuels, which can be utilized to improve environmental quality and increase energy independence;

(B) disseminate to appropriate individuals, governmental departments, agencies, and instrumentalities, institutions of higher education, and other entities, information and data collected pursuant to this provision;

(C) maintain a complete library of technology publications and treatises relating to technology information and data collected pursuant to this provision;

(D) organize and conduct seminars for government officials, utilities, coal companies, and other entities or institutions relating to technology using coal and coal-derived fuels that will improve environmental quality and increase energy independence;

(E) gather information on research grants made for the purpose of improving or enhancing technology relating to the use of coal, and coal-derived fuels, which will improve environmental quality and increase energy independence;

(F) translate into English foreign research papers, articles, seminar proceedings, test results that affect, or could affect, clean coal use technology, and other documents;

(G) encourage, during the testing of technologies, the use of coal from a variety of domestic sources, and collect or develop, or both, complete listings of test results using coals from all sources;

(H) establish and maintain an index or compilation of research projects relating to clean coal technology carried out throughout the world; and

(I) conduct economic modeling for feasibility of projects.

(3) INSTITUTIONS OF HIGHER EDUCATION.—The Secretary may select two institutions of higher education to manage and coordinate the clearing house activities. In selecting such institutions, one shall be located in a western coal producing state and one shall be located in an eastern coal producing state.

(b) GRANTS.—In carrying out the provisions of this section, the Secretary may enter into agreements with, and make grants to, the two institutions of higher education selected pursuant to paragraph (3) of subsection (a). Any such grant may be made at such time or times, in such amount, and subject to such terms and conditions as the Secretary may prescribe.

(c) COORDINATION WITH OTHER FEDERAL ENTITIES.—In carrying out the provisions of this section, the Secretary shall, from time to time, consult and coordinate his activities with other appropriate Federal departments,

agencies and instrumentalities. All Federal departments, agencies, and instrumentalities shall cooperate to the fullest extent possible with the Secretary to enable him to carry out the provisions of this section.

(d) FUNDING FROM NON-FEDERAL SOURCES.—The Secretary may solicit and accept donations from non-Federal sources to assist in defraying expenses incurred in carrying out the provisions of this section.

(e) AUTHORIZATION.—There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994 to carry out the purposes of this section.

SEC. 14112. STUDY OF UTILIZATION OF COAL COMBUSTION BYPRODUCTS.—(a) DEFINITIONS.—As used in this section, the term "coal combustion byproducts" means the residues from the combustion of coal including ash, slag, and flue gas desulfurization materials. When utilized as a product, as an ingredient thereof, or as a raw material, or when handled, transported or stockpiled for such utilization, these byproducts are considered product materials.

(b) FINDINGS.—With respect to utilization of coal combustion byproducts, the Congress makes the following findings.

(1) Coal combustion byproducts have commercial applications, including construction of bridges, highways, airports, dams, tunnels, buildings, reclamation projects, and numerous other technically proven commercial applications.

(2) The Environmental Protection Agency has reported to Congress that utilization of coal combustion byproducts has been done in an environmentally safe manner.

(3) The use of coal combustion byproducts in an environmentally safe manner is beneficial to society in the following respects—

(A) It conserves energy since these materials are byproducts of the combustion process, require no additional energy to produce, and thus conserve the energy necessary to extract and produce virgin materials;

(B) It conserves natural resources by substituting for virgin materials such as sand, gravel and soil;

(C) It lowers electricity costs to ratepayers by producing revenues from the sale of the byproducts and by avoiding disposal costs;

(D) It conserves land resources by avoiding the need for disposal facilities; and

(E) It provides superior quality construction materials at lower cost.

(4) The Federal and State governments are in a position to encourage the utilization of coal combustion byproducts.

(c) STUDY AND REPORT TO CONGRESS.—(1) The Secretary shall conduct a detailed and comprehensive study on the institutional, legal and regulatory barriers to increased utilization of coal combustion byproducts by potential governmental and commercial users. Such study shall identify and investigate barriers found to exist at the Federal, State or local level, that may have limited or may have the foreseeable effect of limiting the quantities of coal combustion byproducts that are utilized. In conducting this study, the Secretary shall consult with other departments and agencies of the Federal Government, appropriate State and local governments, and the private sector.

(2) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit a report to Congress containing the results of the study required by paragraph (1) and the Secretary's recommendations for actions to be taken to increase the utilization of coal combustion byproducts. At a minimum, such report shall identify actions that

would increase the utilization of coal combustion byproducts in (A) bridge and highway construction, (B) stabilizing wastes, and (C) procurement by departments and agencies of the Federal Government, by State and local governments, and in federally funded or federally subsidized procurement by the private sector.

SEC. 14113. ESTABLISHMENT OF DATA BASE AND STUDY OF COAL TRANSPORTATION RATES.—(a) ESTABLISHMENT OF DATA BASE.—The Secretary shall establish a data base containing, to the maximum extent practicable, all transportation rates for rail, pipeline, truck, conveyor belt, barge and other modes of transporting domestic coal during the period January 1, 1988 through December 31, 1997. The confidentiality of contract rates shall be preserved and public access to the data base shall be provided under appropriate terms and conditions that protect the confidentiality of specific contract rates.

(b) STUDY OF COAL TRANSPORTATION RATES.—The Secretary shall study the rates and distribution patterns of domestic coal to determine the impact of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) and other Federal policies on such rates and distribution patterns. The study shall consider, among other factors—

(1) the extent to which coal transportation rate increases occur as a result of the enactment of the Clean Air Act and other Federal policies;

(2) any increases or decreases in the revenue to variable cost ratios of railroad coal transportation rates during the period of the study and the percentage of the delivered price of coal to electric generating facilities that is attributable to coal transportation rates, during this period;

(3) any changes in the distribution patterns of coal among the various regions of the Nation during the study period; and

(4) any electricity rate increases or decreases in the various regions of the Nation during the period of study that are attributable to coal transportation costs.

(c) REPORTS TO CONGRESS.—The Secretary shall submit an interim report to Congress on January 1, 1993, and a final report to Congress, together with any recommendations, on January 1, 1995. The Secretary shall submit an additional report to Congress, with recommendations, on January 1, 1998. The Administrator of the Energy Information Administration and the Chairmen of the Federal Energy Regulatory Commission and the Interstate Commerce Commission shall cooperate fully with the Secretary in the development of the data base and studies authorized by this section.

Subtitle B—Electricity

SEC. 14201. APPLICABILITY OF NEW SOURCE REVIEW TO EXISTING ELECTRIC UTILITY STEAM GENERATING UNITS.—(a) APPLICABILITY OF NEW SOURCE PERFORMANCE STANDARDS.—For purposes of the Clean Air Act, no physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of section 111 of such Act, provided such change does not increase the maximum hourly emissions of any pollutant regulated under that section above the maximum hourly emissions achievable at that unit during the last five years of operation prior to the change.

(b) POLLUTION CONTROL PROJECTS.—For purposes of the Clean Air Act, the addition, replacement or utilization of any pollution control project at an existing electric utility

steam generating unit primarily for purposes of reducing emissions shall not be considered a physical change or change in method of operation for purposes of section 111, Part C or Part D of such Act. For purposes of this subsection, "pollution control project" includes, but is not limited to, any:

(1) sulfur dioxide control technology, nitrogen oxide control system, or particulate control technology (including clean coal technology); or

(2) temporary or permanent conversions to lower sulfur content fuels, including physical and operational changes necessary to accommodate the utilization of such fuels.

(c) OTHER PROJECTS.—For purposes of the Clean Air Act, except for an existing electric utility steam generating unit that is subject to the provisions of subsection (b), no physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of Part C or Part D of such Act for a pollutant, provided that such change does not result in a significant net increase in representative actual annual emissions of a regulated pollutant during normal operations at the source in the case of Part C and of a criteria pollutant in the case of Part D. In projecting future annual emissions based on any increased capacity utilization, the Administrator shall exclude that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, including an increase in projected capacity utilization equal to the rate of electricity demand growth for the utility system as a whole.

(d) MAXIMUM ACHIEVABLE CAPACITY.—Subsections (a), (b) and (c) of this section shall not apply to any physical change, or change in the method of operation, at an existing electric utility steam generating unit if such change results in an increase in the unit's maximum achievable capacity above the maximum capacity achievable at that unit during the last five years of operation prior to the change or other such period demonstrated by the permittee to be more representative.

(e) RECONSTRUCTION.—Subsection (a) shall not apply to any physical change, or change in the method of operation, at an existing electric utility steam generating unit if the fixed capital cost of such change or replacement of components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility.

(f) NITROGEN OXIDE CONTROL REQUIREMENTS.—

(1) For purposes of the Clean Air Act, any modification, as defined in section 169(2)(C) of such Act, at an existing electric utility steam generating unit subject to section 165 of such Act shall be deemed to satisfy the technology requirements of section 165(a)(4) for nitrogen oxides if it meets the following:

(A) For a unit subject to a requirement promulgated pursuant to section 407 of the Clean Air Act, immediately following the modification, the unit shall be required to meet the nitrogen oxide emission limitation specified for that boiler type pursuant to section 407. In the event that the modification precedes the establishment of nitrogen oxides emissions limitations for that boiler type pursuant to section 407, the unit shall be required to meet the applicable emission limitation upon the date required by the regulation.

(B) For an existing electric utility steam generating unit not subject to section 407, immediately following the modification, the

unit shall be required to meet the nitrogen oxide limit equivalent to the limit achievable using "low-NOx burners".

(2) Any state or local permitting authority shall retain the right to impose more stringent limitations for control of nitrogen oxides.

(g) Nothing in this section shall authorize an increase in emissions which causes or contributes to a violation of a national ambient air quality standard, PSD increment, or visibility limitation.

SEC. 14202. EXCESS CAPACITY STUDY.—The Secretary shall study and report to Congress by June 30, 1992, on any physical impediments to the transfer of excess electrical energy from regions of the country having surpluses to regions of the country having shortages and the reasons therefor.

SEC. 14203. CALCULATION OF AVOIDED COST.—Nothing in section 210 of the Public Utility Regulatory Policies Act of 1978 (Pub. L. No. 95-617) requires a state regulatory authority or nonregulated electric utility to treat a cost reasonably identified to be incurred or to have been incurred in the construction or operation of a facility or a project which has been selected by the Department of Energy and provided Federal funding pursuant to the Clean Coal Program authorized by Pub. L. No. 98-473 as an incremental cost of alternative electric energy.

SEC. 14204. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.—(a) DEFINITION.—For purposes of this section, the term "clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of the date of enactment of this title.

(b) FEDERAL RATE INCENTIVES.—(1) Within 24 months after enactment of this section, the Federal Energy Regulatory Commission shall complete a rulemaking to establish a demonstration program for regulatory incentives to promote the development of clean coal technologies and other innovative control technologies that limit power plant emissions. The regulatory incentives shall include—

(A) establishment of an incentive rate of return for clean coal or other innovative emission control technologies that recognizes their inherent risk; and

(B) allowance of a ten- to twenty-year amortization period to recover the capital costs of a clean coal or other innovative emission control technology.

(2) The Federal Energy Regulatory Commission demonstration program is subject to the following—

(A) the program initially will have a five-year life;

(B) the program will cover no more than four units in each technology class; and

(C) the technology classes eligible for the program should be reasonably likely to realize significant cost reductions when employed.

(3) At the end of the five-year demonstration program, the Federal Energy Regulatory Commission shall review the merits of the program and determine whether it should be extended or made permanent.

(c) FERC PREAPPROVAL OF PRUDENCE FOR CLEAN COAL TECHNOLOGY COSTS.—The Federal Energy Regulatory Commission shall establish a process for negotiating with poten-

tial developers of clean coal technology or other innovative control technology projects to agree upon cost caps for future projects and preapproval of the prudence of expenses for those projects if the expenses fall within the agreed-upon cap.

(d) PRIORITY FOR UNITS LOCATED IN STATES WITH INCENTIVE PROGRAMS.—To the extent practicable, the Federal Energy Regulatory Commission shall, in the selection of units which will be provided incentive rate treatment under subsections (b) or (c), give priority to units located in states where—

(1) the State regulatory commission with jurisdiction over the retail rates of the utility seeking such incentive rate treatment has approved comparable incentives for inclusion in the utility's retail rates, or, if the utility makes no retail sales, where comparable retail rate treatment has been approved for other utilities which make retail sales in the state or states in which the wholesale customers of the utility seeking such incentive rate treatment are located; and

(2) the State regulatory commission accords, to the extent relevant and within its jurisdiction, similar incentives to noninvestor-owned utilities on a basis no less favorable than that accorded to investor-owned utilities within its jurisdiction.

(e) ENCOURAGEMENT OF STATE INCENTIVE PROGRAMS.—(1) Because the use of clean coal technologies is in the Nation's interest, States, including their agencies and political subdivisions which regulate public utility rates and charges, are encouraged to provide additional incentives for their implementation. Those incentives may include, but are not limited to—

(A) preapproval of recovery of capital costs and other expenses, within reasonable bounds agreed upon before project construction;

(B) elimination of retroactive "used and useful" reviews for clean coal technologies;

(C) rapid amortization of clean coal technology expenditures; and

(D) immediate recovery of a portion of clean coal technology expenses through a fuel adjustment clause or by some other method.

(2) REPORT OF THE SECRETARY.—(A) Within one year after the date of enactment of this Act, the Secretary shall report to Congress on his progress in encouraging State regulatory authorities to provide regulatory incentives to utilities to invest in clean coal technologies. Such report shall include detailed information on programs initiated by the Department of Energy to encourage such State action and shall describe any regulatory incentives that have been adopted by States as a result of actions taken by the Secretary.

(B) The report required under subparagraph (A) shall also include recommendations, if any, on further action that could be taken by the Department of Energy, other Federal agencies, or the Congress in order to encourage State regulatory authorities to provide regulatory incentives.

TITLE XV—PUBLIC UTILITY HOLDING COMPANY ACT REFORM

Sec. 15101. EXEMPT WHOLESALE GENERATORS.

(a) DEFINITIONS.—For purposes of this title, the term—

(1) "exempt wholesale generator" means any person who:

(A) is engaged directly, or indirectly through one or more affiliates of such person, as defined under section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (15 U.S.C.79b(a)(11)(B)), exclusively in

the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale, but such term excludes an affiliate of a registered holding company which was in existence as of the date of enactment of this title, unless the Commission has consented to such affiliate being an exempt wholesale generator; and (B) provides notice to the Commission, in such form as the Commission may prescribe, that such person is an exempt wholesale generator;

(2) "eligible facility" means a facility, wheresoever located, used for the generation of electric energy exclusively for sale at wholesale, including inter-connecting transmission facilities necessary to effect such sale at wholesale, but shall exclude any facility for which consent is required under subsection (c) if such consent has not been obtained. For purposes of this definition, the term "facility" shall include a portion of a facility and shall include a facility the construction of which has not been commenced or completed;

(3) "sale of electric energy at wholesale" shall have the same meaning as provided in section 201(d) of the Federal Power Act, as amended (16 U.S.C. 824(d));

(4) "retail rates and charges" means rates and charges for the sale of electric energy directly to consumers;

(5) "Commission" means the Securities and Exchange Commission; and

(6) "the Act" means the Public Utility Holding Company Act of 1935, as amended (15 U.S.C. 79 et seq.).

(b) **APPLICABILITY OF DEFINITIONS IN PUHCA.**—All of the terms used in this title and defined in the Act shall have the same meanings as defined therein.

(c) **STATE CONSENT FOR ELIGIBLE FACILITIES.**—If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of the date of enactment of this title, in order for the facility to be considered an eligible facility consent must be obtained from every State commission having jurisdiction over any such rate or charge: *Provided*, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company: (1) consent with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company; and (2) the approval of the Commission under the Act shall not be required for the transfer of the facility to an exempt wholesale generator.

(d) **EXEMPTION OF EWGS FROM PUHCA.**—An exempt wholesale generator shall not be considered an electric utility company under section 2(a)(3) of the Act and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, shall be exempt from all provisions of the Act.

(e) **OWNERSHIP OF EWGS BY EXEMPT HOLDING COMPANIES.**—Notwithstanding any provision of the Act, a holding company that is exempt under section 3 of the Act shall be permitted without condition or limitation under the Act to acquire and maintain an interest in the business of one or more exempt wholesale generators.

(f) **OWNERSHIP OF EWGS BY REGISTERED HOLDING COMPANIES.**—Notwithstanding any provision of the Act and the Commission's jurisdiction as provided under subsection (g) of this section, a registered holding company

shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under the Act), to acquire and hold the securities, or an interest in the business, of one or more exempt wholesale generators.

(g) **FINANCING AND OTHER RELATIONSHIPS BETWEEN EWGS AND REGISTERED HOLDING COMPANIES.**—The issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, the guarantee of securities of an exempt wholesale generator by a registered holding company, the entering into service, sales or construction contracts, and the creation or maintenance of any other relationship in addition to that described in subsection (f) between an exempt wholesale generator and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under the Act; *Provided*, That:

(1) section 11 of the Act shall not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located) shall be considered as reasonably incidental, or economically necessary or appropriate to the operations of an integrated public utility system;

(3) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or (B) the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system;

(4) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator, or (B) other transactions by such registered holding company or by its subsidiaries other than with respect to exempt wholesale generators, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator upon the registered holding company system, unless the approval of the issue or sale or other transaction, together with the effect of such capitalization and earnings, would have a substantial adverse impact on the financial integrity of the registered holding company system; and

(5) the Commission shall make its decision under paragraph (3) to approve or disapprove the issue or sale of a security or the guarantee of a security within 120 days of the filing

of a declaration concerning such issue, sale or guarantee.

SEC. 15102. OWNERSHIP OF EXEMPT WHOLESALE GENERATORS AND QUALIFYING FACILITIES.

The ownership by a person of one or more exempt wholesale generators shall not result in such person being considered as being primarily engaged in the generation or sale of electric power within the meaning of sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act, as amended (16 U.S.C. 796 (17)(C)(ii) and 796(18)(B)(ii)).

SEC. 15103. PREVENTION OF STRANDED INVESTMENT.

The Federal Energy Regulatory Commission shall not approve a rate or charge for the sale of electric energy at wholesale by an exempt wholesale generator if such sale of electric energy would result in a State commission not permitting such purchaser to recover in retail rates and charges any portion of its capital investment in an electric generation facility:

(a) which facility was under construction as of the date of enactment of this section; or

(b) upon which portion such purchaser has previously been permitted to earn a rate of return in retail rates and charges subject to such State commission's jurisdiction.

SEC. 15104. PREVENTION OF SHAM WHOLESALE TRANSACTIONS.

The Federal Energy Regulatory Commission shall not approve a rate or charge for the sale of electric energy at wholesale by an exempt wholesale generator if:

(a) such electric energy would be resold by the purchaser to any electric consumer; and

(b) the purchaser: (1) is not a municipal electric system, state power authority, electric power cooperative or a public utility under State law; or (2) would not utilize transmission or distribution facilities owned by such purchaser to deliver all such electric energy to such electric consumer.

SEC. 15105. PROTECTION AGAINST ABUSE OF AFFILIATE RELATIONSHIPS.

A rate or charge for the sale of electric energy at wholesale in interstate commerce by an exempt wholesale generator shall not be considered just and reasonable within the meanings of sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) if the rate or charge allows the exempt wholesale generator to receive undue advantage resulting from the fact that the purchaser of such electric energy is an affiliate or associate company of such exempt wholesale generator.

SEC. 15106. STATE AUTHORITY.

Section 209 of the Federal Power Act (16 U.S.C. 824h) is amended by adding at the end the following new subsection:

"(d)(1) Except as set forth in paragraph (2), nothing in this Act shall limit the authority of a State commission in accordance with State law to allow or disallow on grounds of prudence or imprudence the inclusion of the costs of electric energy purchased at wholesale in retail rates subject to such State commission's jurisdiction; *Provided*, That at the request of a utility which has been offered a sale of electric energy at wholesale from an exempt wholesale generator, any State commission with jurisdiction over the retail rates of such utility shall determine the prudence or imprudence of the utility's proposed action with regard to the offer in advance of the effective date of the action, and such determination shall be binding upon the State commission for purposes of the inclusion in retail rates.

"(2) An order by the Commission accepting or establishing as just and reasonable the terms of an agreement for the sale and purchase or interchange of electric energy among affiliates of a registered holding company shall preempt the authority of any State commission to determine the prudence of any purchase of electric energy pursuant to that agreement.

"(3) Paragraph (2) shall not apply to: (A) the purchase of electric energy at wholesale by an affiliate of a registered holding company from an exempt wholesale generator; or (B) the purchase of electric energy at wholesale by an affiliate of a registered holding company from a person other than an exempt wholesale generator when the economic substance of such purchase amounts to an indirect purchase of electric energy from an exempt wholesale generator. For purposes of this subsection (d), energy purchased by an affiliate of a registered holding company as a result of the operation of an integrated holding company shall not be deemed to be an indirect purchase of electric energy from an exempt wholesale generator.

"(4) For purposes of this subsection the term—

"(A) 'exempt wholesale generator' has the same meaning as provided in Title XV of the National Energy Security Act of 1991;

"(B) 'affiliate' and 'registered holding company' have the same meanings as provided in the Public Utility Holding Company Act of 1935;

"(C) 'purchase of electric energy at wholesale' means a purchase of electric energy by any person for resale; and

"(D) 'retail rates' means rates and charges for the sale of electric energy to consumers."

SEC. 15107. STATE CONSIDERATION OF THE EFFECTS OF POWER PURCHASES ON UTILITY COST OF CAPITAL; CONSIDERATION OF THE EFFECTS OF LEVERAGED CAPITAL STRUCTURES ON THE RELIABILITY OF WHOLESALE POWER SELLERS; AND CONSIDERATION OF ADEQUATE FUEL SUPPLIES.

The Public Utility Regulatory Policies Act of 1978 (Pub. L. No. 95-617), as amended, is further amended by inserting the following new paragraph at the end of section 111:

"(8) Consideration of the Effects of Wholesale Power Purchases on Utility Cost of Capital; Effects of Leveraged Capital Structures on the Reliability of Wholesale Power Sellers; and Assurance of Adequate Fuel Supplies.—

"(A) To the extent that a State regulatory authority requires or allows electric utilities for which it has ratemaking authority to consider the purchase of long-term wholesale power supplies as a means of meeting incremental electric demand, such authority shall:

"(i) perform a general evaluation of the potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

"(ii) perform a general evaluation of any negative or positive effects on the reliability of electric service provided by such utilities that may result from purchases of long term wholesale power supplies from sellers that have capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities;

"(iii) consider whether the use by exempt wholesale generators (as defined in Title XV

of the National Energy Security Act of 1991) of capital structures employing less than 35 percent equity threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities;

"(iv) implement procedures for the advance approval or disapproval of the purchase of a particular long term wholesale power supply which procedures reflect the results of evaluations under clauses (i), (ii) and (iii); and

"(v) require as a condition for the approval of the purchase of a particular long term wholesale power supply that the seller have, and continue to have, access to sources of fuel on terms and conditions adequate to provide reasonable assurance of the seller's ability to perform its obligations under the terms of the contract for the sale of such power supply.

"(B) For purposes of implementing the provisions of this paragraph, any reference contained in this title to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of the National Energy Security Act of 1991."

SEC. 15108. STATE COMMISSION ACCESS TO EWG BOOKS AND RECORDS.

(a) REQUIREMENT TO PROVIDE BOOKS AND RECORDS.—Before commencing any sale of electric energy to an electric utility company, an exempt wholesale generator shall make available to each affected State commission relevant financial and other records of the exempt wholesale generator. The records to be provided hereunder shall be specified by the affected State commission and may include: (1) all books and records which the exempt wholesale generator would be required to furnish under State law if such company were an electric utility company making retail sales subject to the jurisdiction of such affected State commission; (2) all contracts to which the exempt wholesale generator is a party relating to the financing, construction or operation of eligible facilities used to produce electric energy sold or to be sold by such exempt wholesale generator; and (3) any other records or information relevant to the exercise of such affected State commission's authority; *Provided*, That nothing in this section shall require an exempt wholesale generator to provide the records or information of any person other than such exempt wholesale generator. All records and information provided hereunder shall be open to public inspection, and shall be subject to subpoena and other process of law, to the same extent and in the same manner as comparable records and information of electric utility companies under applicable law; *Provided further*, That trade secrets and other sensitive commercial information shall be exempt from public disclosure or disclosure to potential competitors of such exempt wholesale generator by an affected State commission and shall not be provided to a State commission unless such commission has in place procedures for protecting the confidentiality of such information.

(b) AFFECTED STATE COMMISSION.—For purposes of this section, with respect to a particular exempt wholesale generator an "affected State commission" means any State commission:

(1) having authority over the retail rates of an electric utility company to which such exempt wholesale generator sells electric energy;

(2) having authority over the retail rates of an electric utility company which is an affiliate of such exempt wholesale generator; or

(3) having authority over the retail rates of an electric utility company which is an associate company of such exempt wholesale generator and which is a subsidiary company of a holding company that is exempt under section 3 of the Act.

(c) NONPREEMPTION OF STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of records and other information.

TITLE XVI—STRATEGIC PETROLEUM RESERVE

SEC. 16101. OIL SECURITY PROTECTION.—(a) Title I of the Energy Policy and Conservation Act (Pub. L. No. 94-163; 42 U.S.C. 6201) is amended—

(1) in section 152, by striking "and Part C" and inserting in lieu thereof "Part C, and Part D" in the material preceding paragraph (1);

(2) by redesignating Part D as Part E;

(3) by redesignating section 181 as section 191; and

(4) by adding the following new part after Part C:

"PART D—ADDITIONAL OIL SECURITY PROTECTION

"SHORT TITLE

"SEC. 181.—This part may be cited as the 'Strategic Petroleum Reserve Enhancement Act of 1991'.

"PURPOSES

"SEC. 182.—The purposes of this part are to—

"(1) complete, at the earliest practicable date, storage of seven hundred and fifty million barrels of petroleum products in the Strategic Petroleum Reserve;

"(2) facilitate progress, as rapidly as practicable, toward establishment of a one billion barrel Strategic Petroleum Reserve;

"(3) authorize establishment of a Defense Petroleum Inventory of at least ten million barrels of petroleum products;

"(4) initiate, at the earliest practicable date, the acquisition of petroleum product pursuant to section 171 of the Energy Policy and Conservation Act of 1990;

"(5) acquire by purchase, exchange, or other arrangement, from one or more foreign governments, petroleum products for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory; and

"(6) provide the President with broad and flexible authority to achieve these objectives.

"COMPLETION OF 750 MILLION BARREL RESERVE

"SEC. 183.—(a) The President shall initiate such actions as are necessary to complete storage of seven hundred and fifty million barrels of petroleum products in the Strategic Petroleum Reserve at the earliest practicable time. Such actions may include the alternatives in section 185.

"ENLARGEMENT OF RESERVE BEYOND 750 MILLION BARRELS

"SEC. 184.—The President shall initiate such actions as are necessary to enlarge the Strategic Petroleum Reserve to one billion barrels as rapidly as possible. Such actions may include—

"(1) either of the alternatives described in section 185; and

"(2) the contracting for petroleum products for storage in facilities not owned by the United States.

"ACQUISITION OF PETROLEUM PRODUCTS

"SEC. 185.—(a) The President, acting through the Secretary of Energy, may—

"(1) acquire by purchase, exchange, or other arrangement, from one or more foreign

governments, without the necessity for competitive procurement, petroleum products for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory; and

"(2) contract, without regard to sections 171(b)(2)(B) and 173 of the Energy Policy and Conservation Act (42 U.S.C. 6349(b)(2)(B)), or to the restrictions which Pub. L. No. 101-512 imposes on the leasing of crude oil, for storage in the Strategic Petroleum Reserve or the Defense Petroleum Inventory of petroleum products owned by one or more foreign governments.

"(b) The Secretary may utilize such funds as are available in the SPR Petroleum Account to carry out the activities described in subsection (a), and may obligate and expend such funds to carry out those activities, in advance of the receipt of petroleum products.

"(c) For the purpose of this part, the term "foreign government" means a foreign government, a foreign State-owned oil company, or an agent of either."

(b) Part B of title I of the Energy Policy and Conservation Act (Pub. L. No. 94-163; 42 U.S.C. 6215 et seq.) is amended by adding after section 167 the following new section:

"DEFENSE PETROLEUM INVENTORY

"SEC. 168. (a) Notwithstanding any other provision of this part, the Secretary may—

"(1) acquire or construct, operate and maintain storage and facilities associated with a Defense Petroleum Inventory of at least ten million barrels of crude oil to meet petroleum product requirements of the Department of Defense; and

"(2) acquire and store crude oil therein.

"(b)(1) The acquisition and storage of crude oil in the Defense Petroleum Inventory shall be in addition to any acquisition or storage of crude oil for the Strategic Petroleum Reserve required by any other law, and crude oil acquired and stored under this section shall not be counted as part of the Strategic Petroleum Reserve.

"(2) In carrying out the functions authorized by this section, the Secretary may exercise any authority available under this part.

"(c)(1) Notwithstanding any other provision of this part, upon the request of the Secretary of Defense, crude oil acquired for or dedicated by the Defense Petroleum Inventory shall be drawn down and distributed by the Secretary to, or on behalf of, the Department of Defense for use, sale, or exchange. Crude oil in the Defense Petroleum Inventory may be drawn down and distributed, used, sold, or exchanged, without regard to—

"(A) whether the crude oil has been commingled with petroleum products of the Strategic Petroleum Reserve;

"(B) the requirements of this part concerning drawdown of the Strategic Petroleum Reserve; or

"(C) otherwise applicable Federal contracting statutes and regulations.

"(2) The Secretary of Energy shall exercise the authority provided by this subsection in a manner which does not adversely affect drawdown of the Strategic Petroleum Reserve.

"(d) Upon the request of the Secretary of Defense, and subject to the availability of funds from the Department of Defense, the Secretary shall acquire and store in the Defense Petroleum Inventory crude oil to replace crude oil drawn down under subsection (c).

"(e) An amendment to the Strategic Petroleum Reserve Plan relating to the exercise of this authority shall not be required.

"(f) The Department of Defense shall reimburse the Secretary of Energy for—

"(1) all costs of acquiring and storing crude oil in the Defense Petroleum Inventory, including the cost of associated facilities construction;

"(2) drawdown and distribution services provided under this section, in amounts that the Secretary determines to be reasonable; and

"(3) all costs of acquiring crude oil for the Strategic Petroleum Reserve to replace crude oil drawn down and distributed under subsection (c).

"(g) Crude oil acquired for the Defense Petroleum Inventory under subsection (a) shall be transferred to the Strategic Petroleum Reserve, pursuant to subsection (f)(3), in reimbursement on a barrel-for-barrel basis for the cost of replacement petroleum products acquired for the Strategic Petroleum Reserve."

(c) The table of contents of the Energy Policy and Conservation Act (Pub. L. No. 94-163) is amended—

(1) by inserting after the item for section 167 the following item:

"Sec. 168. Defense Petroleum Inventory.";

(2) by inserting at the end of the items for Part C of

Title I the following items:

"PART D—ADDITIONAL OIL SECURITY PROTECTION

"Sec. 181. Short Title.

"Sec. 182. Purposes.

"Sec. 183. Completion of 750 million Barrel Reserve.

"Sec. 184. Enlargement of Reserve Beyond 750 million Barrels.

"Sec. 185. Acquisition of Petroleum Products.";

(3) by redesignating Part D in the items for title I as Part E; and

(4) by redesignating the item for section 181 as the item for section 191.●

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled "Allocation to Subcommittees of Budget Totals From the Concurrent Resolution, Fiscal Year 1992" (Rept. No. 102-73).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JOHNSTON:

S. 1220. A bill to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes; from the Committee on Energy and Natural Resources.

By Mr. BENTSEN:

S. 1221. A bill to modify the flood control project for Clear Creek, TX, to direct the Secretary of the Army to remove a railroad bridge, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BIDEN:

S. 1222. A bill to amend the provisions of the Higher Education Act of 1965 relating to treatment by campus officials of sexual assault victims; to the Committee on Labor and Human Resources.

By Mr. BRYAN:

S. 1223. A bill to regulate certain marketing activities engaged in on the premises of federally insured depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KERRY:

S. 1224. A bill to amend the Urban Mass Transportation Act of 1964 to authorize appropriations to assist compliance with the transit provisions of the Americans with Disabilities Act of 1990; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SEYMOUR (for himself and Mr. CRANSTON):

S. 1225. A bill to designate certain lands in California as wilderness, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. JEFFORDS (for himself, Mr. CONRAD, Mr. BURNS, Mr. COHEN, and Mr. GORTON):

S. 1226. A bill to direct the Administrator of the Environmental Protection Agency to establish a small community environmental compliance planning program; to the Committee on Environment and Public Works.

By Mr. MITCHELL (for himself, Mr. KENNEDY, Mr. RIEGLE, and Mr. ROCKEFELLER):

S. 1227. A bill to amend the Public Health Service Act, the Social Security Act, and the Internal Revenue Code of 1986 to provide affordable health care of all Americans, to reduce health care costs, and for other purposes; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENTSEN:

S. 1221. A bill to modify the flood control project for Clear Creek, TX, to direct the Secretary of the Army to remove a railroad bridge, and for other purposes; to the Committee on Environment and Public Works.

IMPROVING BOATING SAFETY ON CLEAR CREEK, TX

● Mr. BENTSEN. Mr. President, today I introduce a bill that improves boating safety in one of America's foremost areas for pleasure boaters by directing removal of a hazardous railroad swing bridge. This bill modifies the terms of the Clear Creek Federal flood control project to allow the Corps of Engineers to remove the bridge that crosses Clear Creek Channel at its outlet into Galveston Bay.

Boat traffic has grown considerably in the Clear Creek Channel area in the past several years. With this increase, a swing bridge belonging to the Southern Pacific Transportation Co. has posed many dangers for boaters of the area. This bill will provide a working agreement between the Corps of Engineers and Southern Pacific that will assure removal of the bridge at Seabrook.

The Galveston District office of the Corps of Engineers and the Southern Pacific Transportation Co. have been working together for over a year in an effort to work out an agreement for the removal of the bridge. Last year, a proposal was submitted by the district office to corps' headquarters in Washington; however, headquarters rejected it. This bill modifies the terms of the Clear Creek project based on the proposed agreement by the Galveston District office. Specifically, the Secretary

of the Army is directed to remove the swing bridge at Federal expense. Before the Federal Government incurs this cost, Southern Pacific will have to agree, in writing, to various terms designed to protect Federal interests. Under current law, the Federal Government could be obligated to build a second railroad bridge over a second outlet. This bill will provide that in return for the Federal Government incurring the cost of removing the bridge, the Government is relieved of any responsibility it may have to build a railroad bridge for Southern Pacific over the proposed second outlet channel.

Estimates have been made that the cost of removing the swing bridge is comparable to the cost of building a bridge over the second outlet channel. Under the arrangement outlined by the bill, the Government should not incur any added net costs. Also, the cost of removal will be offset by the bridge's salvage value.

Mr. President, this bill provides each party involved a much better situation in the end. Boaters will enjoy a safer area, the Government will avoid the expense of building a railroad bridge over the second outlet channel, and Southern Pacific will obtain help in removing a serious navigational hazard.●

By Mr. BIDEN:

S. 1222. A bill to amend the provisions of the Higher Education Act of 1965 relating to treatment by campus officials of sexual assault victims; to the Committee on Labor and Human Resources.

CAMPUS SEXUAL ASSAULT VICTIMS' BILL OF RIGHTS ACT

● Mr. BIDEN. Mr. President, I rise today to introduce the Campus Sexual Assault Victims' Bill of Rights Act of 1991, a companion bill to H.R. 2363, recently introduced by Congressman JIM RAMSTAD and 51 of his colleagues in the House.

It is sad, but true, that our colleges and universities are no longer idyllic oases of learning. Violent crime is ravaging our campuses.

Young women on campus are often at the greatest risk: Experts estimate that one out of every four college women will be attacked by a rapist before they graduate; one in seven will be raped.

Simply stated, the brutal reality is that:

More women will be raped this school year than will be struck by any other major crime. If the number of these crimes stuns, the treatment often suffered by the young victims should shock all of us.

The vast majority of campus rape victims suffer in silence: Less than 5 percent of them report the crime to the police or campus authorities.

Most campus rape victims are left in the dark about their rights: Indeed,

many victims don't even know whether they will be sitting in class with their attacker the very next day.

And, saddest of all, many campus rape victims who try to speak out, are never even heard: A Student recently testified before the Judiciary Committee that when she tried to report her assault to campus authorities, the campus counselor did not condemn the attacker—instead, the victim was told to "keep her grades up" so that she could transfer to another school.

Given such treatment, it is not surprising that so many young women drop out of school after sexual attack.

In a society that says it values education so highly, it is shameful that young women are dropping out of college because of physical violence.

The bill I introduce today—the Campus Sexual Assault Victims Bill of Rights Act—takes aim at the problem by empowering its victims. The legislation requires that federally funded colleges and universities accord sexual assault victims the rights, the respect, and the services they are due.

The bill lists 10 basic rights including the following:

The right to be free from pressure by college authorities not to report the crime to campus officials or local police;

The right to counseling, alternative housing, and transfer of classes upon the victim's request; and—

The right to be free from suggestions by campus authorities that survivors are responsible for their assault, contributorily negligent or assumed the risk of the assault.

I applaud Congressman JIM RAMSTAD for introducing this fine piece of legislation in the House of Representatives. And I applaud Howard and Connie Cleary—a courageous couple—for calling our attention to this problem and pushing for a solution.

With all of our efforts, the efforts of Republicans and Democrats, in the House and in the Senate, we will change the attitudes of colleges towards crime, and we will provide the help campus crime survivors desperately need.●

By Mr. BRYAN:

S. 1223. A bill to regulate certain marketing activities engaged in on the premises of federally insured depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

DEPOSITOR PROTECTION AND ANTI-FRAUD ACT

● Mr. BRYAN. Mr. President, I am introducing today the Depositor Protection and Anti-Fraud Act of 1991. This legislation would prohibit federally insured institutions from selling their own debt securities or the stock of an affiliate in their lobbies. This is a long overdue step needed to protect the public from erroneously believing that these securities are covered by Federal deposit insurance.

Banks, thrifts, and credit unions carry logos on their doors that proclaim each depositor is insured to \$100,000 and that this pledge is backed by the full faith and credit of the U.S. Government. Yet these institutions may now sell uninsured financial instruments to unsuspecting consumers.

One of the most tragic aspects of the savings and loan scandal is that some thrifts sold junk bonds to unsuspecting depositors. Many of these people were elderly retirees who placed their life savings in these now worthless bonds because they mistakenly thought that they were insured.

In the one case of Lincoln Savings/American Continental, 23,000 individuals lost over \$300 million. In the case of Mabel Dickson of Cahokia, IL, she invested her entire life savings—\$229,000—in Germania bank notes only to find out later they were not insured. Mrs. Dickson is a 64-year-old widow suffering from lymph node cancer and has no health insurance.

I introduced similar legislation during the 101st Congress, and it was co-sponsored by a majority of the Democrats and Republicans on the Senate Banking Committee. The Senate passed the legislation as part of S. 566, the National Affordable Housing Act—Public Law 101-625—but it was not included in the conference agreement.

I am optimistic that we can put this potential for abuse behind us. When individuals walk into federally insured institutions, they should not have to worry that their life savings are at risk.●

By Mr. KERRY:

S. 1224. A bill to amend the Urban Mass Transportation Act of 1964 to authorize appropriations to assist compliance with the transit provisions of the Americans With Disabilities Act of 1990; to the Committee on Banking, Housing, and Urban Affairs.

ACCESSIBLE TRANSPORTATION ACTION ACT

Mr. KERRY. Mr. President, I rise today to introduce the Accessible Transportation Act of 1991; legislation designed to improve transportation services to individuals with disabilities.

Almost 1 year ago, the 101st Congress enacted the Americans With Disabilities Act of 1991. I was an active supporter of that legislation and tremendously pleased by its passage into law. By virtue of the ADA, we have ensured that no American is denied access to transportation, buildings, and other necessary activities which are essential to the conduct of life. The ADA is the guarantee for full equality for all Americans regardless of the challenges their disabilities present.

The ADA prohibits discrimination against people with disabilities in transportation and other important aspects of daily life. It is the implementation of the ADA, however, that will

create opportunities for people with disabilities in our society. ADA's implementation is a job for all of us. Businesses, educational institutions, State and local governments and their agencies, the independent sector, and the U.S. Congress all have a role to play to ensure that this implementation occurs with maximum success and minimum delay.

The legislation I am introducing today stems from work already carried out by the National Easter Seal Society, an organization very familiar to every Member of this body. Some 3 years prior to the passage of the ADA, Easter Seals established "Project ACTION"—Accessible Community Transportation In Our Nation. Project ACTION itself is a product of an effective partnership between Easter Seals, the Congress, and the Urban Mass Transportation Administration. During fiscal years 1988, 1989, and 1990, the Congress appropriated \$3 million to Easter Seals to undertake a national program of research, demonstrations, and technical assistance to provide new solutions to the problems of providing transportation for persons with disabilities.

Easter Seals created Project ACTION to administer this program, under a cooperative agreement with UMTA. Since then, Project ACTION has provided excellent service to the Nation. It has sponsored breakthrough research on our needs in this area, and provided technical assistance to hundreds of communities across the country that are diligently working to improve transportation for persons with disabilities. Most significantly, the project has sponsored more than two dozen demonstration projects around the country. These are not paper studies or academic research. These demonstrations represent a coming together of the disability and transit communities to achieve real world results which can then be transferred to other communities.

And, importantly, these demonstrations cover the full range of needs in the field of transportation of persons with disabilities: Training of drivers, marketing, development and application of technology, and many other areas.

In fact, in my own State of Massachusetts we have three successful projects funded through Project ACTION. The Massachusetts Bay Transportation Authority received a grant to develop a program on emergency evacuation procedures for people with disabilities who use rapid transit systems.

The Massachusetts coalition of citizens with disabilities is conducting the interregion travel initiative project which will increase the use of statewide intercity transportation systems developed in Massachusetts through marketing, outreach, and training pro-

grams. And a group in Waltham is developing plans using the Massachusetts Water Shuttle to help individuals with disabilities access public transportation facilities.

Mr. President, now that the ADA has been passed, the demand for the resources and services, that Project ACTION is providing to transit authorities and organizations representing persons with disabilities has grown immense.

Mr. President, that is the principal purpose of the Accessible Transportation Action Act of 1991. In this critical year when ADA is being implemented at the same time that the Nation's surface transportation laws are being revised, now is the time to incorporate a cooperative program between the transit and disability communities similar to Project ACTION, as a permanent resource and tool to assist communities in improving their transportation systems for persons with disabilities. That would be accomplished by the legislation I am introducing today.

The Accessible Transportation Action Act of 1991, is an amendment to the Urban Mass Transportation Act and would allocate \$2 million annually for UMTA research and development grants for cooperative programs, a sound investment in meeting the needs for ADA implementation assistance across the country.

What will the legislation accomplish? It is my expectation based on what Project ACTION has already achieved, that under a continued and expanded cooperative program, we will see: First, ongoing demonstration programs to show practical ways to overcome barriers to transportation accessibility; second, support of future innovations, especially in the area of technology development; third, technical assistance on general accessibility issues to transit authorities and consumers, including onsite technical assistance; and fourth, information dissemination and sharing.

Mr. President, my colleagues on the Committee on Banking, Housing, and Urban Affairs are hard at work on reauthorizing the Urban Mass Transportation Program. I particularly commend the senior Senator from California, Senator CRANSTON, for his work in this area this year and through the last 23 years. I look forward to working under his leadership to help make this proposal an important part of the overall reauthorization package.

Mr. President, just as we needed the ADA, we now need the Accessible Transportation Act of 1991. It will provide the needed assistance in helping communities with the implementation of the Americans With Disabilities Act.

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

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

S. 1224

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 "Accessible Transportation Action Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) assuring access to transportation is critical to promoting maximum independence and achieving meaningful integration for persons with disabilities;

(2) the number of individuals with disabilities who need special assistance in transportation has increased from approximately 9,000,000 to more than 11,000,000 persons nationally in the past decade;

(3) currently only 40 percent of existing fixed route vehicles used for public transportation are accessible to persons with disabilities;

(4) many transit systems have not been able to meet successfully the accessibility needs of persons with disabilities;

(5) with the passage of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), transit systems nationwide are struggling to implement effectively the new requirements of the law;

(6) in fiscal years 1988 through 1990, the Urban Mass Transportation Administration funded a successful cooperative agreement to improve relations between transit and disability communities nationwide and to develop new tools and techniques to improve transportation services to citizens with disabilities;

(7) further funding is vital to assist transit systems working cooperatively with disability organizations to improve transportation services for individuals with disabilities and implement the transit provisions of the Americans with Disabilities Act of 1990; and

(8) recent successful demonstration programs to assist individuals with disabilities in achieving access to transportation systems should be continued until the need has been met.

SEC. 3 AUTHORIZATION OF APPROPRIATIONS FOR ASSISTING COMPLIANCE WITH THE TRANSIT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT.

Section 16 of the Urban Mass Transportation Act of 1964 (49 U.S.C. App. 1612) is amended by adding at the end the following:

"(f) COMPLIANCE WITH ADA.—Of the amounts made available for grants and loans under this subsection, the Secretary shall make available not less than \$2,000,000 per year for fiscal years 1992, 1993, 1994, 1995, and 1996 to assist transit providers in achieving compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) through the following means:

"(1) Technical assistance.

"(2) Ongoing and new demonstration programs.

"(3) Research and Development.

"(4) Public Education.

"(5) Technological innovations.

To the extent practicable, the Secretary shall carry out this subsection through contracts with national nonprofit organizations which serve persons with disabilities and have demonstrated a capacity to conduct these activities."

By Mr. SEYMOUR (for himself and Mr. CRANSTON):

S. 1225. A bill to designate certain lands in California as wilderness, and

for other purposes; to the Committee on Energy and Natural Resources.

DESIGNATION OF CERTAIN CALIFORNIA LANDS AS WILDERNESS

Mr. SEYMOUR. Mr. President, today I am introducing a bill to designate 398,800 acres of the Los Padres National Forest as wilderness. The notion of further wilderness designation in the Los Padres National Forest is not new. Senators WILSON and CRANSTON, along with Congressman LAGOMARSINO have all previously introduced measures to assure the protection of the region's forest and streams.

Until today, though, no consensus had been reached on such legislation. Competing measures in both the Senate and the House had prevented some of Los Padres' most distinctive and delicate natural areas from receiving the permanent protection they required.

Today that has all changed. Today, Mr. President, I am pleased to announce that Senator CRANSTON and I have joined together in offering legislation that will not only assure the protection of the important natural assets found in the Los Padres National Forest, but also will ensure that the public will continue to have access to enjoy these wonders.

Our bill creates seven new wilderness areas within the forest. The Sespe Wilderness will total 220,500 acres; the Matilija—30,000, San Rafael—43,000, Garcia—14,600, Chumash—38,200, Ventana—38,000, and Silver Peak—14,500.

Also included in the legislation are seven rivers that run through the forest. A full 33 miles of Sisquoc River and 18.9 miles of Big Sur are designated as wild and scenic. Forty nine miles of the Piru Creek, 23 miles of the Little Sur River, 16 miles of the Matilija Creek, and 11 miles of the Lopez are all to be studied for designation.

Although the bill covers over 150 miles of rivers, and designates almost 400,000 acres of wilderness, one issue remains to be solved. The issue involves the designation of the Sespe Creek as wild and scenic. While there is agreement that the vast majority of the Sespe should receive protection under the Wild and Scenic Rivers Act, I have not been convinced that all 55 miles of the Creek should be placed into the system.

I have agreed to keep my mind open on this issue. And in the same spirit of cooperation that has led to the joint introduction of this bill, I am certain that after hearings have been held on the measure, a solution to the challenge of protecting the Sespe Creek can and will be found.

Mr. President, I would like to take this opportunity to thank Congressman LAGOMARSINO and Senator CRANSTON for their diligent work on the protection of the Los Padres National Forest. I am hopeful that by combining

our efforts this vital wilderness bill will become law.

By Mr. JEFFORDS (for himself, Mr. CONRAD, Mr. BURNS, Mr. COHEN, and Mr. GORTON):

S. 1226. A bill to direct the Administrator of the Environmental Protection Agency to establish a small community environmental compliance planning program; to the Committee on Environment and Public Works.

SMALL TOWN ENVIRONMENTAL PLANNING ACT

Mr. JEFFORDS. Mr. President, small towns of Vermont and others in this country are beginning to crumble under the weight of many Federal environmental mandates. Let me give you an example. We have a little town, Grand Isle, in the State of Vermont that has some 68 people. It is located in the pristine areas of Lake Champlain, yet under the law it must immediately start considering the construction of a water purification plant as well as a landfill. It has the most pure water you can imagine coming from those pristine areas of Lake Champlain. There is no problem with it. The State says there will not be a problem with it, yet they are required to build a filtration plant as well as waste disposal facilities.

What we need, Mr. President, is a logical planning procedure which will allow towns to be able to do this in a manner that they can afford, to comply with all regulations. Thus, Mr. President, I intend to introduce a bill today on behalf of myself, Senator CONRAD, Senator BURNS, Senator COHEN, and Senator GORTON to try to bring some order out of this chaos which is going to be wreaked upon our towns and communities.

I have discussed this with Administrator Riley, and they are concerned about this problem also. They are planning to come forward with a book of regulations which the little towns must meet. They say it will probably be about 6 inches thick.

What we are trying to do with the bill we are introducing today, which we call the Small Town Environmental Planning Act, is to help small communities reach full compliance with Federal requirements. The main points of our proposal are as follows: We believe our small towns want to comply. They lack only the resources and the time. S. 729 helps provide the resources. We help provide the time.

Our bill establishes a voluntary planning program. No small town is obligated to participate in this program.

Second, if a small town agrees to participate, they can help shield themselves from liability. We believe the limited resources small towns have should go toward environmental compliance, not toward lawyers' fees.

Third, no State laws are preempted. Our bill simply creates the flexibility at the Federal level. We are giving the

States the ability to help their towns reach full compliance.

Fourth, the EPA helps in this endeavor by publishing an easy-to-understand compilation of Federal requirements.

Fifth, EPA publishes guidelines to help small towns prioritize their activities so as to achieve the greatest environmental benefit with their available funds.

Sixth, no requirements are waived. Instead, we recognize our small towns cannot do everything at once. This program lets them set up an organized plan for achieving compliance as fast as they can.

We could just let nature take its course, but where would it lead us? It would lead us to EPA or States suing their small towns, setting up administrative orders, and basically spending scarce Federal funds to reach the same goal. Let us let our small towns avoid this expense and begin a rational program for reaching full compliance.

Certainly we hope that Senators will join with us.

I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 1226

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Town Environmental Planning Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Small communities do not have sufficient resources to assure compliance with environmental laws.

(2) Insufficient amounts of Federal, State, and local resources are available for funding environmental compliance activities in small communities in the near future.

(3) Small communities lack the legal authority to adjust compliance deadlines to match the availability of resources to environmental compliance activities.

(4) A system that would allow small communities to prioritize environmental compliance activities in order to maximize environmental benefits derived from available funding would have a positive effect on the environment.

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

(1) To allow small communities a degree of flexibility in meeting regulatory deadlines appropriate to the level of available financial resources to maximize benefits to human health and the environment.

(2) To establish a Federal program to ensure that small communities are meeting requirements under Federal environmental laws in an expeditious manner.

(3) To create flexibility with respect to Federal requirements under certain environmental laws so that States may have the ability to provide flexibility in State requirements with respect to related State laws.

SEC. 3. ESTABLISHMENT OF SMALL COMMUNITY ENVIRONMENTAL COMPLIANCE PROGRAM.

(a) **ESTABLISHMENT.**—The Administrator of the Environmental Protection Agency (hereafter in this Act referred to as the "Administrator") shall establish a program of small community environmental compliance planning for facilities that are owned, operated, or under contract with a small community, or with respect to which an environmental compliance activity is dependent on a facility owned, operated, or under contract with a small community (as defined and determined by the Administrator).

(b) **CONDITIONS OF PARTICIPATION IN PLANNING ACTIVITIES.**—(1) Participation in the small community environmental compliance planning activities described in this section by a small community, or by a State, acting on the part of a small community, shall—

(A) be voluntary; and

(B) not be construed so as to authorize the preemption of any State law or the law of any political subdivision of a State.

(2) A small community may not participate in the environmental compliance planning activities under this program if the Administrator determines that participation would result in a violation of a State law or the law of a political subdivision of the State.

(c) **IDENTIFICATION.**—(1) Not later than 6 months after the date of the enactment of this Act, the Administrator shall publish a list of requirements under the Acts described in paragraph (2) (and the regulations promulgated pursuant to such Acts) that shall be addressed in a small community environmental compliance plan. Not less than annually, the Administrator shall review such list and make such additions and deletions as the Administrator determines to be appropriate.

(2) The laws described in this paragraph are the following:

(A) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(B) The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 et seq.).

(C) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

(D) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(E) The Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(F) The Clean Air Act (42 U.S.C. 7401 et seq.).

(G) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(d) **GUIDELINES FOR PRIORITIZATION.**—(1) Not later than 9 months after the date of the enactment of this Act, the Administrator shall publish guidelines for the use by a small community or State responsible for the development of a small community compliance plan.

(2) In developing the guidelines described in paragraph (1), the Administrator shall—

(A) identify priority requirements that have the most significant impact on human health and the environment; and

(B) develop a recommended model for small communities to employ in prioritizing the scheduling of environmental compliance activities related to facilities described in subsection (a).

(e) **PLAN REQUIREMENTS.**—(1)(A) Not later than 12 months after the date of the enactment of this Act, the Administrator shall promulgate regulations that specify requirements for the form, content, and manner of submission of a small community environmental compliance plan.

(B)(i) In promulgating the regulations under this paragraph, the Administrator shall, to the extent practicable, ensure that the appropriate official of any small community (or of the State, acting on the part of the small community) is able to prepare such small community environmental compliance plan with a minimal amount of technical assistance.

(ii) In promulgating the regulations under this paragraph, the Administrator shall require a format for the small community environmental compliance plan that, in most cases, could be completed using 20 single-spaced typewritten pages. Notwithstanding the preceding sentence, at the option of a preparer acting on the part of a small community, the small community environmental compliance plan may exceed 20 single-spaced typewritten pages in length.

(2) At a minimum, the regulations promulgated under this subsection shall require that a small community environmental compliance plan shall—

(A) identify areas of environmental regulation related to the Acts described in subsection (c)(2) with respect to which appropriate officials of the small community (or the State, acting on the part of the small community) determines there are significant problems in achieving compliance within the implementation schedules provided under such Acts;

(B) identify general areas of environmental noncompliance with the implementation schedules described under subparagraph (A); and

(C) with respect to each treatment or disposal facility owned, operated, or under contract with a small community, estimate the aggregate amount of user fees necessary for the financing of the environmental compliance activities described in this section at the facility, and assess the ability of the residents of the small community to pay such user fees.

(f) **PLAN PREPARATION.**—(1) Except as provided in paragraph (2), not later than 9 months after the date of issuance of the plan requirements described in subsection (c), each small community participating in the small community planning program established under this section shall prepare a small community environmental compliance plan in accordance with the plan requirements described in subsection (d).

(2)(A) If the Governor of a State determines that a small community that elects to participate in the small community environmental compliance planning program does not have sufficient resources to prepare a small community environmental compliance plan, the Governor shall authorize the appropriate State agency to develop a small community environmental compliance plan for the small community.

(B) An official with appropriate authorization of a small community (as determined by the Administrator) may request the Governor of a State to prepare a small community environmental compliance plan on the part of the small community (regardless of the level of resources available to such small community), and upon approval of such request by the Governor, the State may prepare the plan.

(3)(A) Except as provided in subparagraph (B), in preparing a small community environmental compliance plan, a small community (or the State) shall apply the guidelines issued under subsection (d) and meet the plan requirements described in subsection (e).

(B) A small community environmental compliance plan may depart from the rec-

ommended model of prioritizing the scheduling of environmental compliance activities described in the guidelines issued under subsection (d), if the preparer of the plan demonstrates, to the satisfaction of the Administrator, that there is a significant need to deviate from the recommended model because the model is not appropriate to meet the needs of the small community on the basis of any of the following factors:

(i) Local environmental conditions.

(ii) Economic considerations.

(iii) The availability of State or Federal funding.

(iv) Other factors that the Administrator determines to be significant.

(4) The Administrator shall review each small community environmental compliance plan prior to approval, and may require modifications in a plan prior to approval.

(5) Notwithstanding any other provision of law, a small community that submits a small community environmental compliance plan to the Administrator pursuant to the requirements of subsection (f) of this section, shall be granted interim status and shall be treated as having an approved small community compliance plan in effect until such time as the Administrator makes a final disposition on the approval or disapproval of the plan.

(6) Upon the approval of the small community environmental compliance plan by the Administrator, the small community (or the State acting on the part of the small community) shall implement the plan in accordance with the requirements of this Act.

(7) At any time after the approval and implementation of the small community environmental compliance plan, the Administrator may require, in accordance with regulations that the Administrator shall promulgate, that a small community make such revisions to the plan as the Administrator determines to be appropriate.

(8) At any time after the approval and implementation of the small community environmental compliance plan, the preparer of the plan may submit written revisions to the Administrator for approval. The Administrator may approve the revisions if the preparer demonstrates, to the satisfaction of the Administrator, that recent statutory and regulatory developments warrant a change in the scheduling of environmental compliance activities; or that changing conditions in the small community otherwise warrant a revision of the small community environmental compliance plan.

(g) **REQUIREMENTS FOR REGULATIONS.**—In promulgating regulations under this section, the Administrator shall—

(A) use language that is easily understandable to the reader; and

(B) take into consideration any economic burden that any such regulation imposes on small communities.

(h) **REGULATORY WAIVERS.**—(1) The Administrator shall periodically review the regulations identified pursuant to subsection (c)(1), and shall identify those regulations with respect to which the Administrator determines that a waiver mechanism for small communities is appropriate.

(2) The Administrator shall, by regulation, provide for a mechanism under which a small community may apply for a waiver with respect to any regulation identified by the Administrator under paragraph (1). In the case where a small community demonstrates, to the satisfaction of the Administrator, that compliance with the regulation is not necessary to protect human health and the environment, the Administrator shall waive the

requirements of the regulation. In issuing the waiver, the Administrator may attach such conditions to the waiver as the Administrator determines to be necessary to protect human health and the environment.

(1) **OUTREACH AND TECHNICAL ASSISTANCE.**—(1) In addition to publishing the regulations promulgated under this section in the Federal Register, the Administrator shall, as part of the program under this section, implement a program to notify small communities of the regulations through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including any of the following:

- (A) Newspapers and other periodicals.
- (B) Other news media.
- (C) Trade associations and other associations that the Administrator determines to be appropriate.
- (D) Other methods that the Administrator determines to be appropriate.

(2) The Administrator shall, as part of the program under this section, develop and implement a program to provide technical assistance to small communities in preparing small community environmental compliance plans.

SEC. 4. ADMINISTRATION OF PLAN.

(a) **AVAILABILITY OF PLAN.**—Upon approval by the Administrator of the small community environmental compliance plan, the small community (or the State acting on the part of the small community) shall deposit a copy of the small community plan—

- (1) in the department or agency responsible for the administration of the plan; and
- (2) in each facility (as described in subsection (a)) subject to a provision of the plan or in the office of the owner or operator of such facility, or an authorized representative of the owner or operator.

SEC. 5. ENFORCEMENT.

(a) **WAIVER AUTHORITY.**—(1) Subject to sections 3(b) and 6 of this Act, and notwithstanding any other provision of law, with respect to each small community with an environmental compliance plan approved by the Administrator or granted interim status under section 3(f)(5), the Administrator shall waive any requirement described in section 3(a) if the Administrator determines that such waiver is necessary to carry out the provisions of the plan.

(2) Notwithstanding any other provision of law, no citizen suit may be brought to enforce a provision of law in the case where the Administrator waives the provision to carry out the provisions of a small community environmental compliance plan.

(b) **PENALTIES.**—(1) Notwithstanding any other provision of law, the Administrator shall, by regulation, provide for procedures for the assessment of an administrative penalty against any facility that fails to meet an environmental compliance requirement described in a small community environmental compliance plan. The Administrator shall promulgate regulations to account for each day of violation of the requirement of the small community environmental compliance plan. The amount of any penalty under this subsection and the manner of assessment of the penalty shall be determined by the Administrator. In making the determination, the Administrator shall provide for the assessment in a manner substantially similar to the assessment of a penalty for any related provision of law waived by the Administrator.

(2) Notwithstanding any other provision of law, the Administrator may bring an action in a United States district court of appro-

appropriate jurisdiction for a judicial assessment in an amount determined by the court to be substantially similar to the amount of any penalty under any related provision of law waived by the Administrator.

SEC. 6. STATUTORY CONSTRUCTION.

Nothing in this Act shall be construed so as to preempt any State or political subdivision of a State from enforcing additional limitations and requirements under the laws (including regulations) of the State or the political subdivision of the State.

SEC. 7. DEFINITIONS.

For the purposes of this Act, the term—
(A) "environmental compliance activity" includes any planning, design, construction, management, training, or other activity conducted by a permittee to achieve compliance with a requirement described in section 3(a); and

(B) the term "small community" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 5,000 individuals.

Mr. JEFFORDS. I am happy to yield to the Senator from North Dakota if he so desires.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise today to join my colleague, Senator JEFFORDS, in introducing the Small Town Environmental Planning Act of 1991. This bill will help small communities meet important environmental requirements. This bill is a logical complement to legislation introduced by my colleague, the senior Senator from North Dakota, and the chairman of the Environment and Public Works Committee, Senator BURDICK. His bill recognizes the serious problems small communities have with the environmental mandate by providing them with loans to finance environmental facilities.

This bill provides the other crucial components—flexibility and prioritization. Small towns are literally being crushed under the weight of Federal requirements. This is especially true in rural States like North Dakota and South Dakota, the home State of the occupant of the chair. This year I wrote to the mayors of all of the towns in North Dakota to ask them their highest priority for legislation this year. Meeting Federal environmental regulations topped their list of concerns.

Community after community wrote to me desperate for some assistance in meeting all the requirements they see coming their way. EPA has found that small towns already pay more per capita than larger cities for drinking water, sewage treatment, and solid waste disposal, while the average per capita income in those towns is below the national average. EPA concluded that small towns are those most likely to face problems in implementing changes called for in these new environmental regulations.

Mr. President, most officials in my State of North Dakota do not know how they will afford the cost of compli-

ance. Some are already at the limit of borrowing ability and cannot afford the improvements already required. New regulations will simply increase the burden. With the very limited tax base and higher costs already, they have nowhere to turn, yet we seem to have new requirements that we send their way almost on a monthly basis.

This bill will allow small communities to work with the appropriate agencies to prioritize their needs along with their ability to raise the necessary funds. Communities will not be exempt from the important requirements for safe drinking water and landfills. They will meet the requirements in a priority manner, in a way that will take the health and safety of the community into account first.

Small communities do not want to shirk their responsibility to environmental regulations. They simply want to have a realistic, sensible approach to the various requirements.

This bill will allow them that opportunity. I hope my colleagues will support this bill.

I want to thank and commend my colleague, Senator JEFFORDS, for his very strong leadership on this issue. The small towns of my State are crying out for this kind of relief, Mr. President. I hope we can expeditiously consider it, pass it, and make it a reality.

I thank the Chair. I yield the floor.
Mr. JEFFORDS. I thank the Senator for his words and for his activities. I hope working together we solve the problems.

Mr. COHEN. Mr. President, I am very pleased to be joining Senators JEFFORDS and CONRAD in introducing legislation, the Small Town Environmental Planning [STEP] Act, that will help alleviate the enormous financial burdens facing small communities as they attempt to meet the requirements of various Federal environmental statutes.

The STEP Act will allow small communities, those with populations under 5,000, to participate in a program establishing a compliance schedule that reflects each community's needs and its ability to pay the costs of these Federal requirements. As a participant of the compliance program, the community would set its own priorities using guidelines established by the Environmental Protection Agency. Schedules for meeting the Federal requirements would be established and would be the operative plan governing compliance with Federal law. The deadlines that present so many difficulties for small towns would be rolled back according to the new compliance schedules, affording these communities more time to pay for the costs of compliance.

I believe this legislation is crucial to small communities, which are finding it very difficult to provide essential services while facing deadlines for compliance with Federal environmental

laws. The costs for compliance are astounding for many small towns and water systems, which do not have access to the resources that will help reduce the financial burden of compliance. For example, estimates of the cost of new requirements under the Safe Drinking Water Act for communities with fewer than 3,300 users is \$5 billion. In Wilton, ME, a community of about 3,500 with only 900 water users, the costs of complying with the Safe Drinking Water Act are \$2.7 million. The town of Andover, ME, with only 135 water users, must pay \$880,000 to comply with the act.

These costs are difficult enough to absorb on their own, but they are exacerbated by costs imposed by other laws, including the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Superfund Amendments and Reauthorization Act, and other laws.

To assist towns in meeting these requirements, a few Federal loan and grant programs exist, but they are limited and cannot serve all needs. There are loans available through the State revolving loan funds established in the Clean Water Act of 1987, and there are grants and loans available through the water and sewer program administered by the Farmers Home Administration. I have supported increased funding for these programs in the past, and in recent years Congress has approved those increases, but the \$500 million in loans and \$300 million in grants for the program nationwide does not come close to meeting the needs of many small towns. Maine alone needs \$500 million to comply with the Safe Drinking Water Act and \$1 billion to comply with the Clean Water Act's storm water separation requirements. In addition, an estimated 20 communities in Maine still discharge untreated sewage into the State's waters; it will take \$50 million to outfit these towns with primary sewage treatment facilities.

Available loan programs are clearly inadequate, and there is no indication that this situation will be alleviated soon. In any case, loan programs still require the expenditure of significant amounts of money by the communities, with ratepayers facing enormous increases in water and sewer rates.

The Small Town Environmental Planning Act will bring a bit more reason to this process, by establishing a priority system rather than burdening the towns all at once with mandate after mandate. I do not believe we should repeal these laws, or exempt towns from meeting their requirements because of cost. The elimination of contamination in our drinking water is a laudable goal, as is the reduction of pollution in our rivers, lakes, and oceans.

However, we must recognize the hardships confronting communities

and their residents, who are now facing reductions in general assistance, fuel assistance, library hours, fire protection services, and other programs at the same time that they must spend thousands and sometimes millions of dollars to address problems associated with drinking water contamination and sewage treatment.

I wish there was a way we could help all communities facing these problems, not just those under 5,000 in population. However, I certainly understand the need to establish a reasonable cut-off point at this time in order to set up a workable program, and in Maine this standard will cover about 90 percent of Maine's communities. I will continue to work on solutions to the financial burdens faced by Maine's larger communities in the hope of devising a reasonable approach to compliance with Federal environmental laws.

I believe Maine's small communities and their residents will benefit significantly from the provisions of the STEP Act. A priority system needs to be established so that the most important work is accomplished first. Towns will still have to comply with the laws that have been enacted to address serious water, sewer, toxic waste, and other problems. However, ratepayers—especially the elderly and poor—will not be too heavily burdened with increased costs under this legislation. A more reasonable and gradual approach to compliance will relieve these citizens from the burden of immediate rate increases of 50 percent, 100 percent, and more.

Senators JEFFORDS and CONRAD are to be commended for their initiative on this issue. I am joining them in their effort because I believe small towns need some real assistance in dealing with the many requirements they face now and will continue to face in the future. This legislation is a starting point for discussion on this issue, and we welcome all comments in an effort to provide the best solution to this difficult problem.

I hope this legislation will receive the attention it deserves in the Senate, and I commend it to my colleagues for their consideration.

By Mr. MITCHELL (for himself,
Mr. KENNEDY, Mr. RIEGLE, and
Mr. ROCKEFELLER):

S. 1227. A bill to amend the Public Health Service Act, the Social Security Act, and the Internal Revenue Code of 1986 to provide affordable health care of all Americans, to reduce health care costs, and for other purposes; by unanimous consent ordered held at the desk until the close of business on June 7, 1991.

HEALTHAMERICA: AFFORDABLE HEALTH CARE
FOR ALL AMERICANS ACT

Mr. MITCHELL. Mr. President, today I join with a number of my colleagues to introduce comprehensive legislation

to reform the Nation's health care system to assure access to affordable health care for all Americans.

This legislation is the culmination of nearly 2 years of work by the Senate working group on the uninsured, and reflects input from a wide range of interest groups including health-care providers, insurers, consumer groups, the States, and many others.

Access to affordable, quality health care should be a right for all Americans, not merely a luxury for those who have the economic means to purchase health insurance. As many as 37 million Americans have no health care coverage, and millions more have insurance coverage which is inadequate to protect them against the costs of serious illness.

Furthermore, the rising cost of health insurance threatens coverage for all who are currently insured. The Department of Labor estimates that nearly 1 million Americans lose their health insurance coverage each year, often because their employers drop coverage because of the rising costs of premiums, or because insurers refuse to cover persons with preexisting conditions.

The problem of the uninsured is not principally a problem of the poor; the Office of Management and Budget estimates that 70 percent of the uninsured are above the poverty level.

Nor is the lack of health insurance coverage principally a problem of the unemployed—two-thirds of the uninsured are working persons or their dependents whose jobs do not provide what was once considered a routine benefit—health insurance.

One-third of the uninsured are children—one of four children in the United States has no health insurance. If we ignore the health care of our children now, it will cost us more to deal with the effects later.

The underlying crisis in our Nation's health care system is the rapidly rising cost which is eroding the very foundation of the system for all Americans, regardless of income.

Clearly, the tremendous amount of money our Nation is spending on health care is not buying quality health care for all Americans. We must find a way to bring health care costs under control or we risk adding millions more to the rolls of the uninsured, and ultimately face a total collapse of the health care system.

In 1990, the United States spent \$671 billion on health care, approximately 12.2 percent of gross national product, up from 11.6 percent—\$604 billion—in 1989. Real per capita health expenditures have not only risen dramatically in the United States, they have also far exceeded the per capita expenditures of all other industrialized nations.

The United States per capita spending on health is approximately one-third higher than Canada's, double the

spending of Japan and the former West Germany, and three times the amount spent in the United Kingdom.

Yet, in spite of the amount of GNP spent on health care and our Nation's advances in medical treatment and technology, our health outcomes compare poorly with many other industrialized nations. When the United States is compared with Canada in health status, the Canadians fare better in lower infant mortality rates, lower maternal mortality rates, lower mortality rates for low-risk and moderate-risk surgery, and higher life expectancy for both men and women.

It is not enough that we find a way to add those who are uninsured to the existing health care system. We must make fundamental reform in that system including effective cost containment efforts and insurance market reform.

I believe we must build upon the existing public-private health care system which asks employers to share the responsibility of providing access to health care for their employees and their dependents.

Currently that burden is not shared equitably by all employers. While it is often difficult for small businesses to provide health coverage to their employees and their dependents, most already do so. Health insurance coverage is offered by 80 percent of businesses with 25 or fewer employees; coverage is offered in 46 percent of businesses with 10 or fewer employees.

Unfortunately it has become more difficult and more expensive for small business to insure their employees. If we are going to expect small business to provide health coverage to their employees, we must make it more affordable to do so.

The legislation we are introducing today will require all employers to either provide private health insurance to their employees or contribute to a public program which will provide coverage. This "play or pay" model will be phased-in over a 5 year period in an effort to give small employers an opportunity to adjust to the new requirement.

Businesses with employees between 25 to 100 will be required to play or pay after 4 years of the bill's enactment if fewer than 75 percent of employees in small businesses not previously insured are not covered. This requirement also applies to firms with fewer than 25 employees after 5 years.

The legislation also includes a number of provisions which are intended to provide financial assistance to small businesses in the form of tax credits to help them adjust to the new requirements.

Small businesses with fewer than 60 employees would be provided with a 25-percent credit on the first \$3,000 of health insurance expenses for each full-time employee with an income under

\$20,000, except for high-profit firms. The 25-percent tax credit would be in addition to the deduction currently available for the cost of such insurance.

The bill also increases the tax deduction for self-employed firms from 25 to 100 percent for the cost of health insurance. New businesses will be given a grace period of 2 years with no play or pay requirement. In the third year, new businesses will pay one-half of the payroll contribution.

Small businesses that have not previously provided coverage will be allowed to use Medicare reimbursement rules for the first 5 years. Medicare rules will result in lower costs to businesses purchasing private insurance for their employees.

In addition, this legislation includes a provision to reform the small group insurance market. This reform is critical to small businesses who currently cannot afford insurance or whose employees are excluded from coverage because of preexisting conditions.

The insurance market reform provisions will provide for the continued regulation of health insurance by States within new, Federal standards. The Federal standards are designed to remove barriers to access to group health insurance, promote equity in insurance premiums, and improve the affordability of coverage for small employers.

While this legislation places significant responsibility on employers to expand access to health insurance through the workplace, it recognizes that the Federal and State governments must share the burden in reforming the health care system and assuring access to care for all of our citizens. Even under the best case scenario, not all Americans will have access to employer-based health insurance.

Therefore, our legislation also reforms and expands the existing public program. A new public program called AmeriCare, will replace the existing Medicaid Program for all services except long-term care. All persons who are not eligible for employer-based health insurance will be eligible to receive health benefits through AmeriCare.

AmeriCare is a dramatically new public program. Federal standards will be set for eligibility, benefits, and reimbursement. Traditional categorical eligibility and income requirements for eligibility under Medicaid will be eliminated under AmeriCare.

Benefits under AmeriCare will be identical to those provided in the employer-based basic benefit package. Persons with incomes below 100 percent of poverty will have their out-of-pocket costs completely subsidized by the Federal Government. Persons with incomes between 100 to 200 percent will

have out-of-pocket costs subsidized on a sliding scale.

Most importantly, provider reimbursement rates will be set using Medicare rules. This improvement in reimbursement will eliminate the problem of access to providers currently faced by Medicaid beneficiaries.

We propose that AmeriCare be jointly financed by the Federal and State governments with administration at the State level. Because we are concerned about the financial burdens faced by many States, our proposal includes an enhanced Federal match for AmeriCare, to be phased-out after 5 years.

While this legislation is primarily intended to assure access to health care for all Americans by assuring each person a means of payment for care, we are aware some persons with health insurance coverage may not have access to a delivery system, particularly in rural or urban underserved areas.

In an effort to respond to this problem, we have included a provision to expand the Community Health Centers system throughout the United States, which includes both rural and urban centers. While this expansion does not fully address the problems with the current health-care delivery system, it is an attempt to recognize the problem and begin to improve access to health-care providers for persons in medically underserved areas.

If this legislation is to accomplish our goal of providing quality, affordable health care for all Americans it must have as its underlying foundation meaningful cost containment. The cost containment provisions included in this bill are intended to put in place a structure which will result in significant reductions in the rate of increases throughout the system.

Over the last decade a variety of cost containment strategies have been attempted by both the government and private sectors. These strategies have had mixed results, but overall there appears to have been little impact on the growth in total health spending.

In the development of this legislation, we have evaluated these cost containment strategies and have sought additional ones. It is important that we look at the entire health care system—at both the price and volume of services. In the past, controlling costs in one segment of the health-care market has often meant cost shifting to other payers.

Our legislation includes the establishment of a National Health Care Expenditure Board, designed as an independent agency which establishes voluntary annual goals for national health care expenditure totals and convenes negotiations between purchasers and providers of care.

Working in conjunction with the National Health Care Expenditure Board, each State will be required to establish

a State consortium, which must enroll insurers with a small share of the market for the purpose of reducing administrative costs. State consortia may add optional functions including negotiating rates for providers and allocation of capital, among other functions; within the overall annual goal set by the National Health Care Expenditure Board.

In our effort to contain health-care costs, we must have better information about what we as a nation want to pay for. We must assure that each dollar spent gives us its best return. I believe that we can get more value for the over \$600 billion we spend each year on health care.

It is estimated that between 10 to 30 percent of treatment for illnesses provided by physicians is either unnecessary or ineffective.

We believe that the outcomes research initiatives being conducted through the Agency for Health Care Policy and Research, will improve the quality of care while reducing or eliminating unnecessary or ineffective treatments. Therefore, our legislation includes an expanded effort for outcomes research and the development of practice guidelines.

Similarly, we must evaluate new and existing technology in the same way if we are going to control the rapidly escalating costs of MRI's, CT Scans, and other revolutionary technologies in medicine.

Our bill includes an expanded effort in technology assessment through the Office of Technology Assessment and with Federal grants to private entities to encourage research in the private sector. The information gathered through the improved technology assessment would be taken into consideration by both public and private payers in setting reimbursement for technology and making decisions about coverage.

The legislation also includes managed care initiatives in both the private sector and in AmeriCare.

While there are different estimates as to the extent of the problem—we are convinced that the administrative costs of the existing private health care industry are excessive. We believe that cost savings can and must be achieved in this area and have therefore, included a provision to require the Secretary of Health and Human Resources to collect, analyze and disseminate data and move toward uniform billing and electronic claims processing.

Our Nation's health care system is on the critical list. If we do not work together in good faith to control the soaring costs of care and to provide access to care for millions of Americans now uncovered, we will all fall victim to the collapse of the system.

Reforming the health care system will be difficult. While most believe

there is a serious problem, few can agree on the solution. A perfect solution does not exist. Some argue that the United States should adopt a Canadian model. Others argue that tax incentives to businesses with no requirement to provide coverage is the answer.

The legislation we are introducing today represents a compromise between those two views, keeping in mind our own traditions and values as Americans. A new health care system for our Nation must be developed based on our own needs, history and traditions. Every nation with comprehensive health care for all of its citizens has developed a system over time which is unique to that nation. These systems have evolved as our system must evolve.

I believe the time to act is now. Health care reform is critical if we are going to assure that all Americans are ready for the challenges of the 21st century. Children must be healthy and alert in order to learn. As our citizens live longer we must assure that their health is good and their lives are productive.

I ask forward to working with my colleagues in the Congress to enact meaningful health care reform in this Congress. I challenge the Bush administration to work with the Congress to accomplish this goal which is vital for the future of our nation.

I ask unanimous consent that a summary of the bill, and 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. 1227

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "HealthAmerica: Affordable Health Care for All Americans Act".

(b) **REFERENCE TO ACT.**—Hereafter this Act may be referred to as the "HealthAmerica Act".

(c) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

Sec. 101. Basic health benefits for employees and their families.

Sec. 102. Obligation to secure health insurance.

TITLE II—REQUIREMENTS FOR HEALTH BENEFIT PLANS

Sec. 201. Requirements for health benefit plans.

TITLE III—SPECIAL ASSISTANCE FOR SMALL AND MEDIUM-SIZED BUSINESS

Sec. 301. Preemption of State mandated benefit laws.

Subtitle A—Reform of Small Group Insurance

Sec. 311. Group health insurance standards.

Subtitle B—Tax Equity for Small and Medium-Sized Businesses

Sec. 321. Deductible health coverage provisions.

Sec. 322. Excise tax for violation of health benefit plan requirements.

Subtitle C—Opportunity for Voluntary Provision of Coverage

Sec. 331. Medium-sized employers.

Sec. 332. Measurement surveys.

Sec. 333. Small employers.

Sec. 334. Failure to make surveys.

Subtitle D—Small Business Tax Credit

Sec. 341. Allowance of a credit for small and medium-sized business group health plan expenditures.

Subtitle E—Additional Assistance to Small and Medium-Sized Businesses

Sec. 351. Opportunity to buy coverage at medicare rates.

Sec. 352. Special provisions for new small businesses.

Sec. 353. Small and medium-sized business advisory committee.

TITLE IV—REDUCING HEALTH CARE COST INFLATION

Subtitle A—Outcomes Research and Practice Guideline Development and Dissemination

Sec. 401. Initial guidelines and standards.

Sec. 402. Amendments to the Social Security Act.

Subtitle B—Federal Health Expenditure Board

Sec. 411. Federal Health Expenditure Board.

Subtitle C—State Purchasing Consortia

Sec. 421. State purchasing consortia.

Subtitle D—Cost Control Grant Program

Sec. 431. Cost Control Grant Program.

Subtitle E—Malpractice Reform

Sec. 441. Malpractice reform.

Sec. 442. Study of medical malpractice.

Subtitle F—Reducing the Administrative Cost of Assuring Appropriate Utilization of Health Care Services and Improving the Quality of Health Care Services

Sec. 451. Establishment of a quality improvement board.

Subtitle G—Use of Practice Guidelines in Federal Health Insurance and Service Programs

Sec. 461. Use of practice guidelines in Federal health insurance and service programs.

Subtitle H—National Standards for the Promotion of Managed Care

Sec. 471. National standards for the promotion of managed care.

Subtitle I—Expansion of Technology Assessment

Sec. 481. Expansion of technology assessment.

TITLE V—CONTRIBUTION TO PUBLIC PLAN BY EMPLOYERS NOT PROVIDING HEALTH COVERAGE

Sec. 501. Contribution by employers not providing required private health benefit plans.

TITLE VI—ASSURING PROVISION OF HEALTH BENEFITS TO ALL AMERICANS

Sec. 601. Establishment of AmeriCare.

TITLE VII—DEVELOPMENT OF HEALTH SERVICE CAPACITY

Sec. 701. Grants for expansion of availability of primary care services.

TITLE VIII—EFFECTIVE DATE

Sec. 801. Effective date.

Sec. 802. Policy respecting additional benefits.

TITLE I—AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

SEC. 101. BASIC HEALTH BENEFITS FOR EMPLOYEES AND THEIR FAMILIES.

(a) REQUIREMENT.—The Public Health Service Act is amended—

(1) by redesignating title XXVII (42 U.S.C. 300cc et seq.) as title XXVIII; and

(2) by inserting after title XXVI the following new title:

"TITLE XXVII—BASIC HEALTH BENEFITS FOR EMPLOYEES AND THEIR FAMILIES

"PART A—REQUIREMENTS OF HEALTH BENEFITS

"SEC. 2701. HEALTH BENEFITS.

"(a) REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in part B, each employer shall—

"(A) enroll each of its employees (other than part-time employees) and their families in a health benefit plan in accordance with part B; or

"(B) make a contribution under title V of the HealthAmerica Act, for the coverage for such employees and their families under the public health insurance plan established under title XXI of the Social Security Act.

"(2) PART-TIME EMPLOYEES.—In meeting the requirements of paragraph (1) with respect to part-time employees, an employer may, except as provided in part B—

"(A) enroll all of its part-time employees and their families as required under paragraph (1)(A); or

"(B) make a contribution to the public health insurance plan referred to in paragraph (1)(B) on behalf of all such employees.

"(3) LIMITATION.—An employer providing health insurance coverage for pregnancy-related services and for services for children in the 1-year period prior to the date of enactment of this section may not terminate coverage for such services or reduce the financial contribution provided for the cost of coverage for such services prior to the time such employer is required to provide or contribute to coverage under paragraph (1).

"(b) COORDINATION WITH PUBLIC HEALTH INSURANCE PLAN.—An employer making a contribution for coverage under the public health insurance plan as provided for in subsection (a)(1)(B) shall follow such procedures as the Secretary may prescribe to facilitate the enrollment of its employees in such public health insurance plan. Such procedures shall include—

"(1) the distribution of enrollment forms and information to employees;

"(2) notifying in writing each employee of the availability of premium and cost-sharing subsidies for low-income families;

"(3) notifying the State in which an employee resides concerning the identity of an employee on behalf of whom a contribution is being made;

"(4) submitting enrollment forms and information to the State agency administering the public health insurance plan established under title XXI of the Social Security Act on behalf of the employee and the employee's family, if required by the State in which the employee resides;

"(5) withholding, in the form of payroll deductions, an employee's share of the public health insurance plan premium and submitting such withholding to the administering State agency on behalf of the employee, if required by the State in which the employee resides; and

"(6) notifying the appropriate administering State agency of the public health insurance plan when an employee ceases to be an employee.

"(c) ENFORCEMENT.—Any employer that does not comply with subsections (a) and (b) shall be subject to section 2732.

"(d) DEFINITIONS.—The terms used in this section shall have the meanings prescribed for such terms by section 2713."

(b) CONFORMING AMENDMENTS.—

(1) Sections 2701 through 2714 of the Public Health Service Act (42 U.S.C. 300cc through 300cc-15) are redesignated as sections 2801 through 2814, respectively.

(2)(A) Sections 465(f) and 497 of such Act (42 U.S.C. 286(f) and 289(f)) are amended by striking out "2701" each place that such appears and inserting in lieu thereof "2801".

(B) Section 305(i) of such Act (42 U.S.C. 242c(i)) is amended by striking out "2711" each place such appears and inserting in lieu thereof "2811".

SEC. 102. OBLIGATION TO SECURE HEALTH INSURANCE.

(a) FEDERAL PROGRAMS.—Beginning with the seventh full year after the date of enactment of this Act, to be eligible for benefits under a Federal program, an individual seeking benefits under such program shall certify to the administrator of such program that such individual and the dependents of such individual possess health insurance coverage that meets the applicable minimum standards under this Act.

(b) INTERNAL REVENUE EXEMPTIONS.—To be eligible to claim the exemption amount to which an individual is entitled under section 151 of the Internal Revenue Code of 1986, such individual shall certify, as part of the personal income tax return filed by such individual with the Internal Revenue Service, that such individual is covered under a health insurance plan that meets the applicable minimum standards under this Act. A parent shall make such certification on behalf of a dependent child.

TITLE II—REQUIREMENTS FOR HEALTH BENEFIT PLANS

SEC. 201. REQUIREMENTS FOR HEALTH BENEFIT PLANS.

Title XXVII of the Public Health Service Act (as added by section 101) is amended by adding at the end thereof the following new part:

"PART B—REQUIREMENTS FOR HEALTH BENEFIT PLANS

"Subpart 1—Requirement and Definitions

"SEC. 2711. REQUIREMENT TO ENROLL EMPLOYEES AND FAMILIES.

"(a) IN GENERAL.—This part shall apply to employers required to enroll employees and their families in health benefit plans under section 2701(a).

"(b) TYPES OF PLANS PERMITTED.—Except as required under chapter 2 of subtitle A of title III of the HealthAmerica Act (relating to small and medium-sized business insurance), an employer may meet the requirements of this part by means of enrollment in any health benefit plan.

"(c) EXCEPTION FOR EMPLOYERS IN HAWAII.—Employers that have employees in the State of Hawaii shall be exempt from the requirements of this part with respect to such employees, for so long as the Hawaii Prepaid Health Care Act (Hawaii Rev. Stat. Chapter 393) remains in effect. This subsection shall not apply if the proportion of the population with health care coverage provided under such Act that is at least actuarially equivalent to the coverage required under this title is, or becomes, less than that required to be

provided in other States under this title or the HealthAmerica Act.

"SEC. 2712. COVERAGE OF EMPLOYEES AND FAMILY MEMBERS.

"(a) REQUIREMENT.—Except as permitted under subsections (b) and (d) and section 2723(c)—

"(1) the enrollment of an employee in a health benefit plan under this part shall include the enrollment of the family of such employee in the plan; and

"(2) the enrollment of an employee or the family of an employee in a health benefit plan may not be waived by the employee.

"(b) EXCEPTIONS TO AVOID DUPLICATE FAMILY COVERAGE.—

"(1) SPOUSE OR PARENT EMPLOYED.—An employee may waive enrollment in a health benefit plan under this part for the spouse or a child of the employee but only for such period as the employee demonstrates that such spouse or child, respectively, is actually covered under a health benefit plan.

"(2) CHILD EMPLOYED.—A child who is employed (or a parent on behalf of the child) may waive enrollment in a health benefit plan provided by the employer of such child during any period in which the child otherwise is covered under a health benefit plan.

"(c) NONDISCRIMINATION BASED ON FAMILY STATUS.—An employer shall not fail or refuse to hire, and shall not discharge or otherwise discriminate against, any individual because the individual has a spouse or child that would be required under this part to be enrolled by such employer in a health benefit plan.

"(d) WAIVER IN CASE OF MULTIPLE EMPLOYERS.—In the case of an individual who is an employee with respect to more than one employer and who is required to enroll in a health benefit plan, such employee may waive enrollment in the health benefit plan of any such employer, but only if such employee is, and certifies to the employer that such employee is, enrolled in the health benefit plan of one employer.

"SEC. 2713. DEFINITIONS.

"(a) IN GENERAL.—Unless otherwise specifically provided, as used in this title:

"(1) CHILD.—The term 'child' means, with respect to an employee, an individual—

"(A) who—

"(i) is under 19 years of age;

"(ii) is under 23 years of age and a full-time student; or

"(iii) is an unmarried, dependent child, regardless of age, who is incapable of self-support as a result of a mental or physical disability that existed prior to the individual reaching 22 years of age; and

"(B)(i) who is the biological, adopted, or foster child of the employee or the spouse of the employee, or of the dependent child of the employee or the spouse of the employee;

"(ii) who is the legal ward of the employee or the spouse of the employee; or

"(iii) with respect to whom the employee or spouse of the employee, stands in loco parentis during the course of an adoption application.

"(2) EMPLOYEE.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'employee' means, with respect to an employer, an individual who normally performs at least 1 hour of service per week for that employer.

"(B) HANDICAPPED WORKERS.—The term 'employee' does not include an individual described in section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)).

"(C) CERTAIN EMPLOYEES.—The term 'employee' means, with respect to an employer described in section 3(37) of the Employee

Retirement Income Security Act of 1974 (29 U.S.C. 1002(37)), an individual who performs—

“(i) 17.5 hours or more of service per week for the employer; or

“(ii) an equivalent amount of service during a 1-, 3-, or 6-month period for the employer, as determined under regulations issued by the Secretary.

“(D) LESS-THAN-FULL-TIME EMPLOYEE DEFINED.—The term ‘less-than-full-time employee’ means, with respect to an employer, an employee who normally performs on a monthly basis less than 25 hours of service per week but more than 17.5 hours per week for that employer.

“(E) CONSULTANTS AND CONTRACTORS.—The term ‘employee’ shall include an individual who is a consultant or independent contractor of an employer if the Secretary determines that the consulting arrangement or contract was entered into to avoid the requirements of this part.

“(F) PART-TIME EMPLOYEE.—The term ‘part-time employee’ means, with respect to an employer, an individual who normally performs on a monthly basis—

“(i) less than 17.5 hours per week; and
“(ii) 1 hour or more per week for that employer.

“(3) EMPLOYER.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term ‘employer’ means—

“(i) an entity that is required to pay the individuals it employs the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) (or would be required to pay such wage but for the dollar volume standards prescribed in section 3(s) of such Act (29 U.S.C. 203(s)) or the exemptions prescribed in section 13(a) of such Act (29 U.S.C. 213(a)); and

“(ii) any State or political subdivision thereof, or any agency or instrumentality thereof; but such term does not include the Federal Government or a subdivision thereof.

“(B) OWNER-OPERATORS.—An owner-operator of a business shall be considered to be both an employer and employee with respect to himself or herself if the owner-operator has one or more other employees.

“(C) SMALL AND MEDIUM-SIZED EMPLOYERS.—The term ‘small employer’ means, with respect to a calendar year, an employer that normally employs fewer than 25 employees during the calendar year, and the term ‘medium-sized employer’ means, with respect to a calendar year, an employer that normally employs 25 or more employees, but not more than 100 employees, during the calendar year.

“(D) APPLICATION OF CONTROLLED GROUP RULES.—Section 607(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(4)) shall apply in the determination under this part of whether an employer is a small or medium-sized employer and the number of employees an employer normally employs.

“(E) FAMILY FARMERS.—

“(i) PRICE SUPPORT GREATER THAN 70 PERCENT OF PARITY.—The term ‘employer’ shall not include the owner or operator of a family farm unless the level of agricultural prices, or the minimum level of agricultural price support provided by the Secretary of Agriculture for loans and purchases, for the major commodity produced on the farm is equal to or greater than 70 percent of the parity price of the commodity as maintained by the Secretary during the preceding 2 crop years.

“(ii) PRICE SUPPORT LESS THAN 70 PERCENT OF PARITY.—Owners and operators of a fam-

ily farm who do not receive minimum agricultural price support through loans and purchases that is equal to or greater than 70 percent of parity for the major commodity produced on the farm from the Secretary of Agriculture for the preceding crop year shall be included within the definition of the term ‘employer’ only if, based on a national referendum conducted by the Secretary of Agriculture, a majority of the owners and operators vote in favor of mandatory participation in the small business insurance program provided by part C and the HealthAmerica Act.

“(iii) NO COVERED EMPLOYEES.—Owners and operators of family farms with no employees required to be enrolled in health benefit plans under this part, shall be included in the definition of ‘employee’ under this part if, based on a national referendum conducted by the Secretary of Agriculture, a majority of farmers in the commodity group vote in favor of mandatory participation in the small business insurance program provided by part C and the HealthAmerica Act.

“(iv) DEFINITION OF FAMILY FARM.—As used in this subparagraph, the term ‘family farm’ means a farm with respect to which—

“(I) the operator or the family of the operator, or both (or, if the operator is a cooperative, corporation, partnership, or joint operation, the members, stockholders, partners, or joint operators, respectively) devote a substantial amount of time daily to the management or operation of the farm;

“(II) a majority of the hours of labor required annually for the (farm and nonfarm) enterprise of the farm is provided by the operator or the family of the operator, or both (or, if the operator is a cooperative, corporation, partnership, or joint operation, by the members, stockholders, partners, or joint operators, respectively, and the families of such individuals); and

“(III) the value of the gross annual sales of agricultural commodities produced on the farm is not more than \$750,000.

“(4) FAMILY AND FAMILY MEMBER.—The terms ‘family’ and ‘family member’ mean, with respect to an employee, the spouse and children of the employee.

“(5) HEALTH BENEFIT PLAN.—The term ‘health benefit plan’ means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)) that—

“(A) provides medical care to participants or beneficiaries directly or through insurance, reimbursement, or otherwise; and

“(B) meets the requirements of section 2721.

“(6) INSURER.—The term ‘insurer’ means an entity qualified under the laws of a State to offer insurance or provide health benefits in that State.

“(7) MANAGED CARE.—

“(A) MANAGED CARE ENTITY.—The term ‘managed care entity’ means an insurer, health maintenance organization, preferred provider organization, dental plan organization, or other entity licensed to do business in a State, that markets managed care plans to groups or individuals or an employer, labor union or other State licensed entity that provides managed care plans for its employees or members.

“(B) MANAGED CARE PLAN.—The term ‘managed care plan’ means a health benefit plan—

“(i) in which the insurer—

“(I) utilizes explicit standards for the selection and recertification of participating providers;

“(II) has organizational arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assur-

ance program for its health services, which program (aa) stresses health outcomes, and (bb) provides review by physicians and other health professionals of the process followed in the provision of health services; and

“(III) contains significant incentives to use the participating providers and procedures provided for by the plan; and

“(ii) which, if it limits coverage of services to those provided by participating providers or permits deductibles and coinsurance with respect to basic health services provided by persons who are not participating providers which are in excess of those permitted under health benefit plans—

“(I) has a sufficient number and distribution of participating providers to assure that all covered items and services are (aa) available and accessible to each enrollee, within the area served by the plan, with reasonable promptness and in a manner which assures continuity, and (bb) when medically necessary, available and accessible twenty-four hours a day and seven days a week; and

“(II) provides benefits for covered items and services not furnished by participating providers if the items and services are medically necessary and immediately required because of an unforeseen illness, injury, or condition.

“(C) PARTICIPATING PROVIDER.—The term ‘participating provider’ means a physician, hospital, health maintenance organization, pharmacy, laboratory, or other appropriately licensed provider of health care services or supplies, that has entered into an agreement with a managed care entity to provide such services or supplies to a patient enrolled in a managed care plan.

“(D) UTILIZATION REVIEW.—The term ‘utilization review’ means a program for reviewing the necessity and appropriateness of health care services provided or proposed to be provided to a patient.

“(8) MENTAL DISORDER.—The term ‘mental disorder’ has the same meaning given such term in the International Classification of Diseases, 9th Revision, Clinical Modification.

“(9) NONGOVERNMENTAL EMPLOYER.—The term ‘nongovernmental employer’ means an employer not described in paragraph (3)(A)(i).

“(10) PHYSICIAN SERVICES.—The term ‘physician services’ means professional medical services lawfully provided by a physician under State medical practice acts, and includes professional services provided by a dentist, licensed advanced-practice nurse, optometrist, podiatrist, or chiropractor acting within the scope of their practices (as determined under State law) if such services would be treated as physician services if furnished by a physician, except as provided in section 2722(e).

“(11) STATE.—

“(A) IN GENERAL.—The term ‘State’ means each of the several States and the District of Columbia.

“(B) ELECTION.—If the Governor of the Commonwealth of Puerto Rico or of any territory of the United States certifies to the President that Puerto Rico or such territory has enacted legislation stating that Puerto Rico or such territory desires to be included under the provisions of this Act, Puerto Rico or such territory shall be included under the definition of State for the purposes of this part beginning with January 1 of the first calendar year which begins later than 90 days after the President receives such notification.

“Subpart 2—Requirements for Health Benefit Plans

“SEC. 2721. GENERAL REQUIREMENTS; PERMITTING ACTUARILY EQUIVALENT PLANS.

“(a) GENERAL REQUIREMENTS.—Subject to subsections (b) and (c), in order for a health benefit plan to meet the requirements of this section, such plan shall—

“(1) provide benefits for items and services in accordance with section 2722;

“(2) provide coverage of employees and family enrolled in the plan in accordance with section 2723; and

“(3) provide for premiums, deductibles, copayments, and coinsurance in accordance with section 2724.

“(b) ACTUARILY EQUIVALENT PLANS PERMITTED.—

“(1) VARIATIONS IN PREMIUMS, DEDUCTIBLES, AND COST-SHARING.—A health benefit plan shall meet the requirements of this section, notwithstanding that such plan does not meet one or more of the requirements of section 2724 (relating to premiums, deductibles, copayments, coinsurance, and limit on out-of-pocket expenses) if the actuarial value of benefits provided under the plan (as defined in paragraph (8)) is not less than the equivalent of the actuarial value of benefits provided under the plan that would have applied if the plan met the requirements described in subsection (a).

“(2) MINIMUM REQUIREMENTS.—Nothing in this subsection shall be construed as not requiring each plan—

“(A) to meet the requirements of section 2723; or

“(B) to establish a limit on out-of-pocket expenses under section 2724(d), except that this subparagraph shall not be construed to require the establishment of the out-of-pocket limit described in section 2724(d)(5)(B).

“(3) MENTAL HEALTH BENEFITS.—Notwithstanding any other provision of this part or of the Health America Act, a health benefit plan may meet the requirements of section 2722(a)(6) by including payment for any reasonable combination of benefits described in subparagraphs (A) and (B) of such section if the plan includes payment for—

“(A) benefits the value of which is at least actuarially equivalent to the value of the benefits for which payment is otherwise required under such subparagraphs; and

“(B) both types of benefits described in each such subparagraph.

“(4) ADVISORY BOARD.—

“(A) ESTABLISHMENT.—The Secretary shall establish an Advisory Board to provide advice to the Secretary concerning the development of actuarial equivalency standards and such other matters relating to the administration of this part as the Secretary or the Board considers appropriate.

“(B) MEMBERSHIP.—The Advisory Board shall consist of 15 members appointed by the Secretary, of whom—

“(i) four members shall be representatives of employers, who shall be experienced in the administration of and knowledgeable about health insurance and actively engaged in the management or design of health insurance programs, of which—

“(I) two members shall be representatives of large businesses, as determined by the Secretary; and

“(II) two members shall be representatives of small and medium-sized businesses;

“(ii) two members shall be representatives of labor organizations, who shall possess qualifications of the type required for representatives under clause (i);

“(iii) four members shall be representatives of the insurance industry, at least one

of whom shall be knowledgeable about small group policies;

“(iv) two members shall be actuaries, who shall be experienced in the administration of and knowledgeable about health insurance programs; and

“(v) three members shall be representatives of consumers not described in clauses (i) through (iv).

“(C) TERMS.—Each member of the Advisory Board shall serve for a term of 4 years, except that members initially appointed shall serve for staggered terms, as designated by the Secretary. A member may serve on the Board after the expiration of the term of the member until a successor has taken office as a member of the Board.

“(D) COMPENSATION.—The members of the Advisory Board may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, while away from their homes or regular places of business, for each day (including travel time) during which they are attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Board.

“(E) DEVELOPMENT OF ACTUARIAL EQUIVALENCY VARIATIONS.—Not later than 6 months before the effective date of this part, the Advisory Board shall develop and transmit to the Secretary—

“(i) at least three model health plans each with an actuarial value of benefits that is equivalent to the actuarial value of benefits of a basic plan (as defined in paragraph (9));

“(ii) a table of actuarial equivalency describing permitted expansions in covered services and variations in copayments, deductibles, limits on out-of-pocket expenses, and an employer's share of the premium or premiums under a health plan, as a percentage increase or decrease in the actuarial value of the basic plan, with the table describing as many expansions and variations as practicable in order to facilitate compliance with this section; and

“(iii) recommendations for procedures to facilitate the process by which an employer may certify actuarial equivalency for plan variations not provided in the model health plans or the table of actuarial equivalency and for the certification of multiple plans offered by the same employer.

“(F) REVIEW OF CHANGES.—The Advisory Board shall review proposed changes to the basic benefit package required of health benefit plans and transmit a cost benefit analysis of such changes, along with recommendations, to the appropriate committees of Congress and the Secretary.

“(5) TABLE OF ACTUARIAL EQUIVALENCY.—The Secretary shall publish, at least 3 months prior to the effective date of this part, a table that specifies the percentage increase or decrease in the actuarial value of benefits under a health benefit plan providing only the required benefits that would result from variations in covered services, copayments, deductibles, limits on out-of-pocket expenses, an employer's share of the premium or premiums under a health benefit plan, or any combination thereof. The table shall describe as many variations as feasible. In developing the table, the Secretary shall consider the recommendations of the Advisory Board established under paragraph (4).

“(6) COMPLIANCE WITH FIDUCIARY DUTIES.—In the case of health benefit plan variations for which relative actuarial values are not expressly provided for in the table published under paragraph (5) or in the case of variations in which one or more elements of covered services, copayments, deductibles, and

limits on out-of-pocket expenses are given a relative actuarial value by the plan administrator that is different from that provided by such table, the plan shall not be considered out of compliance with this section—

“(A) if, under a process consistent with the duties of a fiduciary under part 4 of title I of the Employee Retirement Income Security Act of 1974, it is established that, and an actuary meeting credentials established by the American Academy of Actuaries or by the Secretary has certified that, the actuarial value of the benefits of the plan is at least equivalent to the actuarial value of the benefits of a basic plan; and

“(B) until and unless the Secretary has determined that such variations are not in compliance with the requirements of this section.

“(7) MULTIPLE PLANS.—In the case of an employer that has a health benefit plan that meets the requirements of paragraph (6)(A) or is otherwise determined to have an actuarial value of benefits that is at least equivalent to the actuarial value of a basic plan, the Secretary shall establish by regulation streamlined procedures for the approval of additional health benefit plans the actuarial value of the benefits of which is at least equivalent to the actuarial value of the benefits of the approved health benefit plan.

“(8) ACTUARIAL VALUE OF BENEFITS DEFINED.—For purposes of this subsection, the “actuarial value of benefits” of a plan is the amount by which the total of the amounts payable as benefits under the plan exceeds the amount of the premiums, deductibles, copayments, and coinsurance payable by the employee under the plan, as determined on an actuarial basis per enrollee for a plan year.

“(9) BASIC PLAN DEFINED.—For purposes of this subsection, the term “basic plan” means a health benefit plan that only provides the basic benefits required under this part.

“SEC. 2722. REQUIREMENTS RELATING TO COVERED ITEMS AND SERVICES.

“(a) IN GENERAL.—Except as otherwise provided in this section, a health benefit plan shall include payment for—

“(1) inpatient and outpatient hospital care, except that treatment for a mental disorder is subject to the special limitations described in paragraph (6)(A);

“(2) inpatient and outpatient physician services, except that psychotherapy or counseling for a mental disorder is subject to the special limitations described in paragraph (6)(B);

“(3) diagnostic tests;

“(4) prenatal care and well-baby care provided to children who are 1 year of age or younger;

“(5) preventive services, limited to—

“(A) well child care;

“(B) pap smears; and

“(C) mammograms; and

“(6)(A) inpatient hospital care for a mental disorder for not less than 45 days per year, except that days of partial hospitalization or residential care may be substituted for days of inpatient care according to a ratio established by the Secretary; and

“(B) outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year provided by a provider who is acting within the scope of State law and who—

“(i) is a physician; or

“(ii) meets the standards of subsection (g)(2)(B) and is a duly licensed or certified clinical psychologist or a duly licensed or certified clinical social worker, a duly licensed or certified equivalent mental health

professional, or a clinic or center providing duly licensed or certified mental health services.

"(b) EXCEPTIONS.—Subsection (a) shall not be construed as requiring a plan to include payment for—

"(1) items and services that are not medically necessary;

"(2) routine physical examinations or preventive care (other than care and services described in paragraphs (4) and (5) of subsection (a)); or

"(3) experimental services and procedures, except that this paragraph shall not apply to routine medical costs associated with peer-reviewed and approved protocols conducted in connection with peer-reviewed and approved research programs, pursuant to standards established by the Secretary.

"(c) AMOUNT, SCOPE, AND DURATION OF CERTAIN BENEFITS.—Except as provided in subsection (b), a health benefit plan shall place no limits on the amount, scope, or duration of benefits described in paragraphs (1) through (3) of subsection (a).

"(d) AMOUNT, SCOPE, AND DURATION OF PREVENTIVE SERVICES.—A health benefit plan may limit the amount, scope, and duration of preventive services described in subsection (a)(5) pursuant to regulations of the Secretary specifying the amount, scope, and duration of such care. The Secretary shall develop such regulations after consultation with appropriate medical experts.

"(e) LIMITATIONS.—

"(1) PANELS AND MANAGED CARE SYSTEMS.—Nothing in this title or the HealthAmerica Act, shall prohibit a health benefit plan from providing benefits for the items and services described in this section through a managed care system, and from selecting particular health care providers or types, classes, or categories of health care providers to participate in such managed care system. Such managed care system shall provide, in accordance with regulations issued by the Secretary, reasonable access to care by plan enrollees.

"(2) DIFFERENT LEVELS OF PAYMENTS.—Nothing in this title or the HealthAmerica Act, shall prohibit a health benefit plan from establishing a different level of payments for reimbursement for different health care providers furnishing the benefits for the items and services described in this section.

"(3) HEALTH CARE PROVIDERS.—Nothing in this title or the HealthAmerica Act, shall be construed to require a health benefit plan to utilize any health care provider (or type, class, or category of health care provider) to provide benefits for the items and services described in this section that were provided by the plan before the effective date of this part, other than the health care providers being utilized by the health benefit plan on such effective date, except that this paragraph shall not apply to duly licensed or certified clinical psychologists (acting within the scope of State law) after the end of the 5-year period beginning on the effective date of this part. This paragraph shall not apply to plans offered under part C.

"(4) DENIAL OF PAYMENT TO EXCLUDED PROVIDERS.—Nothing in this title or the HealthAmerica Act, shall require a health benefit plan to make payment to any health care provider that is excluded from participation in any Federal health care program.

"(f) BASIS OF PAYMENT MAY DIFFER FROM ACTUAL CHARGES.—The requirement of payment for services described in subsection (a) shall not prevent an employer from establishing a fee schedule or other basis of payment that is different from actual charges,

but only if such fee schedule or other basis provides, pursuant to regulations of the Secretary, for payment at a level sufficient to achieve adequate access to services covered by the plan without additional out-of-pocket expenses for the covered service (but for copayments and deductibles permitted under section 2724).

"(g) MENTAL HEALTH CARE.—

"(1) INPATIENT CARE.—Subject to the provisions of subsection (e), inpatient hospital care described in subsection (a)(6)(A) shall include reimbursement for professional care provided to the individual while the individual is receiving such inpatient care, by a physician or duly licensed or certified clinical psychologist operating within the scope of practice of the physician or psychologist, as determined appropriate under State law. Nothing in this subsection shall be construed to modify hospital practices with regard to scope of practice, admitting privileges, or billing arrangements.

"(2) OUTPATIENT CARE.—

"(A) USE OF PROVIDERS.—Subject to the provisions of subsection (e), a health benefit plan that provided benefits with respect to outpatient psychotherapy described in subsection (a)(6)(B) prior to January 1, 1991, shall not be required under such subsection to provide benefits for outpatient psychotherapy provided by any health care provider (or type, class, or category of health care provider) described in subsection (a)(6)(B)(ii), other than duly licensed or certified clinical psychologists and health care providers being utilized by the plan on January 1, 1991. This subparagraph shall not apply to plans offered under part C.

"(B) STANDARDS FOR CERTAIN PROVIDERS.—The Secretary shall establish standards that providers referred to in subsection (a)(6)(B)(ii) must meet to be eligible for payment under a health benefit plan and such standards shall require that such providers have training and education equivalent to a licensed clinical social worker (as defined in title XVIII of the Social Security Act).

"(h) STUDIES.—

"(1) SERVICES.—The Secretary shall periodically review the appropriateness of the preventive services required to be covered under this section and prepare and submit to the appropriate committees of Congress a report concerning any recommendations for changes in the list of such services that are required to be covered.

"(2) COVERAGE FOR CERTAIN SERVICES.—Not later than 1 year after the date of enactment of this part, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the cost-effectiveness and desirability of coverage of colorectal cancer screening, prostate cancer screening, osteoporosis screening, and outpatient prescription drugs.

"SEC. 2723. REQUIREMENTS RELATING TO TIMING OF COVERAGE AND PROHIBITION OF PREEXISTING CONDITION LIMITATIONS.

"(a) DATE OF INITIAL COVERAGE.—In the case of an employee (and family members) enrolled under a health benefit plan provided by an employer, the coverage under the plan shall begin not later than the latest of the following:

"(1) 30 days after the date on which the employee first performs an hour of service as an employee of that employer, or in a case where an employer does not provide immediate coverage under the plan, on the day on which an employee who has performed an hour of service for the employer agrees to pay 100 percent of the normal employer and employee premium for the period prior to

the normal beginning of coverage under the plan. The employer shall notify the employee on the first day on which the employee first performs an hour of service for the employer of the rights of the employee under this subsection.

"(2) The first day on which the employer is required to meet the requirements of this part.

"(3) In the case of an employer described in section 2713(a)(2)(C)—

"(A) 90 days after the date on which the employee first performs an hour of plan-covered service as an employee of the employer, except that if the initial waiting period is greater than 30 days, coverage under the plan shall continue for an equivalent period after the last day on which the employee performs an hour of plan-covered service as an employee of the employer; or

"(B) 180 days after the date on which the employee first performs an hour of plan-covered service, except that if the initial waiting period is greater than 30 days, coverage under the plan shall continue for an equivalent period after the last day on which the employee performs an hour of plan-covered service.

"(4) Subject to section 2712(b), in the case of a child, coverage applies for any period during which the employee, who is the parent of the child, is covered.

"(b) PROHIBITION OF PREEXISTING CONDITION PROVISIONS.—A health benefit plan shall not exclude or otherwise limit any individual from coverage under the plan on the basis that the individual has (or at any time has had) any disease, disorder, or condition.

"(c) RIGHT TO WAIVE ENROLLMENT.—

"(1) LESS-THAN-FULL-TIME OR PART-TIME EMPLOYEES WITH INCREASED PREMIUMS.—In the case of a less-than-full-time or part-time employee who is subject to, and is charged, an increased premium under section 2724(b)(5), the employee may, notwithstanding any other provision of this part, waive enrollment under this part. Such waiver shall be exercised in such form and manner as the Secretary shall specify and shall terminate on the date the employee is no longer being subject to, and charged, such an increased premium.

"(2) EMPLOYER CONTRIBUTION TO PUBLIC HEALTH INSURANCE PLAN.—In the case of a less-than-full-time or part-time employee who waives enrollment under paragraph (1), the employer shall, in a manner required by the Secretary, make a payment under title V of the HealthAmerica Act equal to the minimum amount the employer would have made towards the actuarial cost of coverage of the employee if the employee had not waived such enrollment.

"(d) CONTINUED COVERAGE.—If an employee's coverage or coverage for the family members of an employee would normally terminate during a period of hospitalization, such coverage shall continue until the employee or family member is discharged from the hospital.

"SEC. 2724. REQUIREMENTS RELATING TO PREMIUMS, DEDUCTIBLES, COPAYMENTS, COINSURANCE, AND LIMIT ON OUT-OF-POCKET EXPENSES.

"(a) ENROLLEE COST-SHARING PERMITTED.—A health benefit plan may require an enrollee to pay for premiums, deductibles, copayments, and coinsurance amounts for coverage under the plan, but only if such premiums, deductibles, copayments, and coinsurance do not exceed the limitations imposed under this section.

"(b) LIMITATION ON PREMIUMS.—

"(1) MONTHLY PREMIUM LIMITED TO 20 PERCENT OF ACTUARIAL RATE.—

"(A) IN GENERAL.—Subject to paragraphs (4) and (5), a health benefit plan shall not require an employee to pay a premium—

"(i) for coverage for a period of longer than one month; or

"(ii) the amount of which on a monthly basis exceeds 20 percent of the monthly actuarial rate defined under subparagraph (B).

"(B) MONTHLY ACTUARIAL RATE DEFINED.—For purposes of this subsection, the term 'monthly actuarial rate' means, with respect to a health benefit plan in a plan year, the average monthly per enrollee amount that the employer providing the plan estimates, based on actuarial calculations conducted in conformity with requirements established by the Secretary, for enrollees under the plan during the year, would be necessary to pay for the total benefits required under the plan (including administrative costs for the provision of such benefits and an appropriate amount for a contingency margin) during the year.

"(C) APPLICATION ON BASIS OF FAMILY STATUS.—For purposes of this paragraph, a health benefits plan may provide for the premium to be applied, and the monthly actuarial rate to be computed—

"(i) separately for employees who have family members covered under the plan and for employees who do not have family members covered under the plan; and

"(ii) with respect to employees with such covered family members, separately—

"(I) for employees who have a covered spouse and one or more covered children;

"(II) for employees who have a covered spouse but no covered children; and

"(III) for employees who do not have a covered spouse but have one or more covered children.

"(D) ADJUSTMENT FOR COVERED SPOUSE WITH OTHER COVERAGE.—For purposes of this paragraph, if a health benefit plan charges an employee for a share of the premium, the plan shall establish a separate premium category (or categories) for family coverage in the case of a covered spouse who is receiving primary health insurance coverage from another health benefit plan. The premium for such categories shall be established based on actual or projected plan experience or according to a formula established by the Secretary, and shall take into account the reduction in health insurance costs resulting from such coverage.

"(E) ADJUSTMENT OF PREMIUMS FOR EMPLOYED RETIREES UNDER HEALTH BENEFIT PLANS.—If an employer provides a health benefit plan with respect to retirees and the plan charges a retiree for a share of the premium of the plan, in the case of such a retiree who is enrolled as an employee (or dependent) under another health benefit plan under this part, the health benefit plan with respect to the retiree shall provide for an adjustment of the amount of the premium paid by the retiree to take into account the reduction in health insurance costs resulting from such coverage.

"(2) PAYMENT OF PREMIUMS.—An employee enrolled under a health benefit plan is liable for payment of premiums required under that plan in accordance with this subsection.

"(3) WITHHOLDING PERMITTED.—No provision of State law shall prevent an employer of an employee enrolled under a health benefit plan established under this part from withholding the amount of any premium due by the employee from the payroll of the employee.

"(4) SPECIAL RULE FOR LESS-THAN-FULL-TIME EMPLOYEES.—In the case of a less-than-full-time employee (as defined in section

2713(3)(D)), a health benefit plan may require the employee to pay a premium the amount of which (on a monthly basis) does not exceed—

"(A) 100 percent, minus

"(B) 80 percent, multiplied by the ratio of—

"(i) the average number of hours per week the employee is normally employed by the employer in the calendar quarter; to

"(ii) 25,

of the monthly actuarial rate (as defined in paragraph (1)(B)).

"(5) PART-TIME EMPLOYEES.—In the case of a part-time employee, a health benefit plan may require the employee to pay a premium amount that does not exceed 50 percent of the monthly actuarial rate (as defined in paragraph (1)(B)).

"(c) LIMITATION ON DEDUCTIBLES.—

"(1) IN GENERAL.—Except as permitted under paragraph (2), a health benefit plan shall not provide, for benefits provided in any plan year, for a deductible amount that exceeds—

"(A) with respect to benefits payable for items and services furnished to any employee with no family member enrolled under the plan, for a plan year beginning in—

"(i) the first calendar year that begins more than 1 year after the effective date of this Act, \$250; or

"(ii) for a subsequent calendar year, the limitation of deductions specified in this subparagraph for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year; and

"(B) with respect to benefits payable for items and services furnished to any employee with a family member enrolled under the plan, for a plan year beginning in—

"(i) the first calendar year that begins more than 1 year after the effective date of this part, \$250 per family member and \$500 per family; or

"(ii) for a subsequent calendar year, the limitation of deductions specified in this subparagraph for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the limitation of deductions computed under subparagraph (A)(ii) or (B)(ii) is not a multiple of \$10, it shall be rounded to the next highest multiple of \$10.

"(2) WAGE-RELATED DEDUCTIBLE.—A health benefit plan may provide for any other deductible amount instead of the limitations under—

"(A) paragraph (1)(A), if such amount does not exceed (on an annualized basis) 1 percent of the total wages paid to the employee in the plan year; or

"(B) paragraph (1)(B), if such amount does not exceed (on an annualized basis) 1 percent per family member or 2 percent per family of the total wages paid to the employee in the plan year.

"(d) LIMITATION ON COPAYMENTS AND COINSURANCE.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (4), a health benefit plan shall not—

"(A) require the payment of any copayment or coinsurance for an item or service for which coverage is required by this

part in an amount that exceeds 20 percent of the cost of the item or service; or

"(B) require the payment of any copayment or coinsurance for items and services required under section 2722 to be furnished in a plan year for an employee after the employee has incurred out-of-pocket expenses under the plan that are equal to the out-of-pocket limit (as defined in paragraph (5)(B)).

"(2) EXCEPTION FOR PREFERRED PROVIDERS.—If a health benefit plan establishes reasonable classifications of participating and nonparticipating providers of items and services, the plan may require payments in excess of the amount permitted under paragraph (1) in the case of items and services furnished by nonparticipating providers.

"(3) EXCEPTION FOR IMPROPER UTILIZATION.—A health benefit plan may provide for copayment or coinsurance in excess of the amount permitted under paragraph (1) for any item or service that an individual obtains without complying with any reasonable procedures established by the plan to ensure the efficient and appropriate utilization of covered services.

"(4) MENTAL HEALTH CARE.—In the case of care provided under section 2722(a)(6)(B), a health benefit plan shall not require payment of any copayment or coinsurance for an item or service for which coverage is required by this part in an amount that exceeds 50 percent of the cost of the item or service.

"(5) LIMIT ON OUT-OF-POCKET EXPENSES.—

"(A) OUT-OF-POCKET EXPENSES DEFINED.—As used in this section, the term 'out-of-pocket expenses' means, with respect to an employee in a plan year, amounts payable under the plan as deductibles and coinsurance with respect to items and services provided under the plan and furnished in the plan year on behalf of the employee and family covered under the plan.

"(B) OUT-OF-POCKET LIMIT DEFINED.—As used in this section and except as provided in subparagraph (C), the term 'out-of-pocket limit' means for a plan year beginning in—

"(i) the first calendar year that begins more than 1 year after the effective date of this part, \$3,000; or

"(ii) for a subsequent calendar year, the out-of-pocket limit specified in this subparagraph for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the out-of-pocket limit computed under clause (ii) is not a multiple of \$10, it shall be rounded to the next highest multiple of \$10.

"(C) ALTERNATIVE OUT-OF-POCKET LIMIT.—A health benefit plan may provide for an out-of-pocket limit other than that defined in subparagraph (B) if, for a plan year with respect to an employee and the family of the employee, the limit does not exceed (on an annualized basis) 10 percent of the total wages paid to the employee in the plan year.

"SEC. 2725. ENROLLEE PROTECTION.

"(a) ADMINISTRATION.—

"(1) INSURANCE COMMISSIONER.—The requirements and standards established under this section shall be administered in a State by the insurance commissioner of that State, or by any other State agency, as designated by the chief executive officer of the State.

"(2) NONCOMPLIANCE.—If the State fails to comply with the requirements of paragraph (1), or, in the judgment of the Secretary, fails to adequately perform the administra-

tive functions required under such paragraph, the Secretary shall assume the administrative responsibilities and duties required under such paragraph in that State.

"(b) INFORMATIONAL REQUIREMENT.—

"(1) SUMMARY OF HEALTH PLAN.—

"(A) REQUIREMENT.—Not later than 30 days after the date on which the coverage of an employee under a health benefit plan under this part begins, the employer of such employee shall provide the employee with a copy of the health benefit plan and a summary of such plan in accordance with subparagraph (B).

"(B) CONTENTS.—The plan and summary provided under subparagraph (A) shall be written in a manner reasonably assumed to be understandable by the average individual. Such summary and plan shall be sufficiently accurate and comprehensive to reasonably apprise individuals of their rights and obligations under the plan.

"(2) AVAILABILITY OF SUBSIDY.—Not later than 30 days after the date on which coverage of an employee under a health benefit plan under this part begins, the employer shall notify the employee of the availability of low-income subsidies for employees, through the public health insurance plan established under title XXI of the Social Security Act, to cover all or part of the cost of the employee's share of the premium for such health benefit plan and of any cost-sharing under such plan. Such notification shall be provided in such form as the Secretary shall require.

"(3) CHANGES IN PLAN.—An employee shall be notified in writing of any changes in the terms of their health benefit plan, not less than 30 days in advance of the implementation of such changes.

"(4) FAILURE TO PAY PREMIUMS.—With respect to a health benefit plan, the insurer issuing such plan shall notify the employee and the Secretary of the failure of the employer to make timely premium payments on behalf of the employee and the employee's family members as required under such plan. Such notification shall be provided not less than 30 days prior to any termination of coverage by the insurer as the result of such nonpayment of premiums.

"(5) FINANCIAL STATEMENT.—An employee shall be entitled to receive, on request, a copy of the most recent financial statement prepared for the health benefit plan under which such employee is covered. An employee shall be entitled to no more than one such request during each 1-year period.

"(6) AVAILABILITY OF INFORMATION.—

"(A) FILING WITH SECRETARY AND PROVISION TO STATES.—A copy of each health benefit plan provided under this part, and any additional information prepared under this subsection concerning such plans, shall be filed with the Secretary who shall make such information available to the State or States in which the employees eligible for benefits under such plans are employed.

"(B) PROVISION TO EMPLOYEES.—Employees not receiving the information required under this subsection may request such information from the State, or, if the program in such State is administered by the Secretary, from the Secretary.

"(c) STANDARDS AND TECHNICAL ASSISTANCE.—

"(1) MODEL PLANS AND SUMMARIES.—Not later than 9 months after the date of enactment of this part, the Secretary shall establish and make available model language for health benefit plans and the summaries of such plans.

"(2) PLAN INFORMATION.—Not later than 9 months after the date of enactment of this

part, the Secretary shall promulgate regulations that describe the health benefit plan information that shall be provided to employees under this section, that shall include—

"(A) the name and address of the administrator of the plan;

"(B) the requirements of the plan with respect to eligibility;

"(C) the benefits to be provided under the plan;

"(D) the procedures for filing claims for benefits under the plan;

"(E) the procedures for appealing the denial of any claim filed under the plan; and

"(F) other information determined appropriate by the Secretary.

"(d) RIGHT TO ASSISTANCE.—

"(1) DESIGNATION OF INDIVIDUAL.—Each health benefit plan provided under this part shall designate an appropriate individual or individuals who shall be available to answer questions concerning the plan or the applicable plan requirements.

"(2) TIMELY RESPONSE.—Employees shall have the right to receive a timely written response to any questions that such employees may submit concerning their rights under the health benefits plan. Employees shall be able to rely on such written responses.

"(3) ASSISTANCE BY ADMINISTERING AUTHORITY.—The authority designated under subsection (a) shall provide assistance to employees in that State with respect to their rights under such plans and under Federal or State law.

"(e) RIGHT TO REVIEW DENIED CLAIMS.—

"(1) NOTICE.—An administrator under a health benefit plan under this part shall provide an employee with written notice concerning the denial of a claim submitted by such employee. Such notice shall include the reasons for such denial.

"(2) PROCESS FOR REVIEW.—Each health benefit plan provided under this part shall utilize a fair process for the timely review of claims denied under such plan.

"(3) CLAIM FOR CARE NEEDED FOR LIFE-THREATENING ILLNESS.—In cases in which the failure to provide health care promptly would be life-threatening or result in a risk of permanent disability, the beneficiary under the health benefit plan shall be entitled to a decision as to whether care will be provided under such plan not later than 1 day after supplying the insurer with all requested information. In the event of a denial of coverage for such care, the beneficiary shall be entitled to an expedited review of an appeal of such denial within 5 days.

"(4) APPEALS.—Individuals shall be entitled to appeal the denial of a claim submitted by such individual to the authority administering the requirements and standards under subsection (a). The Secretary shall promulgate regulations establishing procedures to be utilized for appealing denials of claims under a health benefit plan under this part that are similar to the procedures established under title XVIII of the Social Security Act for appealing denials of claims under such title XVIII, including the right to a trial de novo.

"(f) RIGHT TO CHOICE.—

"(1) NONMANAGED CARE PLANS.—An employer may offer its employees a nonmanaged care plan that meets the requirements of this part as well as a managed care plan.

"(2) USE OF PROVIDERS.—If a nonmanaged care plan is not offered by an employer, the managed care plan or plans offered by such employer shall permit the utilization of providers not participating in the plan for serv-

ices otherwise covered under the plan. If an employee elects to utilize such out-of-plan providers, the plan may provide for cost sharing that shall not exceed 200 percent of the normal cost-sharing imposed under the plan or 200 percent of the cost-sharing permitted under the minimum plan established under this part, whichever is greater.

"(g) RIGHT TO CONFIDENTIALITY OF MEDICAL RECORDS.—Health benefit plans under this title shall provide for the confidentiality of any medical records released under such plan.

"Subpart 3—Regulations and Enforcement

"SEC. 2731. REGULATIONS.

"(a) PROPOSED RULES.—Not later than 4 months after the date of enactment of this part, the Secretary shall publish in the Federal Register a notice of proposed rule-making to carry out this part.

"(b) FINAL RULES.—Not later than 9 months after the date of enactment of this part, the Secretary shall promulgate final rules to carry out this part. Such notice and final rules shall be made in accordance with section 553 of title 5, United States Code.

"(c) EFFECT OF FAILURE TO PROMULGATE RULES.—The failure of the Secretary to promulgate final rules under this part shall not relieve any person or entity to which the provisions of this part apply of any obligations under this part.

"SEC. 2732. ENFORCEMENT.

"(a) CIVIL MONEY PENALTY AGAINST PRIVATE EMPLOYERS.—

"(1) 15 PERCENT OF TOTAL WAGES.—Any employer that does not comply with section 2712(c) or the requirements of section 2701(a) in any calendar year shall be subject to a civil penalty of not more than 15 percent of the total amount of the expenditures of the employer for wages for employees in that year.

"(2) INVESTIGATIONS.—The Secretary may conduct investigations under this section. In conducting such investigations, the Secretary—

"(A) shall have reasonable access to examine evidence of any person or entity being investigated; and

"(B) may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place.

"(3) ASSESSMENT PROCEDURE.—A civil money penalty under this subsection shall be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court. The Secretary shall not assess such a penalty on an employer until the employer has been given notice and an opportunity for a hearing on such charge.

"(4) AMOUNT OF PENALTY.—In determining the amount of the penalty, or the amount agreed on in settlement, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification of noncompliance by the Secretary.

"(5) JUDICIAL REVIEW.—In any civil action brought to review the assessment of such a penalty or to collect such a penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of the penalty, unless in a prior action such a trial de novo was held on the assessment.

"(6) USE OF AMOUNTS COLLECTED.—Civil money penalties collected under this subsection shall be credited to the account maintained to provide health benefits under the program established under title XXI of the Social Security Act.

"(b) LIABILITY TO INDIVIDUALS FOR DAMAGES.—Any employer that knowingly does not comply with section 2712(c) or the requirements of section 2701(a) shall be liable for damages (including health care costs incurred) to the employee or the family of the employee resulting from such failure to comply. Such an employee or family member may bring a civil action to recover damages resulting from an employers failure to comply with such requirements."

TITLE III—SPECIAL ASSISTANCE FOR SMALL AND MEDIUM-SIZED BUSINESSES
SEC. 301. PREEMPTION OF STATE MANDATED BENEFIT LAWS.

(a) IN GENERAL.—Section 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(2)) is amended—

(1) in subparagraph (A), by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)"; and

(2) by adding at the end thereof the following new subparagraph:

"(C) Nothing in subparagraph (A) shall be construed to exempt from subsection (a) any provision of the law of any State to the extent that such provision regulates, or otherwise provides any requirement relating to, the benefits to be provided under contracts or policies of insurance issued to or under a health benefit plan under part B of title XXVII of the Public Health Service Act."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 3 of such Act (29 U.S.C. 1002(1)) is amended by adding at the end thereof the following new sentence: "Such terms include a health benefit plan established in accordance with part B of title XXVII of the Public Health Service Act."

Subtitle A—Reform of Small Group Insurance
SEC. 311. GROUP HEALTH INSURANCE STANDARDS.

(a) PUBLIC HEALTH SERVICE ACT.—Title XXVII of the Public Health Service Act (as added under section 101 and amended by section 201) is further amended by adding at the end thereof the following new part:

"PART C—GROUP HEALTH INSURANCE STANDARDS

"Subpart 1—General Standards; Definitions

"SEC. 2741. APPLICATION OF REQUIREMENTS TO HEALTH BENEFIT PLANS.

"(a) PLAN UNDER STATE REGULATORY PROGRAM OR CERTIFIED BY THE SECRETARY.—

"(1) IN GENERAL.—No health benefit plan may be issued in a State on or after the effective date specified in subsection (c) (and no new contract may be offered under such plan with respect to any small employer beginning on or after such effective date) unless—

"(A) the Secretary determines that the State has established a regulatory program that provides for the application and enforcement of the applicable standards established under section 2742 (to carry out the requirements of this part) and that meets the requirements of section 2742(b) by such effective date, or

"(B) if the State has not established such a program, the plan has been certified by the Secretary (in accordance with such procedures as the Secretary establishes) as meeting the applicable standards established under section 2742 by such effective date.

"(2) PLAN DISAPPROVED UNDER LOOK-BEHIND AUTHORITY.—If the Secretary determines, under section 2742(c), that a health benefit plan does not meet the applicable requirements of this part on or after such effective date, regardless of whether or not the State has taken any action with respect to such noncompliance, no new contracts may be offered

to small employers under the plan on or after the date of the determination.

"(b) SANCTIONS.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

"(A) for individuals and entities to file written, signed complaints with the Secretary respecting potential violations of the requirements of this part;

"(B) for the investigation of those complaints which have a substantial probability of validity; and

"(C) for the investigation of such other violations of the requirements of this part as the Secretary determines to be appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

"(A) agents of the Secretary and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated; and

"(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this subsection and upon application of the Secretary, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(3) HEARING.—

"(A) IN GENERAL.—Before imposing an order described in paragraph (4) against a carrier under this subsection for a violation of the requirements of this part, the Secretary shall provide the carrier with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Secretary) of the date of the notice, a hearing respecting the violation.

"(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. If no hearing is so requested, the Secretary's imposition of the order shall constitute a final and unappealable order.

"(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a carrier named in the complaint has violated the requirements of this part, the administrative law judge shall state the findings of fact and issue and cause to be served on such carrier an order described in paragraph (4).

"(4) ENFORCEMENT AND CIVIL MONEY PENALTY.—

"(A) ENFORCEMENT.—Subject to the provisions of this paragraph, an order issued under this subsection—

"(i) shall require the carrier—

"(I) to cease and desist from such violations; and

"(II) to pay a civil penalty as required in paragraph (9); and

"(ii) may require the carrier to take such other corrective action as is appropriate.

"(B) CORRECTIONS WITHIN 30 DAYS.—No order shall be imposed under this subsection by reason of any violation if the carrier establishes to the satisfaction of the Secretary that—

"(i) such violation was due to reasonable cause and not to willful neglect; and

"(ii) such violation is corrected within the 30-day period beginning on earliest date the carrier knew, or exercising reasonable diligence could have known, that such a violation was occurring.

"(C) WAIVER BY SECRETARY.—In the case of a violation which is due to reasonable cause

and not to willful neglect, the Secretary may waive part or all of the civil money penalty imposed by paragraph (9) to the extent that payment of such penalty would be grossly excessive relative to the violation involved and to the need for deterrence of violations.

"(5) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge under this subsection shall become the final agency decision and order of the Secretary unless, within 30 days, the Secretary modifies or vacates the decision and order, in which case the decision and order of the Secretary shall become a final order under this subsection.

"(6) JUDICIAL REVIEW.—A carrier adversely affected by a final order issued under this subsection may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(7) ENFORCEMENT OF ORDERS.—If a carrier fails to comply with a final order issued under this section against the carrier, the Secretary shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

"(8) USE OF AMOUNTS COLLECTED.—Civil money penalties collected under this subsection shall be credited to the AmeriCare Trust Fund.

"(9) AMOUNT OF CIVIL MONEY PENALTY.—The amount of any civil money penalty imposed under this subsection shall not exceed \$25,000 for each carrier with respect to which a violation occurs. Such amount may take into account the penalties imposed by a State with respect to the same such violation.

"(10) NOTICE TO CARRIER IN THE CASE OF INSURED PLANS.—As part of any order issued under this subsection in the case of a health benefit plan, the order shall require that notice be provided to the carrier of the findings in the order.

"(11) LOSS OF STATUS AS A HEALTH BENEFIT PLAN.—If a carrier is not in compliance with subsection (a) and is not determined to have come into compliance with the applicable standards within 30 days after the date of the initial determination of such a violation, such carrier shall be subject to the provisions of this subsection.

"(c) EFFECTIVE DATE.—The effective date specified in this subsection is January 1 of the third full year that begins after the date of the enactment of this subpart.

"SEC. 2742. ESTABLISHMENT OF STANDARDS.

"(a) ESTABLISHMENT OF STANDARDS.—

"(1) NAIC.—The Secretary shall request the NAIC—

"(A) to develop specific standards, in the form of a model Act and model regulations, to implement the requirements of this part; and

"(B) to report to the Secretary on such development;

by not later than October 1 of the year following the year in which this part is enacted. If the NAIC develops such standards within such period and the Secretary finds that such standards implement the requirements of this part, such standards shall be the standards applied under section 2741.

"(2) SECRETARY.—If the NAIC fails to develop and report on such standards by such date or the Secretary finds that such standards do not implement the requirements of this part, the Secretary shall develop and publish, by not later than November 15 of the year following the year in which this part is enacted, such standards. Such standards

shall then be the standards applied under section 2741.

"(b) ADDITIONAL ELEMENTS OF REGULATORY PROGRAMS.—

"(1) IN GENERAL.—A State regulatory program shall include the following:

"(A) The enforcement under the program—
"(i) shall be designed in a manner so as to secure compliance with the standards within 30 days after the date of a finding of non-compliance with such standards; and

"(ii) shall provide for notice to the Secretary in cases where such compliance is not secured within such 30-day period.

"(B) A toll-free telephone number which provides—

"(i) for a system for the receipt and disposition of consumer complaints or inquiries regarding compliance of health benefit plans with the requirements of this part; and

"(ii) information to small employers and consumers about carriers that offer health benefit plans in the area covered by the regulatory authority.

Such system shall provide for the recording of consumer complaints in accordance with a uniform methodology developed by the NAIC and recognized by the Secretary.

"(2) SECRETARIAL AUTHORITY.—In the case of a State without a regulatory program approved under subsection (a), the Secretary shall provide for the establishment of the toll-free telephone information and complaint system described in paragraph (1).

"(c) SECRETARIAL REVIEW.—

"(1) PERIODIC REVIEW OF STATE REGULATORY PROGRAMS.—The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards referred to in subsection (a) and the requirements of subsection (b). If the Secretary finds that a State regulatory program no longer meets such standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the Secretary shall assume responsibility under section 2741(a)(1)(B) with respect to plans in the State.

"(2) LOOK-BEHIND AUTHORITY.—In the case of a State with a regulatory program found by the Secretary to meet the standards and requirements under this part, the Secretary nonetheless is authorized to determine whether or not health benefit plans offered by carriers in the State have failed to comply with the applicable requirements of this part.

"(d) GAO AUDITS.—The Comptroller General shall conduct periodic audits on a sample of State regulatory programs to determine their compliance with the requirements of this section. The Comptroller General shall report to the Secretary and Congress on the findings in such audits.

"SEC. 2743. TRANSITIONAL REQUIREMENTS APPLICABLE TO ALL HEALTH BENEFIT PLANS ISSUED TO SMALL EMPLOYERS.

"(a) APPLICATION.—The requirements of this section shall apply only to health benefit plans offered to small employers during the period that begins on the effective date of this part and ends in the case of a small employer, on the date that begins the fifth full year after the date of enactment of this part.

"(b) NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.—

"(1) IN GENERAL.—Except as provided under paragraph (2), health benefit plans offered to small employers by carriers may not deny, limit, or condition the coverage under (or benefits of) the plan with respect to basic health services based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

"(2) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, health benefit plans provided to small employers by carriers may exclude coverage with respect to services related to treatment of a pre-existing condition, but the period of such exclusion may not exceed 6 months.

"(B) NONAPPLICATION TO NEWBORNS AND SUNSET OF PREEXISTING CONDITION EXCLUSIONS FOR BASIC HEALTH SERVICES.—The exclusion of coverage permitted under subparagraph (A) shall not apply to—

"(i) services furnished to newborns, or
"(ii) basic health services furnished on or after July 1 of the sixth full year beginning after the date of the enactment of this part.

"(C) CREDITING OF PREVIOUS COVERAGE.—

"(1) IN GENERAL.—A health benefit plan issued to a small employer by a carrier shall provide that if an individual under such plan is in a period of continuous coverage (as defined in clause (ii)(I)) with respect to particular services as of the date of initial coverage under such plan, any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage.

"(ii) DEFINITIONS.—As used in this subparagraph:

"(I) PERIOD OF CONTINUOUS COVERAGE.—The term 'period of continuous coverage' means, with respect to particular services, the period beginning on the date an individual is enrolled under a health benefit plan issued to a small employer by a carrier which provides the same or substantially similar benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

"(II) PREEXISTING CONDITION.—The term 'preexisting condition' means, with respect to coverage under a health benefit plan issued to a small employer by a carrier, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage, except that such term does not include a condition which was first diagnosed or treated during a period of continuous coverage.

"(iii) STANDARDS FOR SIMILAR BENEFITS.—The standards established under section 2742 shall establish such criteria for determining if benefits are substantially similar as may be necessary to carry out this subparagraph.

"(c) PERMITTING COVERAGE DURING WAITING PERIOD.—

"(1) IN GENERAL.—If a health benefit plan issued to a small employer by a carrier imposes a waiting period before an eligible individual may be covered under the plan, the plan—

"(A) must make available to the individual coverage (including coverage of dependents) equivalent to the coverage available to the employee upon the completion of any applicable waiting period; and

"(B) may not impose for such coverage charges that exceed the cost under the plan of providing such coverage with respect to the employee if such waiting period did not apply.

Nothing in this paragraph shall be construed as requiring a health benefit plan issued to a small employer by a carrier to make coverage available to an individual who no longer has an employment relationship (or who is the spouse or dependent of such an individual) with respect to the plan.

"(2) ELIGIBLE INDIVIDUAL DEFINED.—In paragraph (1), the term 'eligible individual' means, with respect to a health benefit plan, an individual who, but for a waiting period, would be eligible for immediate coverage under the plan.

"SEC. 2744. DEFINITIONS.

"(a) HEALTH BENEFIT PLAN AND OTHER DEFINITIONS RELATING TO HEALTH PLANS.—As used in this part:

"(1) HEALTH BENEFIT PLAN.—The term 'health benefit plan' means any hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, health maintenance subscriber contract, other employee welfare plan (as defined in the Employee Retirement Income Security Act of 1964), or any other health insurance arrangement, and includes an employment-related reinsurance plan (as defined in paragraph (3)), but does not include—

"(A) accident-only, credit, dental, or disability income insurance,

"(B) coverage issued as a supplement to liability insurance,

"(C) worker's compensation or similar insurance, or

"(D) automobile medical-payment insurance;

that is offered by a carrier.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs fewer than 100 employees during the calendar year.

"(3) MANAGED CARE PLAN.—The term 'managed care plan' has the same meaning given such term by section 2713(7).

"(4) REINSURANCE PLAN.—The term 'reinsurance plan' means any reinsurance or similar mechanism that underwrites a portion of the risk for a health benefit plan, if the mechanism is offered directly to a small employer.

"(5) SELF-INSURED HEALTH BENEFIT PLAN.—The term 'self-insured health benefit plan' means a health benefit plan in which the small employer or employment-related group assumes the underwriting risk for the plan (whether or not there is any reinsurance or similar mechanism to underwrite a portion of that risk).

"(b) CARRIER; HEALTH MAINTENANCE ORGANIZATION; AND OTHER DEFINITIONS RELATING TO CARRIERS.—As used in this part:

"(1) CARRIER.—The term 'carrier' means any person that offers a health benefit plan, whether through insurance or otherwise, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a self-insurer carrier, a reinsurance carrier, and a multiple small employer welfare arrangement (a combination of small employers associated for the purpose of providing health benefit plan coverage for their employees).

"(2) EMPLOYER CARRIER.—The term 'employer carrier'—

"(A) means any carrier which offers health benefit plans, and

"(B) includes (unless the context otherwise requires)—

"(i) a self-insurer carrier offering such a plan, or

"(ii) a reinsurance carrier offering a health benefit plan that is an reinsurance plan.

"(3) HEALTH MAINTENANCE ORGANIZATION.—The term 'health maintenance organization' has the meaning given the term 'eligible organization' in section 1876(b) of the Social Security Act.

"(4) REINSURANCE CARRIER.—The term 'reinsurance carrier' means the entity assuming responsibility for underwriting under an employment-related reinsurance plan, but does not include a carrier insofar as it directly offers a health benefit plan.

"(5) SELF-INSURER CARRIER.—The term 'self-insurer carrier' means a carrier that is not a licensed insurance company, a prepaid hospital or medical service plan, or a health maintenance organization, that offers a health benefit plan directly with respect to an employment-related group.

"(c) GENERAL DEFINITIONS.—As used in this part:

"(1) APPLICABLE REGULATORY AUTHORITY.—The term 'applicable regulatory authority' means, with respect to a health benefit plan offered in a State, the State commissioner or superintendent of insurance or other State authority responsible for regulation of health insurance, or, if the Secretary is exercising authority under section 2741(a)(1)(B) in the State, the Secretary.

"(2) BLOCK OF BUSINESS.—The term 'block of business' means all, or a distinct grouping of, small employers as shown on the records of the small employer carrier, if established consistent with section 2752(b)(3).

"(3) COMMUNITY.—The term 'community' means a geographic area designated by the Secretary as—

"(A) encompassing one or more adjacent metropolitan statistical areas; or

"(B) the remaining area within each State (that is not designated within any community under subparagraph (A));

except that the Secretary may designate an entire State as a community if such a designation would better carry out the purposes of this part. The Secretary from time to time may change the boundaries of communities designated under subparagraph (A) or (B) for such purposes. There shall be no administrative or judicial review of the designation of communities under this subsection.

"(4) FULL-TIME EMPLOYEE.—The term 'full-time employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 25 hours of service per week for that employer.

"(5) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"(6) REFERENCE PREMIUM RATE.—The term 'reference premium rate' means, for each block of business for a rating period in a community, the lowest premium rate charged or which could have been charged by the small employer carrier to small employers in that block under a rating system for that block of business in the community for health benefit plans with the same or similar coverage. The reference premium rate is determined without regard to any adjustment for age or sex described in section 2752(c) and without regard to any adjustment effected under section 2752(d).

"(7) STATE.—The term 'State' means the 50 States and the District of Columbia.

"Subpart 2—Small Employer Health Insurance Reform

"SEC. 2751. ENROLLMENT PRACTICE AND GUARANTEED RENEWABILITY REQUIREMENTS FOR HEALTH BENEFIT PLANS ISSUED TO SMALL EMPLOYERS.

"(a) REGISTRATION WITH APPLICABLE REGULATORY AUTHORITY.—

"(1) IN GENERAL.—Each carrier (as defined in section 2744(b)(1)) shall register with the applicable regulatory authority for each State in which it issues or offers a health benefit plan to small employers.

"(2) NO PREEMPTION OF STATE INFORMATION REQUIREMENTS.—Nothing in paragraph (1) shall be construed as preventing the applicable regulatory authority from requiring, in the case of carriers that are not self-insurance carriers, such additional information in conjunction with, or apart from, the registration required under paragraph (1) as the applicable regulatory authority may be authorized to require under State law.

"(b) GUARANTEED ISSUE.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, a carrier that offers a health benefit plan (including a reinsurance plan) to small employers located in a community must offer the same plan to any other small employer located in the community.

"(2) TREATMENT OF HEALTH MAINTENANCE ORGANIZATIONS.—

"(A) GEOGRAPHIC LIMITATIONS.—A health maintenance organization may deny coverage under a health benefit plan to a small employer whose employees are located outside the service area of the organization, but only if such denial is applied uniformly without regard to health status or insurability.

"(B) SIZE LIMITS.—A health maintenance organization may apply to the applicable regulatory authority to cease enrolling new small employer groups in its health benefit plan (or in a geographic area served by the plan) if it can demonstrate that its financial or administrative capacity to serve previously enrolled groups and individuals (and additional individuals who will be expected to enroll because of affiliation with such previously enrolled groups) will be impaired if it is required to enroll new groups.

"(3) GROUNDS FOR REFUSAL TO ISSUE OR RENEW.—

"(A) IN GENERAL.—A carrier may refuse to issue or renew or terminate a health benefit plan under this part only for—

"(i) nonpayment of premiums,

"(ii) fraud or misrepresentation, and

"(iii) failure to meet minimum participation rates (consistent with subparagraph (B)).

"(B) MINIMUM PARTICIPATION RATES.—A carrier may require, within the transition period described in section 2743(a), with respect to a health benefit plan, that a minimum percentage of full-time, permanent employees eligible to enroll under the plan be enrolled, so long as such percentage is enforced uniformly for all employment groups of comparable size.

"(c) MINIMUM PLAN PERIOD.—A carrier may not offer to, or issue with respect to, a small employer a health benefit plan with a term of less than 12 months.

"(d) GUARANTEED RENEWABILITY.—

"(1) IN GENERAL.—

"(A) GENERAL RULE.—Subject to the succeeding provisions of this subsection, a carrier shall ensure that a health benefit plan issued to a small employer be renewed, at the option of the small employer, unless the plan is terminated for the reasons specified

in subsection (a)(3)(A) or under subparagraph (B).

"(B) TERMINATION OF BLOCK OF BUSINESS.—A carrier need not renew a health benefit plan with respect to such a small employer if the carrier—

"(i) is terminating the block of business that includes the plan; and

"(ii) provides notice to the small employer covered under the plan of such termination at least 90 days before the date of expiration of the plan.

In the case of such a termination, the carrier may not provide for issuance of any health benefit plan in any block of business during the 5-year period beginning on the date of termination of such block of business.

"(C) CONSTRUCTION RESPECTING ADDITIONAL STATE DISCLOSURE REQUIREMENTS.—Subparagraph (B)(ii) shall not be construed as preventing the applicable regulatory authority from specifying the information to be included in the notice under such subparagraph or in requiring such notice to be provided at an earlier date.

"(2) NOTICE AND SPECIFICATION OF RATES AND ADMINISTRATIVE CHANGES.—

"(A) NOTICE.—A carrier offering health benefit plans to small employers shall provide for notice, at least 30 days before the date of expiration of the health benefit plan, of the terms for renewal of the plan. Except with respect to rates and administrative changes, the terms of renewal (including benefits) shall be the same as the terms of issuance.

"(B) RENEWAL RATES SAME AS ISSUANCE RATES.—The carrier may change the terms for such renewal, but the premium rates charged with respect to such renewal shall be the same as that for a new issue.

"(C) RATES CANNOT CHANGE MORE OFTEN THAN MONTHLY.—

"(1) IN GENERAL.—A carrier may not change the premium rates established with respect to health benefit plans offered for any block of business more often than monthly.

"(ii) APPLICATION OF NEW RATES.—A carrier that offers health benefit plans to small employers which becomes effective in a month, shall ensure that the premium rates established under clause (i) for that month shall apply to all months during the 12-month period beginning with that month. In the case of a plan renewal which is effective for a 12-month period beginning with a month, the premium rates established under clause (i) with respect to that month shall apply to all months during 12-month renewal period.

"(3) PERIOD OF RENEWAL.—The period of renewal of each health benefit plan offered by a carrier to a small employer shall be for a period of not less than 12 months.

"SEC. 2752. RATING PRACTICES FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS.

"(a) COHESIVE RATING SYSTEM AND ACTUARIAL CERTIFICATION.—

"(1) IN GENERAL.—The premiums (including reference premium rate, as defined in section 2744(c)(6), age adjustments under subsection (c), and reductions provided under subsection (d)) for all health benefit plans offered to small employers by carriers shall—

"(A) be established based on a single cohesive rating system which is applied consistently for all small employer groups and is designed not to treat groups, after the second effective year (as defined in subsection (f)), differently based on health status or risk status; and

"(B) be actuarially certified annually.

"(2) ACTUARIAL CERTIFIED DEFINED.—For purposes of paragraph (1)(B), a health benefit plan is considered to be 'actuarially certified' if there is a written statement, by a member of the American Academy of Actuaries or other individual acceptable to the applicable regulatory authority that a carrier is in compliance with this section, based upon the individual's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans.

"(b) USE OF COMMUNITY-RATING.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (c):

"(A) COMMUNITY RATING WITHIN A BLOCK OF BUSINESS.—The reference premium rate charged for health benefit plans offered with similar benefits to small employers in a community within a block of business for a type of family enrollment (described in subsection (e)) shall be the same for all small employers.

"(B) LIMITING VARIATION ON REFERENCE PREMIUM RATES AMONG BLOCKS OF BUSINESS.—

"(i) IN GENERAL.—Except as provided in clause (iii), the reference premium rate charged for health benefit plans offered with similar benefits to small employers in any community for a type of family enrollment for the most expensive block of business shall not exceed 120 percent of such rate charged for such plan for the same type of family enrollment for the least expensive block of business.

"(ii) ROLE OF REGULATORY AUTHORITY.—An applicable regulatory authority that is a State may reduce or eliminate the percent variation otherwise permitted under clause (i).

"(iii) EXCEPTION.—Clause (i) shall not apply to health benefit plans offered by carriers to small employers in a block of business—

"(I) if the block is one for which the carrier does not reject, and never has rejected, small employers included within the definition of small employers eligible for the block of business or otherwise eligible employees and dependents who enroll on a timely basis,

"(II) the carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefit plan into or out of the block of business, and

"(III) that block of business was available for purchase as of the date of the enactment of this part.

"(2) TRANSITION.—Notwithstanding paragraph (1)—

"(A) during the first effective year (as defined in subsection (f)), the premium rate under a health benefit plan issued by a carrier to any small employer may be as much as, but may not exceed, 150 percent of the reference premium rate for such plans in the same community for similar benefits in the same block of business; or

"(B) during the second effective year, the premium rate under such a policy for any small employer may be as much as, but may not exceed, 122 percent of the reference premium rate for such plans in the same community for similar benefits in the same block of business.

"(3) ESTABLISHMENT OF BLOCKS OF BUSINESS.—For the purpose of establishing premiums for small employer health benefit plans with similar coverage, the carrier may establish blocks of business based only on one or more of the following characteristics:

"(A) Plans that are marketed by clearly different sales forces.

"(B) Plans that have been acquired from another carrier as a distinct group.

"(C) Plans that are managed care plans.

"(D) Plans within another distinct group, if the applicable regulatory authority finds that establishment of such a group will enhance the efficiency and fairness of the small employer insurance marketplace.

"(c) ADJUSTMENTS TO COMMUNITY-RATING.—

"(1) IN GENERAL.—Subject to paragraph (2), a health benefit plan offered by a carrier to a small employer may provide for an adjustment to the reference premium rate based on the age and gender of covered individuals. Any such adjustment shall be applied by the carrier consistently to all small employers, except that gender adjustments may only be made during the transition period.

"(2) LIMITATION ON ADJUSTMENT.—

"(A) IN GENERAL.—The adjustment under paragraph (1) may not result, with respect to health benefit plans with similar benefits offered by carriers to small employers in the same block of business in a community, in a premium rate for the most expensive age group exceeding the applicable percent (as defined in subparagraph (B)) of the premium rate for the least expensive age group.

"(B) APPLICABLE PERCENT DEFINED.—In subparagraph (A) but subject to subparagraph (C), the term 'applicable percent' means—

"(i) for the first effective year (as defined in subsection (f)), 200 percent,

"(ii) for the second effective year, 150 percent, and

"(iii) for any subsequent year, 110 percent.

"(C) ROLE OF REGULATORY AUTHORITY.—An applicable regulatory authority that is a State may reduce or eliminate the applicable percent otherwise applied.

"(d) ADJUSTMENT IN RATES PERMITTED IN CASE OF MEDICARE REIMBURSEMENT ELECTION.—A health benefit plan offered by a carrier to a small employer may compute premiums based upon a percentage of the reference premium rate otherwise applicable if the small employer to which the plan is being offered makes the reimbursement election described in section 2744. Any such adjustment shall be applied consistently to all small employers.

"(e) TYPES OF FAMILY ENROLLMENT.—Each health benefit plan offered by a carrier to a small employer shall permit enrollment of (and shall compute premiums separately for) individuals based on each of the following beneficiary classes:

"(1) 1 adult.

"(2) A married couple without children.

"(3) 1 adult and 1 child.

"(4) A married couple with 1 or more children, or 1 adult with 2 or more children.

"(f) EFFECTIVE YEARS DEFINED.—In this section, the terms 'first effective year' and 'second effective year' mean the third and fourth full years beginning after the date of the enactment of this part.

"(g) EXCEPTION FOR SELF-INSURED CARRIERS.—The requirements of this section shall apply to reinsurance carriers and health benefit plans offered by such carriers to small employers.

"SEC. 2753. BASIC BENEFIT PACKAGE FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS.

"(a) IN GENERAL.—

"(1) BENEFITS AND COST-SHARING IN HEALTH BENEFIT PLANS.—Except as provided in paragraph (2) and in section 2743(a), no health benefit plan offered by carriers to small employers may be issued to a small employer unless—

"(A) the plan provides for benefits for all basic health services as defined in part B;

"(B) the plan does not impose cost-sharing with respect to basic health services in ex-

cess of the deductibles and coinsurance permitted under part B respect to such services; and

"(C) the carrier makes available to the small employer a health benefit plan that, subject to paragraph (2)(C), only provides the benefits for basic health services and the maximum cost-sharing consistent with subparagraphs (A) and (B).

"(2) EXCEPTIONS.—

"(A) REQUIRED OFFERING DOES NOT APPLY TO HMO'S.—Paragraph (1)(C) shall not apply to a health maintenance organization.

"(B) ADDITIONAL, OPTIONAL MINIMUM SERVICES.—In meeting the requirement of paragraph (1)(C), a health benefit plan offered by a carrier to a small employer may include such additional items and services as the carrier can demonstrate to the satisfaction of the applicable regulatory authority that inclusion of such items and services will facilitate appropriate hospital discharges or avoid unnecessary hospitalization.

"(b) MANAGED CARE OPTION.—If a carrier (other than a health maintenance organization or reinsurance carrier) offers health benefit plans to an employer that is not a small employer, in a community a health benefit plan that is a managed care plan, the carrier must make available to small employers in the community a health benefit plan that is such a managed care plan.

"(c) EXCEPTION FOR REINSURANCE CARRIERS AND PLANS.—The requirements of this section shall not apply to reinsurance carriers and reinsurance plans.

"(d) STANDARDIZATION OF BENEFIT PACKAGES.—The NAIC shall develop a model to standardize benefits to be made available under health benefit plans offered by carriers to small employers in order to promote consumer understanding and comparison among such plans.

"SEC. 2754. TIME-LIMITED MEDICARE REIMBURSEMENT OPTION FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS NOT PREVIOUSLY OFFERING INSURANCE COVERAGE.

"(a) OPTION MUST BE OFFERED.—Each carrier offering a health benefit plan to small employers meeting the requirements of section 351(a) of the HealthAmerica Act shall offer the small employer the option of having payment under the plan made for basic health benefits at rates no higher than the payment rates established under part B for such services. The provisions of section 1848(g)(3) of the Social Security Act shall not be considered to apply under this subsection.

"(b) APPLICATION OF MEDICARE BILLING LIMITATIONS.—In the case of a small employer that elects the option offered under subsection (a) with respect to a health benefit plan, the limitations on charges that may be made under medicare shall apply to individuals receiving benefits under the plan.

"(c) EXCEPTION FOR REINSURANCE PLAN.—Subsection (a) shall not apply to reinsurance plans.

"SEC. 2755. MISCELLANEOUS DISCLOSURE AND RECORD-KEEPING REQUIREMENTS FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS.

"(a) DISCLOSURE.—

"(1) GENERAL DISCLOSURE.—Each carrier offering health benefit plans to small employers shall disclose to each small employer before issuing such a plan the following:

"(A) The availability (pursuant to the requirement of section 2753(a)(1)(C)) of a plan including only basic benefits.

"(B) Whether any plan that is a managed care plan or provides for a utilization review program, or both, is available, as required under section 2753(b).

"(C) The option of electing the reimbursement rules, as required under section 2754.

"(D) The limits, imposed under section 2752, on the premiums permitted to be charged for such plans.

"(E) The rights of guaranteed issue and renewability provided under section 2751.

Such disclosure shall be in addition to any disclosure required generally of health benefit plans under part B.

"(2) SPECIFIC DISCLOSURE UPON REQUEST.—Each carrier offering health benefit plans to small employers shall disclose to small employer, upon request, information concerning the blocks of business established with respect to such plans and the applicable premiums for such plans.

"(3) STANDARD FORMAT.—The disclosure under paragraph (1) shall be made in a uniform format established by the Secretary, after consultation with the NAIC.

"(4) EXCEPTIONS.—Paragraph (1) (other than subparagraphs (D) and (E)) shall not apply to a reinsurance carrier with respect to a reinsurance plan.

"(b) INFORMATION FILED WITH APPLICABLE REGULATORY AUTHORITY.—

"(1) IN GENERAL.—Each carrier offering health benefit plans to small employers shall disclose to the applicable regulatory authority, in a manner specified by the Secretary, information concerning—

"(1) blocks of business established; and
 "(2) applicable premiums for health benefit plans.

"(2) ADDITIONAL INFORMATION.—Nothing in this subsection shall be construed as limiting the information which an applicable regulatory authority may require to be reported by carriers.

"SEC. 2756. NONAPPLICATION IN PUERTO RICO AND THE TERRITORIES.

"This subpart shall not apply outside the 50 States or the District of Columbia.

"Subpart 3—Encouraging Development of Reinsurance Systems

"SEC. 2758. ENCOURAGING DEVELOPMENT OF REINSURANCE SYSTEMS.

"(a) DEVELOPMENT OF MODELS.—

"(1) IN GENERAL.—Not later than October 1 of the year following the year in which this part is enacted, the NAIC shall develop several models of legislation for the enactment of reinsurance systems that may be used by States with respect to health insurance policies (including health benefit plans offered to small employers).

"(2) SPECIFIC MODELS.—Such models shall include at least 1 of each of the following 3 models:

"(A) A model providing for voluntary participation by insurers.

"(B) A model providing for insurer participation on a retrospective basis.

"(C) A model providing for the case management of services for individual claims or groups which are reinsured through the system.

"(3) TERMS OF MODELS.—Each of the models—

"(A) shall be consistent with the provisions of this part (including those relating to community-rated premiums), and

"(B) shall include deductibles and coinsurance which—

"(i) limit the amount of risk ceded to the reinsurance system; and

"(ii) encourage insurers to manage health care costs.

"(b) PROTECTION OF HEALTH MAINTENANCE ORGANIZATIONS UNDER REINSURANCE SYSTEMS.—No State may establish or enforce a reinsurance system with respect to health insurance policies unless the system provides

for an adjustment in reinsurance premiums (or, in the event of losses to the system, assessments) charged to health maintenance organizations that takes into account—

"(1) the higher premiums charged by such organizations due to the greater coverage provided by such organizations as required by law,

"(2) the limitations under title XIII on the amount of risk which such an organization can reinsure, and

"(3) the ability of such organizations to manage risk internally.

"(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this part."

(b) SOCIAL SECURITY ACT.—The Social Security Act is amended by inserting after title XII the following new title:

"TITLE XIII—GROUP HEALTH INSURANCE STANDARDS

"PART A—GENERAL STANDARDS; DEFINITIONS
"APPLICATION OF REQUIREMENTS TO HEALTH BENEFIT PLANS

"SEC. 1301. (a) PLAN UNDER STATE REGULATORY PROGRAM OR CERTIFIED BY THE SECRETARY.—

"(1) IN GENERAL.—No health benefit plan may be issued in a State on or after the effective date specified in subsection (c) (and no new contract may be offered under such plan with respect to any small employer beginning on or after such effective date) unless—

"(A) the Secretary determines that the State has established a regulatory program that provides for the application and enforcement of the applicable standards established under section 1302 (to carry out the requirements of this title) and that meets the requirements of section 1302(b) by such effective date, or

"(B) if the State has not established such a program, the plan has been certified by the Secretary (in accordance with such procedures as the Secretary establishes) as meeting the applicable standards established under section 1302 by such effective date.

"(2) PLAN DISAPPROVED UNDER LOOK-BEHIND AUTHORITY.—If the Secretary determines, under section 1302(c), that a health benefit plan does not meet the applicable requirements of this title on or after such effective date, regardless of whether or not the State has taken any action with respect to such noncompliance, no new contracts may be offered to small employers under the plan on or after the date of the determination.

"(b) SANCTIONS.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

"(A) for individuals and entities to file written, signed complaints with the Secretary respecting potential violations of the requirements of this title;

"(B) for the investigation of those complaints which have a substantial probability of validity; and

"(C) for the investigation of such other violations of the requirements of this title as the Secretary determines to be appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

"(A) agents of the Secretary and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated; and

"(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this sub-

section and upon application of the Secretary, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(3) HEARING.—

"(A) IN GENERAL.—Before imposing an order described in paragraph (4) against a carrier under this subsection for a violation of the requirements of this title, the Secretary shall provide the carrier with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Secretary) of the date of the notice, a hearing respecting the violation.

"(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge under section 201. If no hearing is so requested, the Secretary's imposition of the order shall constitute a final and unappealable order.

"(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a carrier named in the complaint has violated the requirements of this title, the administrative law judge shall state the findings of fact and issue and cause to be served on such carrier an order described in paragraph (4).

"(4) ENFORCEMENT AND CIVIL MONEY PENALTY.—

"(A) ENFORCEMENT.—Subject to the provisions of this paragraph, an order issued under this subsection—

"(i) shall require the carrier—

"(I) to cease and desist from such violations; and

"(II) to pay a civil penalty as required in paragraph (9); and

"(ii) may require the carrier to take such other corrective action as is appropriate.

"(B) CORRECTIONS WITHIN 30 DAYS.—No order shall be imposed under this subsection by reason of any violation if the carrier establishes to the satisfaction of the Secretary that—

"(i) such violation was due to reasonable cause and not to willful neglect; and

"(ii) such violation is corrected within the 30-day period beginning on earliest date the carrier knew, or exercising reasonable diligence could have known, that such a violation was occurring.

"(C) WAIVER BY SECRETARY.—In the case of a violation which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the civil money penalty imposed by paragraph (9) to the extent that payment of such penalty would be grossly excessive relative to the violation involved and to the need for deterrence of violations.

"(5) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge under this subsection shall become the final agency decision and order of the Secretary unless, within 30 days, the Secretary modifies or vacates the decision and order, in which case the decision and order of the Secretary shall become a final order under this subsection.

"(6) JUDICIAL REVIEW.—A carrier adversely affected by a final order issued under this subsection may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(7) ENFORCEMENT OF ORDERS.—If a carrier fails to comply with a final order issued under this section against the carrier, the Secretary shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

"(8) USE OF AMOUNTS COLLECTED.—Civil money penalties collected under this subsection shall be credited to the AmeriCare Trust Fund.

"(9) AMOUNT OF CIVIL MONEY PENALTY.—The amount of any civil money penalty imposed under this subsection shall not exceed \$25,000 for each carrier with respect to which a violation occurs. Such amount may take into account the penalties imposed by a State with respect to the same such violation.

"(10) NOTICE TO CARRIER IN THE CASE OF INSURED PLANS.—As part of any order issued under this subsection in the case of a health benefit plan, the order shall require that notice be provided to the carrier of the findings in the order.

"(11) LOSS OF STATUS AS A HEALTH BENEFIT PLAN.—If a carrier is not in compliance with subsection (a) and is not determined to have come into compliance with the applicable standards within 6 months after the date of the initial determination of such a violation, such carrier shall be subject to the provision of this subsection.

"(12) EXCISE TAX.—A carrier that is not in compliance with subsection (a) shall be subject to the tax described in section 4980C of the Internal Revenue Code of 1986.

"(c) EFFECTIVE DATE.—The effective date specified in this subsection is January 1 of the third full year that begins after the date of the enactment of this part.

"ESTABLISHMENT OF STANDARDS

"SEC. 1302. (a) ESTABLISHMENT OF STANDARDS.—

"(1) NAIC.—The Secretary shall request the NAIC—

"(A) to develop specific standards, in the form of a model Act and model regulations, to implement the requirements of this title; and

"(B) to report to the Secretary on such development;

by not later than October 1 of the year following the year in which this title is enacted. If the NAIC develops such standards within such period and the Secretary finds that such standards implement the requirements of this title, such standards shall be the standards applied under section 1301.

"(2) SECRETARY.—If the NAIC fails to develop and report on such standards by such date or the Secretary finds that such standards do not implement the requirements of this title, the Secretary shall develop and publish, by not later than November 15 of the year following the year in which this title is enacted, such standards. Such standards shall then be the standards applied under section 1301.

"(b) ADDITIONAL ELEMENTS OF REGULATORY PROGRAMS.—

"(1) IN GENERAL.—A State regulatory program shall include the following:

"(A) The enforcement under the program—

"(i) shall be designed in a manner so as to secure compliance with the standards within 30 days after the date of a finding of non-compliance with such standards; and

"(ii) shall provide for notice to the Secretary in cases where such compliance is not secured within such 30-day period.

"(B) A toll-free telephone number which provides—

"(i) for a system for the receipt and disposition of consumer complaints or inquiries regarding compliance of health benefit plans with the requirements of this title; and

"(ii) information to small employers and consumers about carriers that offer health benefit plans in the area covered by the regulatory authority.

Such system shall provide for the recording of consumer complaints in accordance with a uniform methodology developed by the NAIC and recognized by the Secretary.

"(2) SECRETARIAL AUTHORITY.—In the case of a State without a regulatory program approved under subsection (a), the Secretary shall provide for the establishment of the toll-free telephone information and complaint system described in paragraph (1).

"(c) SECRETARIAL REVIEW.—

"(1) PERIODIC REVIEW OF STATE REGULATORY PROGRAMS.—The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards referred to in subsection (a) and the requirements of subsection (b). If the Secretary finds that a State regulatory program no longer meets such standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the Secretary shall assume responsibility under section 1301(a)(1)(B) with respect to plans in the State.

"(2) LOOK-BEHIND AUTHORITY.—In the case of a State with a regulatory program found by the Secretary to meet the standards and requirements under this title, the Secretary nonetheless is authorized to determine whether or not health benefit plans offered by carriers in the State have failed to comply with the applicable requirements of this title.

"(d) GAO AUDITS.—The Comptroller General shall conduct periodic audits on a sample of State regulatory programs to determine their compliance with the requirements of this section. The Comptroller General shall report to the Secretary and Congress on the findings in such audits.

"TRANSITIONAL REQUIREMENTS APPLICABLE TO ALL HEALTH BENEFIT PLANS ISSUED TO SMALL EMPLOYERS

"SEC. 1303. (a) APPLICATION.—The requirements of this section shall apply only to health benefit plans offered to small employers during the period that begins on the effective date of this title and ends in the case of a small employer, on the date that begins the fifth full year after the date of enactment of this title.

"(b) NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.—

"(1) IN GENERAL.—Except as provided under paragraph (2), health benefit plans offered to small employers by carriers may not deny, limit, or condition the coverage under (or benefits of) the plan with respect to basic health services based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

"(2) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, health benefit plans provided to small employers by carriers may exclude coverage with respect to services related to treatment of a pre-existing condition, but the period of such exclusion may not exceed 6 months.

"(B) NONAPPLICATION TO NEWBORNS AND SUNSET OF PREEXISTING CONDITION EXCLUSIONS FOR BASIC HEALTH SERVICES.—The exclusion of coverage permitted under subparagraph (A) shall not apply to—

"(i) services furnished to newborns, or

"(ii) basic health services furnished on or after July 1 of the sixth full year beginning after the date of the enactment of this title.

"(C) CREDITING OF PREVIOUS COVERAGE.—

"(i) IN GENERAL.—A health benefit plan issued to a small employer by a carrier shall provide that if an individual under such plan is in a period of continuous coverage (as defined in clause (ii)(I)) with respect to particular services as of the date of initial coverage under such plan, any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage.

"(ii) DEFINITIONS.—As used in this subparagraph:

"(I) PERIOD OF CONTINUOUS COVERAGE.—The term 'period of continuous coverage' means, with respect to particular services, the period beginning on the date an individual is enrolled under a health benefit plan issued to a small employer by a carrier which provides the same or substantially similar benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

"(II) PREEXISTING CONDITION.—The term 'preexisting condition' means, with respect to coverage under a health benefit plan issued to a small employer by a carrier, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage, except that such term does not include a condition which was first diagnosed or treated during a period of continuous coverage.

"(iii) STANDARDS FOR SIMILAR BENEFITS.—The standards established under section 1302 shall establish such criteria for determining if benefits are substantially similar as may be necessary to carry out this subparagraph.

"(c) PERMITTING COVERAGE DURING WAITING PERIOD.—

"(1) IN GENERAL.—If a health benefit plan issued to a small employer by a carrier imposes a waiting period before an eligible individual may be covered under the plan, the plan—

"(A) must make available to the individual coverage (including coverage of dependents) equivalent to the coverage available to the employee upon the completion of any applicable waiting period; and

"(B) may not impose for such coverage charges that exceed the cost under the plan of providing such coverage with respect to the employee if such waiting period did not apply.

Nothing in this paragraph shall be construed as requiring a health benefit plan issued to a small employer by a carrier to make coverage available to an individual who no longer has an employment relationship (or who is the spouse or dependent of such an individual) with respect to the plan.

"(2) ELIGIBLE INDIVIDUAL DEFINED.—In paragraph (1), the term 'eligible individual' means, with respect to a health benefit plan, an individual who, but for a waiting period, would be eligible for immediate coverage under the plan.

"DEFINITIONS

"SEC. 1304. (a) HEALTH PLAN AND OTHER DEFINITIONS RELATING TO HEALTH PLANS.—As used in this title:

"(1) HEALTH BENEFIT PLAN.—The term 'health benefit plan' means any hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, health maintenance subscriber contract, other employee welfare plan (as defined in the Employee Retirement Income Security Act of 1964), or any other health in-

insurance arrangement, and includes an employment-related reinsurance plan (as defined in paragraph (3)), but does not include—

“(A) accident-only, credit, dental, or disability income insurance,

“(B) coverage issued as a supplement to liability insurance,

“(C) worker's compensation or similar insurance, or

“(D) automobile medical-payment insurance;

that is offered by a carrier.

“(2) SMALL EMPLOYER.—The term ‘small employer’ means, with respect to a calendar year, an employer that normally employs fewer than 100 employees on during the calendar year.

“(3) MANAGED CARE PLAN.—The term ‘managed care plan’ has the same meaning given such term by section 2108(a)(6).

“(4) REINSURANCE PLAN.—The term ‘reinsurance plan’ means any reinsurance or similar mechanism that underwrites a portion of the risk for a health benefit plan, if the mechanism is offered directly to a small employer.

“(5) SELF-INSURED HEALTH BENEFIT PLAN.—The term ‘self-insured health benefit plan’ means a health benefit plan in which the small employer or employment-related group assumes the underwriting risk for the plan (whether or not there is any reinsurance or similar mechanism to underwrite a portion of that risk).

“(b) CARRIER; HEALTH MAINTENANCE ORGANIZATION; AND OTHER DEFINITIONS RELATING TO CARRIERS.—As used in this title:

“(1) CARRIER.—The term ‘carrier’ means any person that offers a health benefit plan, whether through insurance or otherwise, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a self-insurer carrier, a reinsurance carrier, and a multiple small employer welfare arrangement (a combination of small employers associated for the purpose of providing health benefit plan coverage for their employees).

“(2) EMPLOYER CARRIER.—The term ‘employer carrier’—

“(A) means any carrier which offers health benefit plans, and

“(B) includes (unless the context otherwise requires)—

“(i) a self-insurer carrier offering such a plan, or

“(ii) a reinsurance carrier offering a health benefit plan that is a reinsurance plan.

“(3) HEALTH MAINTENANCE ORGANIZATION.—The term ‘health maintenance organization’ has the meaning given the term ‘eligible organization’ in section 1876(b).

“(4) REINSURANCE CARRIER.—The term ‘reinsurance carrier’ means the entity assuming responsibility for underwriting under an employment-related reinsurance plan, but does not include a carrier insofar as it directly offers a health benefit plan.

“(5) SELF-INSURER CARRIER.—The term ‘self-insurer carrier’ means a carrier that is not a licensed insurance company, a prepaid hospital or medical service plan, or a health maintenance organization, that offers a health benefit plan directly with respect to an employment-related group.

“(c) GENERAL DEFINITIONS.—As used in this title:

“(1) APPLICABLE REGULATORY AUTHORITY.—The term ‘applicable regulatory authority’ means, with respect to a health benefit plan offered in a State, the State commissioner or superintendent of insurance or other State authority responsible for regulation of

health insurance, or, if the Secretary is exercising authority under section 1301(a)(1)(B) in the State, the Secretary.

“(2) BLOCK OF BUSINESS.—The term ‘block of business’ means all, or a distinct grouping of, small employers as shown on the records of the small employer carrier, if established consistent with section 1312(b)(3).

“(3) COMMUNITY.—The term ‘community’ means a geographic area designated by the Secretary as—

“(A) encompassing one or more adjacent metropolitan statistical areas; or

“(B) the remaining area within each State (that is not designated within any community under subparagraph (A));

except that the Secretary may designate an entire State as a community if such a designation would better carry out the purposes of this title. The Secretary from time to time may change the boundaries of communities designated under subparagraph (A) or (B) for such purposes. There shall be no administrative or judicial review of the designation of communities under this subsection.

“(4) FULL-TIME EMPLOYEE.—The term ‘full-time employee’ means, with respect to an employer, an employee who normally performs on a monthly basis at least 25 hours of service per week for that employer.

“(5) NAIC.—The term ‘NAIC’ means the National Association of Insurance Commissioners.

“(6) REFERENCE PREMIUM RATE.—The term ‘reference premium rate’ means, for each block of business for a rating period in a community, the lowest premium rate charged or which could have been charged by the small employer carrier to small employers in that block under a rating system for that block of business in the community for health benefit plans with the same or similar coverage. The reference premium rate is determined without regard to any adjustment for age or sex described in section 1312(c) and without regard to any adjustment effected under section 1312(d).

“(7) STATE.—The term ‘State’ means the 50 States and the District of Columbia.

“PART B—SMALL EMPLOYER HEALTH INSURANCE REFORM

“ENROLLMENT PRACTICE AND GUARANTEED RENEWABILITY REQUIREMENTS FOR HEALTH BENEFIT PLANS ISSUED TO SMALL EMPLOYERS

“SEC. 1311. (a) REGISTRATION WITH APPLICABLE REGULATORY AUTHORITY.—

“(1) IN GENERAL.—Each carrier (as defined in section 1304(b)(1)) shall register with the applicable regulatory authority for each State in which it issues or offers a health benefit plan to small employers.

“(2) NO PREEMPTION OF STATE INFORMATION REQUIREMENTS.—Nothing in paragraph (1) shall be construed as preventing the applicable regulatory authority from requiring, in the case of carriers that are not self-insurance carriers, such additional information in conjunction with, or apart from, the registration required under paragraph (1) as the applicable regulatory authority may be authorized to require under State law.

“(b) GUARANTEED ISSUE.—

“(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, a carrier that offers a health benefit plan (including a reinsurance plan) to small employers located in a community must offer the same plan to any other small employer located in the community.

“(2) TREATMENT OF HEALTH MAINTENANCE ORGANIZATIONS.—

“(A) GEOGRAPHIC LIMITATIONS.—A health maintenance organization may deny cov-

erage under a health benefit plan to a small employer whose employees are located outside the service area of the organization, but only if such denial is applied uniformly without regard to health status or insurability.

“(B) SIZE LIMITS.—A health maintenance organization may apply to the applicable regulatory authority to cease enrolling new small employer groups in its health benefit plan (or in a geographic area served by the plan) if it can demonstrate that its financial or administrative capacity to serve previously enrolled groups and individuals (and additional individuals who will be expected to enroll because of affiliation with such previously enrolled groups) will be impaired if it is required to enroll new groups.

“(3) GROUNDS FOR REFUSAL TO ISSUE OR RENEW.—

“(A) IN GENERAL.—A carrier may refuse to issue or renew or terminate a health benefit plan under this part only for—

“(i) nonpayment of premiums,

“(ii) fraud or misrepresentation, and

“(iii) failure to meet minimum participation rates (consistent with subparagraph (B)).

“(B) MINIMUM PARTICIPATION RATES.—A carrier may require, within the transition period described in section 1303(a), with respect to a health benefit plan, that a minimum percentage of full-time, permanent employees eligible to enroll under the plan be enrolled, so long as such percentage is enforced uniformly for all employment groups of comparable size.

“(c) MINIMUM PLAN PERIOD.—A carrier may not offer to, or issue with respect to, a small employer a health benefit plan with a term of less than 12 months.

“(d) GUARANTEED RENEWABILITY.—

“(1) IN GENERAL.—

“(A) GENERAL RULE.—Subject to the succeeding provisions of this subsection, a carrier shall ensure that a health benefit plan issued to a small employer be renewed, at the option of the small employer, unless the plan is terminated for the reasons specified in subsection (a)(3)(A) or under subparagraph (B).

“(B) TERMINATION OF BLOCK OF BUSINESS.—A carrier need not renew a health benefit plan with respect to such a small employer if the carrier—

“(i) is terminating the block of business that includes the plan; and

“(ii) provides notice to the small employer covered under the plan of such termination at least 90 days before the date of expiration of the plan.

In the case of such a termination, the carrier may not provide for issuance of any health benefit plan in any block of business during the 5-year period beginning on the date of termination of such block of business.

“(C) CONSTRUCTION RESPECTING ADDITIONAL STATE DISCLOSURE REQUIREMENTS.—Subparagraph (B)(ii) shall not be construed as preventing the applicable regulatory authority from specifying the information to be included in the notice under such subparagraph or in requiring such notice to be provided at an earlier date.

“(2) NOTICE AND SPECIFICATION OF RATES AND ADMINISTRATIVE CHANGES.—

“(A) NOTICE.—A carrier offering health benefit plans to small employers shall provide for notice, at least 30 days before the date of expiration of the health benefit plan, of the terms for renewal of the plan. Except with respect to rates and administrative changes, the terms of renewal (including benefits) shall be the same as the terms of issuance.

"(B) RENEWAL RATES SAME AS ISSUANCE RATES.—The carrier may change the terms for such renewal, but the premium rates charged with respect to such renewal shall be the same as that for a new issue.

"(C) RATES CANNOT CHANGE MORE OFTEN THAN MONTHLY.—

"(i) IN GENERAL.—A carrier may not change the premium rates established with respect to health benefit plans offered for any block of business more often than monthly.

"(ii) APPLICATION OF NEW RATES.—A carrier that offers health benefit plans to small employers which becomes effective in a month, shall ensure that the premium rates established under clause (i) for that month shall apply to all months during the 12-month period beginning with that month. In the case of a plan renewal which is effective for a 12-month period beginning with a month, the premium rates established under clause (i) with respect to that month shall apply to all months during 12-month renewal period.

"(3) PERIOD OF RENEWAL.—The period of renewal of each health benefit plan offered by a carrier to a small employer shall be for a period of not less than 12 months.

"RATING PRACTICES FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS

"SEC. 1312. (a) COHESIVE RATING SYSTEM AND ACTUARIAL CERTIFICATION.—

"(1) IN GENERAL.—The premiums (including reference premium rate, as defined in section 1304(c)(6), age adjustments under subsection (c), and reductions provided under subsection (d)) for all health benefit plans offered to small employers by carriers shall—

"(A) be established based on a single cohesive rating system which is applied consistently for all small employer groups and is designed not to treat groups, after the second effective year (as defined in subsection (f)), differently based on health status or risk status; and

"(B) be actuarially certified annually.

"(2) ACTUARIAL CERTIFIED DEFINED.—For purposes of paragraph (1)(B), a health benefit plan is considered to be 'actuarially certified' if there is a written statement, by a member of the American Academy of Actuaries or other individual acceptable to the applicable regulatory authority that a carrier is in compliance with this section, based upon the individual's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans.

"(b) USE OF COMMUNITY-RATING.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (c):

"(A) COMMUNITY RATING WITHIN A BLOCK OF BUSINESS.—The reference premium rate charged for health benefit plans offered with similar benefits to small employers in a community within a block of business for a type of family enrollment (described in subsection (e)) shall be the same for all small employers.

"(B) LIMITING VARIATION ON REFERENCE PREMIUM RATES AMONG BLOCKS OF BUSINESS.—

"(i) IN GENERAL.—Except as provided in clause (iii), the reference premium rate charged for health benefit plans offered with similar benefits to small employers in any community for a type of family enrollment for the most expensive block of business shall not exceed 120 percent of such rate charged for such plan for the same type of family enrollment for the least expensive block of business.

"(ii) ROLE OF REGULATORY AUTHORITY.—An applicable regulatory authority that is a

State may reduce or eliminate the percent variation otherwise permitted under clause (i).

"(iii) EXCEPTION.—Clause (i) shall not apply to health benefit plans offered by carriers to small employers in a block of business—

"(I) if the block is one for which the carrier does not reject, and never has rejected, small employers included within the definition of small employers eligible for the block of business or otherwise eligible employees and dependents who enroll on a timely basis,

"(II) the carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefit plan into or out of the block of business, and

"(III) that block of business was available for purchase as of the date of the enactment of this title.

"(2) TRANSITION.—Notwithstanding paragraph (1)—

"(A) during the first effective year (as defined in subsection (f)), the premium rate under a health benefit plan issued by a carrier to any small employer may be as much as, but may not exceed, 150 percent of the reference premium rate for such plans in the same community for similar benefits in the same block of business; or

"(B) during the second effective year, the premium rate under such a policy for any small employer may be as much as, but may not exceed, 122 percent of the reference premium rate for such plans in the same community for similar benefits in the same block of business.

"(3) ESTABLISHMENT OF BLOCKS OF BUSINESS.—For the purpose of establishing premiums for small employer health benefit plans with similar coverage, the carrier may establish blocks of business based only on one or more of the following characteristics:

"(A) Plans that are marketed by clearly different sales forces.

"(B) Plans that have been acquired from another carrier as a distinct group.

"(C) Plans that are managed care plans.

"(D) Plans within another distinct group, if the applicable regulatory authority finds that establishment of such a group will enhance the efficiency and fairness of the small employer insurance marketplace.

"(c) ADJUSTMENTS TO COMMUNITY-RATING.—

"(1) IN GENERAL.—Subject to paragraph (2), a health benefit plan offered by a carrier to a small employer may provide for an adjustment to the reference premium rate based on the age and gender of covered individuals. Any such adjustment shall be applied by the carrier consistently to all small employers, except that adjustment based on gender may only be made during the transition period.

"(2) LIMITATION ON ADJUSTMENT.—

"(A) IN GENERAL.—The adjustment under paragraph (1) may not result, with respect to health benefit plans with similar benefits offered by carriers to small employers in the same block of business in a community, in a premium rate for the most expensive age group exceeding the applicable percent (as defined in subparagraph (B)) of the premium rate for the least expensive age group.

"(B) APPLICABLE PERCENT DEFINED.—In subparagraph (A) but subject to subparagraph (C), the term 'applicable percent' means—

"(i) for the first effective year (as defined in subsection (f)) 200 percent,

"(ii) for the second effective year, 150 percent, and

"(iii) for any subsequent year, 110 percent.

"(C) ROLE OF REGULATORY AUTHORITY.—An applicable regulatory authority that is a

State may reduce or eliminate the applicable percent otherwise applied.

"(d) ADJUSTMENT IN RATES PERMITTED IN CASE OF MEDICARE REIMBURSEMENT ELECTION.—A health benefit plan offered by a carrier to a small employer may compute premiums based upon a percentage of the reference premium rate otherwise applicable if the small employer to which the plan is being offered makes the reimbursement election described in section 1314. Any such adjustment shall be applied consistently to all small employers.

"(e) TYPES OF FAMILY ENROLLMENT.—Each health benefit plan offered by a carrier to a small employer shall permit enrollment of (and shall compute premiums separately for) individuals based on each of the following beneficiary classes:

"(1) 1 adult.

"(2) A married couple without children.

"(3) 1 adult and 1 child.

"(4) A married couple with 1 or more children, or 1 adult with 2 or more children.

"(f) EFFECTIVE YEARS DEFINED.—In this section, the terms 'first effective year' and 'second effective year' mean the third and fourth full years beginning after the date of the enactment of this part.

"(g) EXCEPTION FOR SELF-INSURED CARRIERS.—The requirements of this section shall apply to reinsurance carriers and health benefit plans offered by such carriers to small employers.

"BASIC BENEFIT PACKAGE FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS

"SEC. 1313. (a) IN GENERAL.—

"(1) BENEFITS AND COST-SHARING IN HEALTH BENEFIT PLANS.—Except as provided in paragraph (2) and in section 1303(a), no health benefit plan offered by carriers to small employers may be issued to a small employer unless—

"(A) the plan provides for benefits for all basic health services as defined in section 1182(1);

"(B) the plan does not impose cost-sharing with respect to basic health services in excess of the deductibles and coinsurance permitted under section 2103 with respect to such services; and

"(C) the carrier makes available to the small employer a health benefit plan that, subject to paragraph (2)(C), only provides the benefits for basic health services and the maximum cost-sharing consistent with subparagraphs (A) and (B).

"(2) EXCEPTIONS.—

"(A) REQUIRED OFFERING DOES NOT APPLY TO HMO'S.—Paragraph (1)(C) shall not apply to a health maintenance organization.

"(B) ADDITIONAL, OPTIONAL MINIMUM SERVICES.—In meeting the requirement of paragraph (1)(C), a health benefit plan offered by a carrier to a small employer may include such additional items and services as the carrier can demonstrate to the satisfaction of the applicable regulatory authority that inclusion of such items and services will facilitate appropriate hospital discharges or avoid unnecessary hospitalization.

"(b) MANAGED CARE OPTION.—If a carrier (other than a health maintenance organization or reinsurance carrier) offers health benefit plans to employers that are not small employers, in a community a health benefit plan that is a managed care plan, the carrier must make available to small employers in the community a health benefit plan that is such a managed care plan.

"(c) EXCEPTION FOR REINSURANCE CARRIERS AND PLANS.—The requirements of this section shall not apply to reinsurance carriers and reinsurance plans.

"(d) STANDARDIZATION OF BENEFIT PACKAGES.—The NAIC shall develop a model to standardize benefits to be made available under health benefit plans offered by carriers to small employers in order to promote consumer understanding and comparison among such plans.

"TIME-LIMITED MEDICARE REIMBURSEMENT OPTION FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS NOT PREVIOUSLY OFFERING INSURANCE COVERAGE

"SEC. 1314. (a) OPTION MUST BE OFFERED.—Each carrier offering a health benefit plan to small employers meeting the requirements of section 351(a) of the HealthAmerica Act shall offer the small employer the option of having payment under the plan made for basic health services at rates no higher than the payment rates established under title XVIII for such benefits. The provisions of section 1848(g)(3) shall not be considered to apply under this subsection.

"(b) APPLICATION OF MEDICARE BILLING LIMITATIONS.—In the case of a small employer that elects the option offered under subsection (a) with respect to a health benefit plan, the limitations on charges that may be made under medicare shall apply to individuals receiving benefits under the plan. The sanctions imposed under the medicare program (and title XI), including exclusion under such program and the imposition of civil money penalties for violations of such limitations, apply to violations of the limitations imposed under this subsection.

"(c) EXCEPTION FOR REINSURANCE PLAN.—Subsection (a) shall not apply to reinsurance plans.

"MISCELLANEOUS DISCLOSURE AND RECORD-KEEPING REQUIREMENTS FOR HEALTH BENEFIT PLANS OFFERED TO SMALL EMPLOYERS

"SEC. 1315. (a) DISCLOSURE.—

"(1) GENERAL DISCLOSURE.—Each carrier offering health benefit plans to small employers shall disclose to each small employer before issuing such a plan the following:

"(A) The availability (pursuant to the requirement of section 1313(a)(1)(C)) of a plan including only basic benefits.

"(B) Whether any plan that is a managed care plan or provides for a utilization review program, or both, is available, as required under section 1313(b).

"(C) The option of electing the reimbursement rules, as required under section 1314.

"(D) The limits, imposed under section 1312, on the premiums permitted to be charged for such plans.

"(E) The rights of guaranteed issue and renewability provided under section 1311.

Such disclosure shall be in addition to any disclosure required generally of health benefit plans under section 2725 of the Public Health Service Act.

"(2) SPECIFIC DISCLOSURE UPON REQUEST.—Each carrier offering health benefit plans to small employers shall disclose to small employer, upon request, information concerning the blocks of business established with respect to such plans and the applicable premiums for such plans.

"(3) STANDARD FORMAT.—The disclosure under paragraph (1) shall be made in a uniform format established by the Secretary, after consultation with the NAIC.

"(4) EXCEPTIONS.—Paragraph (1) (other than subparagraphs (D) and (E)) shall not apply to a reinsurance carrier with respect to a reinsurance plan.

"(b) INFORMATION FILED WITH APPLICABLE REGULATORY AUTHORITY.—

"(1) IN GENERAL.—Each carrier offering health benefit plans to small employers shall

disclose to the applicable regulatory authority, in a manner specified by the Secretary, information concerning—

"(1) blocks of business established; and

"(2) applicable premiums for health benefit plans.

"(2) ADDITIONAL INFORMATION.—Nothing in this subsection shall be construed as limiting the information which an applicable regulatory authority may require to be reported by carriers.

"NONAPPLICATION IN PUERTO RICO AND THE TERRITORIES

"SEC. 1316. This part shall not apply outside the 50 States or the District of Columbia.

"PART C—ENCOURAGING DEVELOPMENT OF REINSURANCE SYSTEMS

"ENCOURAGING DEVELOPMENT OF REINSURANCE SYSTEMS

"SEC. 1321. (a) DEVELOPMENT OF MODELS.—

"(1) IN GENERAL.—Not later than October 1 of the year following the year in which this title is enacted, the NAIC shall develop several models of legislation for the enactment of reinsurance systems that may be used by States with respect to health insurance policies (including health benefit plans offered to small employers).

"(2) SPECIFIC MODELS.—Such models shall include at least 1 of each of the following 3 models:

"(A) A model providing for voluntary participation by insurers.

"(B) A model providing for insurer participation on a retrospective basis.

"(C) A model providing for the case management of services for individual claims or groups which are reinsured through the system.

"(3) TERMS OF MODELS.—Each of the models—

"(A) shall be consistent with the provisions of this title (including those relating to community-rated premiums), and

"(B) shall include deductibles and coinsurance which—

"(i) limit the amount of risk ceded to the reinsurance system; and

"(ii) encourage insurers to manage health care costs.

"(b) PROTECTION OF HEALTH MAINTENANCE ORGANIZATIONS UNDER REINSURANCE SYSTEMS.—No State may establish or enforce a reinsurance system with respect to health insurance policies unless the system provides for an adjustment in reinsurance premiums (or, in the event of losses to the system, assessments) charged to health maintenance organizations that takes into account—

"(1) the higher premiums charged by such organizations due to the greater coverage provided by such organizations as required by law,

"(2) the limitations under title XIII of the Public Health Service Act on the amount of risk which such an organization can reinsure, and

"(3) the ability of such organizations to manage risk internally.

"(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title."

Subtitle B—Tax Equity for Small and Medium-Sized Business

SEC. 321. DEDUCTIBLE HEALTH COVERAGE PROVISIONS.

(a) INCREASE IN DEDUCTIBLE HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS WITHOUT EMPLOYEES.—

(1) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insur-

ance costs of self-employed individuals) is amended by striking out "25 percent" and all that follows and inserting in lieu thereof "100 percent of—

"(A) the cost of the lowest cost plan meeting the requirements of the subtitle A of title III of the HealthAmerica Act available in the geographic area in which the individual resides or conducts business, or

"(B) if such individual is enrolled in AmeriCare, the cost of AmeriCare, paid during the taxable year for the taxpayer, his spouse, and dependents."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning in the third full calendar year after the date of enactment of this Act.

(b) DEDUCTION ALLOWABLE FOR CERTAIN GROUP HEALTH PLAN CONTRIBUTIONS BY SELF-EMPLOYED INDIVIDUALS.—

(1) IN GENERAL.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) (relating to special rules for health insurance costs of self-employed individuals) the following new subsection:

"(m) DEDUCTION ALLOWABLE FOR CERTAIN GROUP HEALTH PLAN CONTRIBUTIONS FOR THE BENEFIT OF SELF-EMPLOYED INDIVIDUALS.—

"(1) IN GENERAL.—For purposes of this section and sections 212, 104, 105, and 106, in the case of a qualified group health plan which provides medical care benefits for any self-employed individual—

"(A) such individual shall be treated as an employee,

"(B) the employer of such individual shall be the person treated as the employer under section 301(c)(4), and

"(C) contributions to such plan for medical benefits for such individual shall be treated as meeting the requirements of subsection (a) and section 212 to the extent such contributions during the taxable year do not exceed the lowest per employee contribution for employees working 25 hours a week or more to the plan made by the employer during such year.

"(2) DEDUCTION CANNOT EXCEED TAXABLE INCOME FROM ACTIVITY.—The deduction allowed to any individual by reason of this subsection for any taxable year shall not exceed the portion of the taxable income of such individual (determined without regard to this subsection) for such year which is allocable or apportionable to such individual's interest in the employer.

"(3) QUALIFIED GROUP HEALTH PLAN.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified group health plan' means, with respect to any self-employed individual, any group health plan (as defined in section 5000(b)(1)) of an employer if—

"(i) such plan is not a self-insured plan, and

"(ii) such plan meets the requirements of subparagraphs (B) and (C).

"(B) ONE-HALF OF PARTICIPANTS MUST BE EMPLOYEES WHO ARE NOT SELF-EMPLOYED INDIVIDUALS OR EMPLOYEE FAMILY MEMBERS OF SUCH INDIVIDUALS.—

"(1) IN GENERAL.—A plan meets the requirements of this subparagraph with respect to any self-employed individual only if at least half of the participants in the plan (on each day of the taxable year of such individual) are employees who are not—

"(I) self-employed individuals to whom a deduction is allowable by reason of this subsection with respect to contributions to such plan, or

"(II) family members of any self-employed individual described in subclause (I).

"(ii) FAMILY MEMBER.—For purposes of clause (i), the term 'family member' means, with respect to an individual, such individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

"(C) SELF-INSURED PLAN.—The term 'self-insured plan' means any plan under which medical care benefits are not provided under a policy of accident and health insurance.

"(4) LOWEST PER EMPLOYEE CONTRIBUTION.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'lowest per employee contribution' means, with respect to any taxable year of a self-employed individual, the smallest contribution made by the employer during such taxable year to the plan with respect to any employee—

"(i) who is not a self-employed individual,

"(ii) with respect to whom a contribution to the plan was made during such year, and

"(iii) who is in the same category of coverage as the self-employed individual.

"(B) CATEGORIES OF COVERAGE.—For purposes of subparagraph (A), the categories of coverage are—

"(i) self only, and

"(ii) self and family.

"(C) SELF-EMPLOYED INDIVIDUALS WHO ARE PARTICIPANTS FOR LESS THAN ENTIRE TAXABLE YEAR.—In the case of a self-employed individual who is a participant in the plan for less than the entire taxable year, the lowest per employee contribution applicable to such individual shall be the same portion of amount determined under subparagraph (A) as the portion of the taxable year during which such individual was a participant in the plan bears to the entire taxable year.

"(D) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) only contributions for coverage during the taxable year shall be taken into account, and

"(ii) the contributions with respect to any employee who is not a participant in the plan for the entire taxable year shall be determined on an annualized basis.

"(5) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) SELF-EMPLOYED INDIVIDUAL.—The term 'self-employed individual' has the meaning given such term by section 301(c)(1)(B).

"(B) MEDICAL CARE BENEFITS.—The term 'medical care benefits' means, with respect to any self-employed individual, compensation for the medical care (as defined in section 213(d)) of such individual, the spouse of such individual, and dependents of such individual.

"(C) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152. Any child to whom section 152(e) applies shall be treated as a dependent of both parents.

"(6) SPECIAL RULES.—

"(A) COORDINATION WITH SECTION 213.—Any amount allowed as a deduction by reason of this subsection shall not be treated as an amount paid for medical care under section 213.

"(B) AGGREGATION OF EMPLOYER PLANS.—If any self-employed individual is a participant in 2 or more qualified group health plans of the employer, all such plans shall be treated as 1 plan for purposes of this subsection."

(2) TECHNICAL AMENDMENT.—Subsection (g) of section 105 of the Internal Revenue Code of 1986 (relating to self-employed individual not considered an employee) is amended by striking out "For purposes of this section"

and inserting in lieu thereof "Except as provided in section 162(m)(1), for purposes of this section".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning in the third full year after the date of enactment of this Act.

SEC. 322. EXCISE TAX FOR VIOLATION OF HEALTH BENEFIT PLAN REQUIREMENTS.

(a) IN GENERAL.—

(1) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 4980C. VIOLATION OF HEALTH BENEFIT PLAN REQUIREMENTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on an entity's violation of subsection (a) of section 1301 of the Social Security Act. The determination of whether there has been such a violation shall be made by the Secretary of Health and Human Services under such section.

"(b) AMOUNT OF TAX.—The tax imposed by subsection (a) shall be equal to 25 percent of the amounts received by the entity (during the period such a violation persists) for providing any health plan for all blocks of business in all communities.

"(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by the entity.

"(d) EXCEPTIONS.—

"(1) CORRECTIONS WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) by reason of any violation if—

"(A) such violation was due to reasonable cause and not to willful neglect, and

"(B) such violation is corrected within the 30-day period beginning on earliest date the entity knew, or exercising reasonable diligence could have known, that such a violation was occurring.

"(2) WAIVER BY SECRETARY.—In the case of a violation which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that payment of such tax would be excessive relative to the violation involved.

"(e) DEFINITIONS.—For purposes of this section, the definitions in title XXIII of the Social Security Act shall apply under this section."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end thereof the following new item:

"Sec. 4980C. Violation of health plan requirements."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on January 1 of the 4th year beginning after the date of the enactment of this Act.

Subtitle C—Opportunity for Voluntary Provision of Coverage

SEC. 331. MEDIUM-SIZED EMPLOYERS.

(a) EMPLOYERS WITH BETWEEN 25 AND 100 EMPLOYEES.—

(1) IN GENERAL.—No medium-sized employer shall be required to provide a health benefit plan under section 2701 of the Public Health Service Act or make a contribution in lieu of coverage under title V of this Act until the fifth calendar year after the date of enactment of this Act.

(2) APPLICATION OF REQUIREMENTS.—If, during the fourth calendar year after the date of enactment of this Act, the Secretary finds that the total number of employees, excluding part-time employees, of all such employers that have no employment-based health insurance coverage provided through the em-

ployers of such employees has been reduced to 25 percent or less of the number of such uninsured employees that existed during the calendar year in which this Act was enacted, the requirement to provide coverage or make a contribution under title V shall apply to employers described in paragraph (1).

(3) PERCENTAGES DURING SUBSEQUENT YEARS.—An employer described in paragraph (1) shall provide the health benefits coverage under this Act, or an amendment made by this Act, or make a contribution under title V if the percentage of the uninsured employees during the fifth calendar year or any subsequent calendar year after the date of the enactment of this Act is more than the 25 percent level described in paragraph (2).

(b) UNINSURED EMPLOYEES.—

(1) YEAR OF ENACTMENT.—For purposes of subsection (a), employees shall be considered uninsured during the calendar year in which this Act is enacted if such employees are not covered under any employment-based health insurance coverage provided through their employer.

(2) FOURTH YEAR.—For purposes of subsection (a), employees shall be considered uninsured during the fourth calendar year after the date of the enactment of this Act if such employees are not covered under any employment-based health insurance coverage provided through their employer that meets the requirements of this Act and the amendments made by this Act.

SEC. 332. MEASUREMENT SURVEYS.

(a) ANNOUNCEMENT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall publish in the Federal Register an announcement of the survey or surveys to be used by such Secretary in the coverage level of employees described in section 331, and the criteria that will be used to determine such level.

(b) CRITERIA.—The announcement of criteria under subsection (a) shall include a determination, based on the availability of the most reliable survey data available, as to whether the determination of the coverage level shall be based on a measurement of insurance coverage at a point in time or during the course of all or part of a calendar year.

(c) APPLICATION OF ACT.—If the percentage of uninsured employees in the fourth calendar year after the date of the enactment of this Act is equal to or less than the 25 percent level described in section 331(a), the Secretary shall repeat the measurement of such coverage level annually and if, in any calendar year, the Secretary does not find that the number of employees who do not have employer provided health insurance coverage is equal to or less than such 25 percent level, the requirements of this Act or section 2701 of the Public Health Service Act shall apply to all employers described in section 331(a).

SEC. 333. SMALL EMPLOYERS.

Sections 331 and 332 shall apply to small employers, except that the requirement to provide coverage or make a contribution in lieu of coverage under title V shall not be applied until the sixth calendar year after the date of enactment of this Act, and the Secretary shall make the determinations required under such sections to be made in the fourth calendar year, in the fifth calendar year after the date of enactment of this Act.

SEC. 334. FAILURE TO MAKE SURVEYS.

The failure of the Secretary to make the surveys required under this subtitle shall not relieve an employer of the obligation of such employer to provide coverage or make a contribution in lieu of coverage absent a finding

by the Secretary that the coverage target has been met.

Subtitle D—Small Business Tax Credit

SEC. 341. ALLOWANCE OF A CREDIT FOR SMALL AND MEDIUM-SIZED BUSINESS GROUP HEALTH PLAN EXPENDITURES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by inserting at the end thereof the following new section:

***SEC. 45. SMALL BUSINESS GROUP HEALTH PLAN EXPENDITURES.**

“(a) ALLOWANCE OF CREDIT.—

“(1) IN GENERAL.—For purposes of section 38, in the case of an eligible small business, the amount of the qualified group health plan credit for the taxable year shall be an amount equal to the applicable percentage of the qualified group health plan expenditures for such taxable year.

“(2) APPLICABLE PERCENTAGE DEFINED.—

“(A) IN GENERAL.—For purposes of paragraph (1), the term ‘applicable percentage’ means 25 percent reduced (but not below 0 percent) by 5 percent for—

“(i) each employee of the eligible small business in excess of 40, or

“(ii) each .1 by which the expanded profit ratio of such business exceeds 1.

“(B) COORDINATION OF MULTIPLE PHASE-OUTS.—If an eligible small business is subject to subparagraphs (A)(i) and (A)(ii), the applicable percentage shall be determined by multiplying the resulting applicable percentage under subparagraph (A)(i) (expressed as a percentage of the credit remaining) by such applicable percentage under subparagraph (A)(ii).

“(C) EXPANDED PROFIT RATIO.—

“(1) IN GENERAL.—For purposes of this paragraph, the term ‘expanded profit ratio’ means the expanded profit of the eligible small business for the taxable year divided by the qualified group health plan expenditures of such business for such year.

“(ii) EXPANDED PROFIT.—For purposes of clause (i), the term ‘expanded profit’ means the sum of—

“(I) the taxable income of the eligible small business,

“(II) the amount of earned income exceeding the applicable contribution base (as defined in section 3121(x)(1)) for each 5-percent owner of such business, plus

“(III) the total amount of interest and dividends distributed to all owners of such business.

“(b) QUALIFIED GROUP HEALTH PLAN EXPENDITURES; ELIGIBLE SMALL BUSINESS.—For purposes of this section—

“(1) QUALIFIED GROUP HEALTH PLAN EXPENDITURES.—

“(A) IN GENERAL.—The term ‘qualified group health plan expenditures’ means the aggregate amount of expenditures paid or incurred by the eligible small business for the taxable year for coverage of its employees under a group health plan (as defined in section 5000(b)(1)) which is a health benefit plan (as defined in section 2713(a)(5) of the Public Health Service Act to the extent such expenditures do not exceed \$3,000 for each employee, reduced (but not below zero) by 5 percent for each \$250 (or fraction thereof) by which the amount of wages paid to such employee by the eligible small business in such taxable year exceeds \$15,000.

“(B) LIMIT INDEXED.—In the case of any taxable year beginning in a calendar year after the effective date of this section, the \$3,000 amount in subparagraph (A) shall be increased by an amount equal to

“(i) such amount, multiplied by
“(ii) the increase (if any) in the wage index for such calendar year.

“(2) ELIGIBLE SMALL BUSINESS.—

“(A) IN GENERAL.—The term ‘eligible small business’ means any person which, on an average business day during the preceding taxable year, had no more than 60 employees.

“(B) AGGREGATION RULES.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person.

“(C) EMPLOYEE.—The term ‘employee’—

“(i) shall include a self-employed individual as defined in section 401(c)(1), but

“(ii) shall not include an employee who works less than 25 hours per week.

“(c) COORDINATION WITH DEDUCTION.—Any deduction allowable under this chapter for any qualified group health plan expenditures shall be in addition to any credit under section 38 attributable to such expenditures.”

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of such Code is amended—

(A) by striking “plus” at the end of paragraph (6),

(B) by striking “plus” at the end of paragraph (7), and inserting a comma and “plus”, and

(C) by adding at the end thereof the following new paragraph:

“(8) the small business group health plan expenditures credit determined under section 45.”

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 44 the following new item:
“Sec. 45. Small business group health plan expenditures.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning in the third full calendar year after the date of the enactment of this Act.

Subtitle E—Additional Assistance to Small and Medium-Sized Businesses

SEC. 351. OPPORTUNITY TO BUY COVERAGE AT MEDICARE RATES.

(a) ELIGIBILITY.—Businesses with fewer than 100 employees that have not provided coverage to their employees in the calendar year preceding the date of enactment of this Act shall be eligible to buy private health insurance coverage from a small or medium-sized business insurer under which providers of health care services are paid at rates based on Medicare rates as provided for in part C of title XXVII of the Public Health Service Act and title XIII of the Social Security Act, for a period of not to exceed 5 years.

(b) DEFINITION.—As used in this section the term “not provided coverage in the calendar year preceding the date of enactment of this Act” means, with respect to a business, that less than 25 percent of employees working more than 17.5 hours per week for the business received coverage from the business in each of the years.

SEC. 352. SPECIAL PROVISION FOR NEW SMALL BUSINESSES.

In the case of a small employer that normally employs 24 or fewer employees during a year, and that has been an employer for not more than 3 years, such employer shall not be required to provide coverage under this Act or the amendment made by this Act or make a contribution in lieu of coverage under title V for the first two years in which the employer has been an employer. Such employer shall be permitted to meet the re-

quirements of part B of title XXVII of the Public Health Service Act by making a contribution at a rate that is ½ of the rate that would otherwise be required to be paid under this Act.

SEC. 353. SMALL AND MEDIUM-SIZED BUSINESS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary shall establish a small and medium-sized business advisory committee (hereafter referred to in this section as the “committee”) that shall provide advice to such Secretary and to the appropriate committees of Congress concerning all provisions of this Act that relate to small and medium-sized businesses.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Secretary shall jointly appoint individuals to serve on the committee, of which—

(A) seven individuals shall be representatives of small or medium-sized businesses;

(B) two individuals shall be representatives of employees of small or medium-sized businesses;

(C) two individuals shall be knowledgeable concerning the small and medium-sized business insurance market; and

(D) two individuals shall be members of the general public.

(2) SMALL AND MEDIUM-SIZED BUSINESS REPRESENTATIVES.—Individuals appointed under paragraph (1)(A) shall—

(A) be selected from geographically diverse regions of the country;

(B) include at least one representative of small or medium-sized businesses that are located in rural areas and one representative of small or medium-sized businesses located in urban areas;

(C) include at least one individual who represents the concerns of minority businesses; and

(D) represent a diversity of businesses.

(3) CHAIRPERSON.—The members of the committee shall elect an individual to serve as chairperson.

(4) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—Members of the committee appointed under paragraph (1) shall receive compensation for each day (including travel time) engaged in carrying out the duties of the committee. Such compensation may not be in an amount in excess of the maximum rate of basic pay payable for GS-18 of the General Schedule.

(5) STAFF.—The Secretary shall provide to the committee such staff, information, and other assistance as may be necessary to carry out the duties of the committee.

(6) REGULATIONS.—The Secretary shall promulgate regulations that prescribe the terms to be served by the members of the committee, the procedure for filling vacancies on the committee, and the procedure for holding and administering meetings.

(c) DUTIES.—The committee shall—

(1) perform the advisory functions as described in subsection (a);

(2) analyze the impact of the implementation of this Act and the amendments made by this Act on small and medium-sized businesses and make recommendations to the Secretary and the appropriate committees of Congress concerning appropriate modifications to such Act;

(3) review and provide comments concerning the regulations promulgated pursuant to this Act that impact on small and medium-sized businesses;

(4) monitor the effectiveness of the small insurer reform program established under subtitle A, and make recommendations to the Secretary and the appropriate committees of Congress concerning appropriate modifications in such program;

(5) serve as a channel of communication between the Secretary and the small and medium-sized business communities; and

(6) perform such other functions as the Secretary considers appropriate.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE IV—REDUCING HEALTH CARE COST INFLATION

Subtitle A—Outcomes Research and Practice Guideline Development and Dissemination

SEC. 401. INITIAL GUIDELINES AND STANDARDS.

Subsection (d) of section 912 of the Public Health Service Act (as added by section 6103(a) of Public Law 101-239) is amended to read as follows:

“(d) **INITIAL GUIDELINES AND STANDARDS.**—

“(1) **IN GENERAL.**—Not later than January 1, 1992, the Administrator shall assure the development of an initial set of guidelines as described in subsection (a)(1) that shall include not less than three clinical treatments or conditions that—

“(A) account for a significant portion of national health expenditures;

“(B) have a significant variation in the frequency or the type of treatment provided; or

“(C) otherwise meet the needs and priorities described in this section.

“(2) **MENTAL HEALTH SERVICES.**—The Administrator, in consultation with the National Institute of Mental Health and mental health providers, shall develop outcomes research and practice parameters for mental health services, including at least the diagnosis and treatment of childhood attention deficit disorders and manic depression.”

SEC. 402. AMENDMENTS TO THE SOCIAL SECURITY ACT.

Section 1142(i) of the Social Security Act (as added by section 6103(b) of Public Law 101-239) is amended—

(1) in paragraph (1), to read as follows:

“(1) **IN GENERAL.**—There are authorized to be appropriated to carry out this section—

“(A) \$125,000,000 for fiscal year 1991;

“(B) \$175,000,000 for fiscal year 1992;

“(C) \$225,000,000 for fiscal year 1993; and

“(D) \$275,000,000 for fiscal year 1994.”; and

(2) in paragraph (2), by striking out “75 percent” and inserting in lieu thereof “50 percent”.

Subtitle B—Federal Health Expenditure Board

SEC. 411. FEDERAL HEALTH EXPENDITURE BOARD.

(a) **PUBLIC HEALTH SERVICE ACT.**—Title XXVII of the Public Health Service Act (as added under section 101 and amended by section 201 and 311) is further amended by adding at the end thereof the following new part:

“PART D—FEDERAL HEALTH EXPENDITURE BOARD

“SEC. 2761. ESTABLISHMENT AND MEMBERSHIP.

“(a) **ESTABLISHMENT.**—There is established as an independent agency in the executive branch a Federal Health Expenditure Board (hereafter referred to in this part as the ‘Board’).

“(b) **MEMBERSHIP.**—

“(1) **IN GENERAL.**—

“(A) **APPOINTMENT.**—The Board shall be composed of 11 members to be appointed by the President, by and with the advice and consent of the Senate.

“(B) **EX OFFICIO MEMBERS.**—The Secretary, the Chairman of the Prospective Payment Assessment Commission and the Chairman of the Physician Payment Review Commis-

sion shall serve as ex officio members of the Board.

“(2) **REPRESENTATION.**—In appointing members to the Board under paragraph (1)(A), the President shall ensure that—

“(A) the interests of health care providers and purchasers are fairly represented; and

“(B) a majority of the members of the Board are experts in health care issues and fairly represent the interests of the general public in having access to quality and affordable health care.

“(3) **CHAIRPERSON.**—The President shall appoint a member appointed under paragraph (1)(A) to serve as the Chairperson of the Board.

“(4) **TERMS.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the members of the Board appointed under paragraph (1)(A) shall serve for terms of 7 years. Such members may be reappointed.

“(B) **INITIAL MEMBERS.**—Of the initial members of the Board appointed under paragraph (1)(A)—

“(i) three shall be appointed for a term of 2 years;

“(ii) three shall be appointed for a term of 4 years;

“(iii) three shall be appointed for a term of 6 years; and

“(iv) two shall be appointed for a term of 7 years;

as designated by the President at the time of appointment.

“(5) **VACANCIES.**—Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

“(6) **QUORUM.**—Six members of the Board appointed under paragraph (1)(A) shall constitute a quorum for purposes of conducting the business of the Board, but a lesser number may meet to hold hearings.

“(7) **MEETINGS.**—The Board shall meet at the call of the Chairperson, or upon motion by not less than six of the members of the Board appointed under paragraph (1)(A), to conduct the business of the Board.

“SEC. 2762. FUNCTIONS AND DUTIES OF THE BOARD.

“(a) **IN GENERAL.**—The Board shall—

“(1) develop national health care expenditure, access and quality goals;

“(2) convene and oversee negotiations between health care providers and purchasers to develop payment rates and perform other activities necessary to achieve expenditure goals developed under paragraph (1);

“(3) establish recommended payment levels and other recommended measures that may include increased utilization of managed care, increased utilization of alternatives to institutionalization, and procedures for the allocation and limitation of capital investment necessary to achieve health care expenditure, quality and access targets subsequent to the conclusion of required negotiations;

“(4) develop goals for States and regions that are consistent with national goals established under paragraph (1);

“(5) prepare and submit, to the President, the appropriate committees of Congress and to the general public, an annual report concerning the success in achieving the goals established under paragraph (1), together with such recommendations as the Board considers appropriate to further the objectives of

providing access to affordable, quality health care;

“(6) establish uniform billing and claim forms and mandatory reporting requirements to—

“(A) measure the success in meeting the goals established under paragraph (1);

“(B) permit the Board, to the extent practicable, to analyze data acquired under such reporting requirements for individual providers to assist purchasers and consumers in evaluating the quality and cost of care offered by different providers; and

“(C) reduce the administrative cost of the health care system;

“(7) recommend rates, budgets and such other measures as may be appropriate and consistent with expenditure goals developed by negotiators or the Board under this part to assure access to quality affordable health care under Federal health insurance programs and programs under which the Federal Government enters into contracts for the delivery of health care;

“(8) conduct studies, issue reports, and gather and disseminate data to the Congress, the President and the general public, to contribute to the objective of providing access to high-quality affordable health care;

“(9) cooperate with State-based consortium established under section 2781; and

“(10) carry out any other activities determined by the Board to be necessary to further the goal of making available affordable, accessible, high quality health care in the United States.

“(b) **PERSONNEL, SERVICES, REGULATIONS.**—The Board may, for the purpose of performing its duties and carrying out its functions under this part—

“(1) employ such personnel as it considers necessary to perform administrative, clerical, technical and other duties;

“(2) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5, United States Code, at rates the Board determines to be reasonable; and

“(3) prescribe regulations necessary to carry out the functions and duties of the Board under this part.

“SEC. 2763. DEVELOPMENT OF NATIONAL HEALTH CARE EXPENDITURE, ACCESS, AND QUALITY GOALS.

“(a) **EXPENDITURE GOALS.**—

“(1) **IN GENERAL.**—The Board shall, to the extent practicable, develop national expenditure goals under section 2762(a)(1) applicable to the total amount to be expended in the United States for health care. To the extent practicable, such goals shall contain a separate expenditure breakdown for—

“(A) hospital services;

“(B) physician services;

“(C) laboratory services;

“(D) pharmaceutical products;

“(E) durable medical equipment; and

“(F) such other health services or sectors, including subdivisions of the sectors described in this paragraph, other than long-term care services, as the Board determines appropriate.

“(2) **CONSIDERATIONS.**—In developing expenditure goals under paragraph (1), the Board shall take into consideration—

“(A) the aging of the population and such other factors as may affect the demand for health care in the future;

“(B) general inflation factors and the costs related to inflation in labor and other inputs used to produce health services;

“(C) technological advances that may increase or decrease health care costs;

“(D) appropriate improvements in health care productivity;

"(E) feasible reductions in unnecessary health care;

"(F) the need to assure that all sectors of the population have adequate access to health care services;

"(G) the impact and availability of such goals on the quality of health care; and

"(H) such other factors as the Board determines appropriate.

"(b) QUALITY GOALS.—

"(1) DEVELOPMENT.—The Board shall, to the extent practicable, develop national goals under section 2762(a)(1) for improving the quality of the health care system of the United States. Such goals shall include recommendations for improving the quality of health care provided in the United States and establish a system of measuring the progress made in achieving such goals.

"(2) DATA AND STUDIES.—The Board shall collect such data and conduct such studies as may be necessary to carry out paragraph (1).

"(c) ACCESS GOALS.—

"(1) DEVELOPMENT.—The Board shall, to the extent practicable, develop national goals under section 2762(a)(1) for improving access to the health care system for all Americans. Such goals shall include recommendations for achieving such goals and establish a system of measuring progress made in achieving such goals.

"(2) DATA AND STUDIES.—The Board shall collect such data and conduct such studies as may be necessary to carry out paragraph (1).

"(d) STATE AND REGIONAL GOALS.—In carrying out its functions under this section, the Board shall develop separate goals for each State and region, based on an adjustment of the national goals, to reflect the demographic characteristics and other relevant characteristics of such States and regions.

"(e) TIMING.—The Board shall, not later than June 30 of each year, develop preliminary goals under this section and, not later than December 1 of each year, develop final goals and the recommended payment rates and other measures necessary to achieve such goals.

"SEC. 2764. HEALTH CARE PROVIDER AND PURCHASER NEGOTIATIONS.

"(a) REQUIREMENT OF NEGOTIATIONS TO ACHIEVE GOALS.—The Board shall convene appropriate representatives of health care providers and purchasers recognized or appointed as negotiators under section 2765 to negotiate concerning terms and conditions related to the provision of health care to achieve the expenditure goals developed under section 2763(a). The Board shall adopt a negotiating process that shall be followed by such negotiators.

"(b) OBLIGATION TO BARGAIN IN GOOD FAITH.—It shall be the obligation of negotiators participating in negotiations under subsection (a) to bargain in good faith and consistent with the processes established by the Board.

"(c) TIME FOR NEGOTIATIONS.—The negotiations required under subsection (a) shall be commenced not later than July 1, and shall be completed not later than September 31, of each year unless such time period is extended by the Board.

"(d) SECTORS FOR NEGOTIATIONS.—The Board shall require negotiations under subsection (a) for the achievement of the expenditure goals for physician and hospital care. The Board may require that negotiations also be convened under such subsection concerning other health care sectors of the type referred to in section 2763(a)(1), including subdivisions of sectors, to the extent determined to be appropriate and feasible by the Board.

"(e) CONTENT OF NEGOTIATIONS.—

"(1) IN GENERAL.—Negotiators participating in negotiations under subsection (a) shall attempt to agree on recommendations to be submitted to the Board concerning a health care payment system and uniform payment rates, together with other appropriate recommendations for achieving the expenditure goals developed under section 2763(a).

"(2) ACHIEVEMENT OF GOALS.—In developing recommendations under paragraph (1), the negotiators shall attempt to ensure that such recommended payment system, payment rates, and other recommended measures will, if implemented, will result in the achievement of the expenditure goals developed under section 2763(a).

"SEC. 2765. NEGOTIATION REQUIREMENTS.

"(a) NEGOTIATION BY SECTOR.—In each sector selected by the Board under section 2764(d) as a sector in which negotiations shall be conducted, negotiators representing providers of health care and purchasers of health care shall be selected in accordance with this section. The Board shall determine which individuals, organizations, and institutions are eligible for representation as providers or purchasers in each sector.

"(b) HEALTH CARE PROVIDERS.—

"(1) IN GENERAL.—

"(A) PETITION.—An organization (through a representative of such organization) or an individual that desires to be a negotiator on behalf of health care providers under this section shall submit a petition requesting such to the Board. Such petition shall include any authorizations of representation that such organization or individual has received on behalf of health care providers, in such form and meeting such requirements as the Board may require.

"(B) GENERAL APPROVAL.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 25 percent of the health care providers in a sector, as determined by the Board, shall be approved by the Board as a negotiator for providers with respect to that sector.

"(C) EXCLUSIVE NEGOTIATOR.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 50 percent of the health care providers in a sector, as determined by the Board, shall be approved by the Board as the exclusive negotiator for providers with respect to that sector.

"(D) APPOINTMENT.—If no organization or individual submits a petition under subparagraph (A) that contains authorizations of representation from 25 percent or more of the health care providers in a sector, as determined by the Board, the Board shall—

"(i) appoint a negotiator or negotiators to represent such providers; or

"(ii) establish an election procedure for the election of a negotiator or negotiators for such providers.

"(2) INSTITUTIONAL SECTORS.—In the case of a health care sector in which health care services are delivered primarily through institutions or organizations, the Board shall establish a procedure to select negotiators to represent such institutions and organizations that is based on a weighted designation of all such institutions and organizations after consideration of the revenues or number of patients served by such institutions or organizations or based on such other measure as the Board determines appropriate.

"(c) PURCHASERS.—

"(1) IN GENERAL.—

"(A) PETITION.—An organization (through a representative of such organization) or an individual that desires to be a negotiator on behalf of health care purchasers under this section shall submit a petition requesting such to the Board. Such petition shall include any authorizations of representation that such organization or individual has received on behalf of health care purchasers.

"(B) GENERAL APPROVAL.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 25 percent of the health care purchasers in a sector, as determined by the Board, shall be approved by the Board as a negotiator for purchasers with respect to that sector.

"(C) EXCLUSIVE NEGOTIATOR.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 50 percent of the health care purchasers in a sector, as determined by the Board, shall be approved by the Board as the exclusive negotiator for purchasers with respect to that sector.

"(D) APPOINTMENT.—If no organization or individual submits a petition under subparagraph (A) that contains authorizations of representation from 25 percent or more of the health care purchasers in a sector, as determined by the Board, the Board shall—

"(i) appoint a negotiator or negotiators to represent such purchasers; or

"(ii) establish an election procedure for the election of a negotiator or negotiators for such purchasers.

"(2) DETERMINATIONS.—If the Board designates employment-based health benefit plans as all or some of the purchasers entitled to be represented in negotiations for a sector, the Board shall establish a procedure for determining whether the 25 percent or 50 percent requirements are met for purposes of subparagraphs (B) and (C) of paragraph (1), based on a weighted designation that considers the number of individuals covered by the health benefits plan of the purchaser, the total expenditures under such plans, or such other measure as the Board determines appropriate. In the case of health benefit plans provided pursuant to a collective bargaining agreement, for purposes of the weighted designation, 50 percent of the costs of or individuals covered under such plan shall be assigned to the union and 50 percent to the appropriate employer or employers. If the Board designates other categories of purchasers, a similar procedure shall be utilized.

"(d) CONTINUED APPROVAL AS NEGOTIATORS, LIMITATION.—

"(1) ESTABLISHMENT OF PROCEDURES.—The Board shall establish procedures for the withdrawal of approvals granted to organizations or individuals under subsections (b)(1) or (c)(1).

"(2) EXCLUSIVE NEGOTIATORS.—

"(A) PETITION FOR INITIATION OF PROCEDURES.—The Board may initiate procedures under paragraph (1) to withdraw the approval of an exclusive negotiator under subsection (b)(1)(C) or (c)(1)(C), if not less than 30 percent of the health care providers or purchasers in the appropriate sector file a petition with the Board for such withdrawal.

"(B) VOTE ON WITHDRAWAL.—If the Board determines that a petition received under subparagraph (A) is valid, the Board shall arrange for a vote to take place among the appropriate purchasers or providers to determine whether to withdraw the approval that is the subject of such petition. If in excess of 50 percent of such providers or purchasers vote to withdraw such approval, the Board

shall certify that such approval is withdrawn and initiate procedures to select a new negotiator or negotiators.

"(3) LIMITATION AND ELECTION.—

"(A) LIMITATION.—With respect to a sector in which no exclusive negotiator has been approved under subsection (b)(1)(C) or (c)(1)(C), the Board may not grant approvals to organizations and individuals under paragraph (1)(B) of each such subsection, as applicable, in a manner that would result in the approval of individuals and organizations representing in excess of 100 percent of the purchasers or providers.

"(B) ELECTION.—In the event that petitions are received (whether or not approvals have previously been granted) under subsection (b)(1)(B) or (c)(1)(C), from organizations or individuals cumulatively representing in excess of 100 percent of the purchasers or providers in a sector the Board shall conduct an election among such qualified organizations or individuals to determine which such organizations and individuals will be approved or have their approval continued.

"(4) PERIOD OF DESIGNATION.—No organization or individual shall be a negotiator or an exclusive negotiator for more than a 5-year period without being recertified as a negotiator or exclusive negotiator in the same manner as the original designation was made under this section.

"(5) TIMING.—Any vote or election held under this subsection to determine the negotiators for a particular year, shall be completed prior to June 30 of that year. Votes or elections completed after such date shall apply to the negotiations for the following year.

"SEC. 2766. REQUIREMENTS FOR RECOMMENDED PAYMENT SYSTEMS AND RATES.

"(a) HOSPITALS.—

"(1) NEGOTIATED AGREEMENT.—A payment system for hospitals that is recommended in an agreement negotiated pursuant to section 2767 shall be based on the hospital payment system established under title XVIII of the Social Security Act, except that the Board may approve or adopt an alternative payment system.

"(2) ALTERNATIVE PAYMENT SYSTEM.—An alternative payment system approved or adopted under paragraph (1) shall provide for the adjustment of payment rates to reflect the differences in costs between different types of hospitals to the extent that such costs represent appropriate differences in the costs of delivering care efficiently and effectively in different types of hospitals or are necessary to achieve other public policy objectives, as determined by the Board. Such a payment system shall reflect geographic differences in labor and to the extent feasible, other input costs, capital and other needs to maintain adequate access to care and quality of care. To the extent desirable and feasible, the negotiators shall recommend, and the Board shall approve, special treatment for managed care programs.

"(b) PHYSICIANS.—

"(1) NEGOTIATED AGREEMENT.—A payment system for physicians that is recommended in an agreement negotiated pursuant to section 2767 shall be based on the physician payment system established under title XVIII of the Social Security Act, except that the Board may approve or adopt an alternative payment system.

"(2) ALTERNATIVE PAYMENT SYSTEM.—An alternative payment system approved or adopted under paragraph (1) shall reflect geographic differences in practice costs insofar as those differences reflect the cost of economical and efficient provision of quality

care, and shall promote an appropriate distribution of primary and specialty care. To the extent desirable and feasible, the negotiators shall recommend, and the Board shall approve, special treatment for managed care programs.

"SEC. 2767. OUTCOME OF NEGOTIATIONS, AGREEMENTS.

"(a) AGREEMENT.—If a majority of the negotiators (in the case of multiple negotiators) for the providers and a majority of the negotiators (in the case of multiple negotiators) for the purchasers, for a particular sector, agree to recommend a proposal under this part to the Board, such proposal shall be considered to have been agreed to by the negotiators.

"(b) BINDING NATURE OF AGREEMENTS.—If a negotiated agreement is reached, pursuant to subsection (a), concerning a health services rate structure, or concerning any other matter that would lead to the achievement of the goals developed by the Board under section 2763, or an alternative goal accepted by the Board under subsection (c), and such agreement, in the judgment of the Board, will lead to the achievement of such goals, the Board shall promulgate regulations implementing such rates and other matters and such rates and other matters shall be binding on providers and purchasers in the sector to which such agreement applies.

"(c) AGREEMENT ON DIFFERENT GOAL.—If the negotiators reach an agreement, pursuant to subsection (a), concerning a goal that is different than a goal that has been developed by the Board under section 2763, the Board shall adopt such agreed upon goal if the Board determines that it would be in the best interest of the general public to adopt such goal. The Board, on a rejection of such alternative agreed upon goal, may request that the negotiators attempt to reach a negotiated agreement concerning the original goal under section 2763, and such other measures to achieve such original goal, and may promulgate regulations recommending rates and other matters to achieve the original goal.

"(d) EFFECT OF NO AGREEMENT.—

"(1) IN GENERAL.—If the negotiators for a particular sector fail to reach a negotiated agreement, pursuant to subsection (a), concerning a goal established under section 2763, the Board shall promulgate regulations recommending advisory rates and other matters necessary to achieve such goals. Such advisory rates and other matters shall not be binding on health care providers and purchasers.

"(2) CONSTRUCTION.—Notwithstanding any other provision of law, health care purchasers may combine for the purpose of agreeing to pay health care providers for services at rates recommended pursuant to paragraph (1). Notwithstanding any other provision of law, health care providers may combine for the purpose of agreeing to charge for services at rates recommended pursuant to paragraph (1).

"(e) TECHNICAL ASSISTANCE.—The Board shall provide technical assistance to negotiators, including estimates of the effect on expenditure goals of alternative proposals and estimates of utilization changes that can be expected under different proposals. The Board may recommend a proposal to achieve expenditure goals for the consideration of the negotiators. The Board may make available professional mediation and conciliation services to the negotiators.

"SEC. 2768. ENFORCEMENT.

"(a) IN GENERAL.—A health care provider assessing rates other than those required

under regulations promulgated by the Board under this part, or failing to comply in any other manner with such regulations, or a health care purchaser paying rates other than those required under such regulations, except in the case of an alternative rate or method established under subsections (a)(2) and (b)(2) of section 2766, shall—

"(1) be ineligible for any assistance under this Act; and

"(2) be liable to the United States for a civil penalty for such failure in an amount not to exceed \$50,000 in the case of an individual and \$500,000 in the case of an organization, as provided for in subsection (b).

"(b) CIVIL ACTIONS.—

"(1) IN GENERAL.—A civil penalty under subsection (a)(2) shall be assessed by the Board on a health care provider or purchaser by an order made on the record after an opportunity for a hearing on any disputed issues of material fact and the amount of the penalty. In the course of any investigation or hearing under this paragraph, the Board or its designees may administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

"(2) AMOUNT.—In determining the amount of a civil penalty under paragraph (1), the Board shall take into account the nature, circumstances, extent, and gravity of the act subject to penalty, the ability to pay, the effect on the ability to continue to do business, any history of prior, similar acts, and such other matters as the Board determines appropriate.

"(3) LIMITATION ON ACTIONS.—The Board may not initiate an action under this subsection with respect to any noncompliance described in subsection (a) that occurred before the date of the enactment of this section.

"(c) INJUNCTIVE RELIEF.—The Board shall have the power, upon the initiation of an action regarding noncompliance with a provision of this part, to petition any United States district court, within any district wherein such noncompliance is alleged to have occurred, for appropriate temporary injunctive relief. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant the Board such temporary injunctive relief as the court determines to be appropriate.

"(d) JUDICIAL REVIEW.—Any health care provider or purchaser that is the subject of an adverse decision under subsection (b)(1) or subsection (c) may obtain a review of such decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the provider or purchaser resides, by filing in such court (within 60 days following the date the purchaser or provider is notified of the decision of the Board) a petition requesting that the decision be modified or set aside.

"SEC. 2769. OTHER GOVERNMENT PROGRAMS.

The Board shall promulgate regulations recommending advisory rates and other matters necessary to achieve the goals established under section 1172 for all Federal programs (other than the program under titles XVIII, XIX and XXI of the Social Security Act) that reimburse providers on a fee, charge, or cost basis or charge third-party providers on such basis. Such nonbinding rates shall be consistent with the rates promulgated by the Board under sections 1176 and 1178, except that Federal payments resulting from such rates shall be no greater

than such payments would have been if determined without regard to this section through the fifth full fiscal year after the date of enactment of this section.

"SEC. 2770. ROLE OF STATES.

"(a) ALTERNATIVE SYSTEMS, ETC.—A State consortia established under section 2781 may, with the approval of the Board, establish an alternative payment system, rates, and methods for achieving goals developed by the Board under section 2763.

"(b) APPROVAL.—The Board shall approve alternative payment systems, rates, and methods under subsection (a) if Board determines that such alternative systems, rates, or methods would result in a level of health care expenditures in the State that achieves the national goals developed under section 2763, adjusted to the State level. If the Board determines that such national goals would not be achieved through the proposed alternative systems, rates or methods, the rates or other matters that apply to the State under regulations promulgated by the Board shall remain binding in the State. Such Board approval is only necessary where binding payment systems, rates and methods are not promulgated under a negotiated agreement.

"(c) STANDARD FOR DETERMINATION.—In making a determination under subsection (b), the Board shall consider the effect of the alternative systems, rates or methods, with respect to the goals established under section 2763, on the State as a whole rather than on particular health care sectors in the State.

"SEC. 2771. UNIFORM BILLING AND MANDATORY REPORTING.

"(a) IN GENERAL.—The Board shall establish a system of uniform billing and reporting, as required under subsection (c), that will enable the Board to determine the progress made in meeting the goals established under section 2763, to provide information for health care providers and purchasers to assist such providers and purchasers in providing and obtaining efficiently provided quality health care, and to reduce administrative costs of the health care system.

"(b) GENERAL REPORTING AND DATA REQUIREMENTS.—The Board shall—

"(1) develop a computerized system for the collection, analysis, and dissemination of data required to be collected under this part;

"(2) establish one or more uniform claims and billing form as required in subsection (c)(2) to be utilized by all data sources and providers;

"(3) audit information provided by health care providers on a sample basis or in situations where there exists reasonable cause for such an audit; and

"(4) issue public reports concerning health care costs and the effectiveness of the health care provided by health care providers.

"(c) DATA COLLECTION.—

"(1) IN GENERAL.—Data sources shall submit to the Board, on the request of the Board, all data required to be submitted under this part in accordance with the uniform submission formats, coding systems, and other technical specifications established by the Board to assure that such incoming data is substantially valid, consistent, compatible and manageable.

"(2) UNIFORM CLAIMS AND BILLING FORMS.—Data shall be collected by the Board through the use of one or more Federal Uniform Claims and Billing Forms developed by the Board and utilized by providers and purchasers of health care that shall, at a minimum, include—

"(A) a uniform patient identifier;

"(B) the date of birth of the patient;

"(C) the gender of the patient;

"(D) the ZIP Code of the patient;

"(E) the date of admission of the patient for inpatient hospital services;

"(F) the date of discharge of the patient referred to in subparagraph (E);

"(G) the principal and secondary diagnoses of the patient;

"(H) the principal and secondary procedures to be followed in treating the patient;

"(I) a uniform health care facility identifier;

"(J) uniform identifiers of physicians and treating the patient;

"(K) for services provided in an inpatient setting, the total charges of the health care facility treating the patient, segregated into major categories determined appropriate by the Board;

"(L) the amounts of actual payments made to the treating health care facility;

"(M) the amounts of the charges of each physician or professional rendering service to the patient;

"(N) the services provided in an inpatient setting;

"(O) the amounts of actual payments made to each physician or professional rendering service to the patient;

"(P) a uniform identifier of the primary payor;

"(Q) the ZIP Code of the facility where service is rendered to the patient;

"(R) the patient discharge status; and

"(S) such other material as the Board determines necessary or useful to carry out the duties of the Board or to provide adequate information to purchasers of health care to assist such purchasers in appropriately paying for services.

"(3) MEASURE OF SERVICE EFFECTIVENESS.—

"(A) DEVELOPMENT OF METHODOLOGY.—To the extent practical and as rapidly as feasible, the Secretary shall develop and implement a methodology or methodologies that will measure the effectiveness of the health care service provided by health care providers.

"(B) INCLUSION IN UNIFORM BILLING FORM.—To the extent practical and as rapidly as feasible, the Secretary shall include in the uniform claims and billing forms or in other data collection instruments established under subsection (b) data necessary to provide the Secretary with information concerning each service provided by health care providers that is sufficient to enable the Secretary to analyze the quality, cost, and service effectiveness of the provider.

"(4) ADDITIONAL DATA.—The Board may collect additional data, including audited annual financial reports of all hospitals and ambulatory service facilities, medicare cost reports, information on capital expenditures, and any other data that the Board determines necessary to carry out its responsibilities under this part.

"(5) RECOMMENDATIONS.—The Board shall make recommendations to the committees of Congress, the President, and the insurance industry concerning methods to reduce the cost and burden of duplication or excessive reporting requirements imposed on health care providers.

"(d) REPORTS.—

"(1) IN GENERAL.—The Board, not less than once each calendar year, shall for every health care provider for which sufficient data is available, prepare and make available reports that shall, to the extent practicable and scientifically valid, contain data in a form that will provide the most useful information to purchasers of health care services

regarding such providers to enable such purchasers to compare providers on the basis of cost and quality.

"(2) AVAILABILITY.—The Secretary shall advertise and make available all reports prepared under paragraph (1) to the general public, including any dissents submitted by health care providers.

"(3) RECOMMENDATIONS.—The Board shall make recommendations to the appropriate committees of Congress, the President, and the insurance industry concerning methods to reduce the cost and burden of duplicative or excessive reporting requirements imposed on health care providers.

"(e) DEFINITION.—As used in this section, the term 'data sources' means classes of entities and individuals that the Board designates as data sources.

"SEC. 2772. ANNUAL REPORTS.

"Not later than June 30 of each year, the Board shall prepare and submit to the President, the appropriate committees of Congress and the general public, a report concerning the success in attaining expenditure, access, and quality goals developed under section 2763, and containing recommendations for additional measures, if any, that the Board determines are necessary to achieve such goals.

"SEC. 2773. DEFINITIONS.

"As used in this part:

"(1) PROVIDER.—The term 'provider' means a physician, hospital, health maintenance organization, pharmacy, laboratory, or other provider of health care services or supplies, that has entered into an agreement with a managed care entity to provide such services or supplies to a patient enrolled in a managed care plan.

"(2) PURCHASER.—The term 'purchaser' means an entity that pays for the services of providers, including in the case of a health benefit plan provided pursuant to a collective bargaining agreement, the labor union that has negotiated for such plan on behalf of employees shall be considered to be a purchaser.

"SEC. 2774. EFFECTIVE DATES.

"The Board shall develop the goals under section 2763 for each calendar year beginning not later than the second full calendar year after the date of enactment of this part. The Board shall establish the negotiating procedures required under section 2714(a) for each calendar year beginning not later than the third calendar year after the date of enactment of this part."

(b) SOCIAL SECURITY ACT.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end thereof the following new part:

"PART C—FEDERAL HEALTH EXPENDITURE BOARD

"FUNCTIONS AND DUTIES OF THE FEDERAL HEALTH EXPENDITURE BOARD

"SEC. 1171. (a) IN GENERAL.—The Federal Health Expenditure Board (hereafter in this part referred to as the 'Board') shall—

"(1) develop national health care expenditure, access and quality goals;

"(2) convene and oversee negotiations between health care providers and purchasers to develop payment rates and perform other activities necessary to achieve expenditure goals developed under paragraph (1);

"(3) establish recommended payment levels and other recommended measures that may include increased utilization of managed care, increased utilization of alternatives to institutionalization, and procedures for the allocation and limitation of capital investment necessary to achieve health care ex-

penditure, quality, and access targets subsequent to the conclusion of required negotiations;

"(4) develop goals for States and regions that are consistent with national goals established under paragraph (1);

"(5) prepare and submit, to the President, the appropriate committees of Congress and to the general public, an annual report concerning the success in achieving the goals established under paragraph (1), together with such recommendations as the Board considers appropriate to further the objectives of providing access to affordable, quality health care;

"(6) establish uniform billing and claims forms and mandatory reporting requirements to—

"(A) measure the success in meeting the goals established under paragraph (1);

"(B) permit the Board, to the extent practicable, to analyze data acquired under such reporting requirements for individual providers to assist purchasers and consumers in evaluating the quality and cost of care offered by different providers; and

"(C) reduce the administrative cost of the health care system;

"(7) recommend rates, budgets, and such other measures as may be appropriate and consistent with expenditure goals developed by negotiators or the Board under this part to assure access to quality affordable health care under Federal health insurance programs and programs under which the Federal Government enters into contracts for the delivery of health care;

"(8) conduct studies, issue reports, and gather and disseminate data to the Congress, the President, and the general public, to contribute to the objective of providing access to high-quality affordable health care;

"(9) cooperate with State-based consortium described under part D of this title; and

"(10) carry out any other activities determined by the Board to be necessary to further the goal of making available affordable, accessible, high quality health care in the United States.

"(b) PERSONNEL, SERVICES, REGULATIONS.—The Board may, for the purpose of performing its duties and carrying out its functions under this part—

"(1) employ such personnel as it considers necessary to perform administrative, clerical, technical and other duties;

"(2) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5, United States Code, at rates the Board determines to be reasonable; and

"(3) prescribe regulations necessary to carry out the functions and duties of the Board under this part.

DEVELOPMENT OF NATIONAL HEALTH CARE EXPENDITURE, ACCESS, AND QUALITY GOALS

"SEC. 1172. (a) EXPENDITURE GOALS.—

"(1) IN GENERAL.—The Board shall, to the extent practicable, develop national expenditure goals under section 1171(a)(1) applicable to the total amount to be expended in the United States for health care. To the extent practicable, such goals shall contain a separate expenditure breakdown for—

"(A) hospital services;

"(B) physician services;

"(C) laboratory services;

"(D) pharmaceutical products;

"(E) durable medical equipment; and

"(F) such other health services or sectors, including subdivisions of the sectors described in this paragraph, other than long-term care services, as the Board determines appropriate.

"(2) CONSIDERATIONS.—In developing expenditure goals under paragraph (1), the Board shall take into consideration—

"(A) the aging of the population and such other factors as may affect the demand for health care in the future;

"(B) general inflation factors and the costs related to inflation in labor and other inputs used to produce health services;

"(C) technological advances that may increase or decrease health care costs;

"(D) appropriate improvements in health care productivity;

"(E) feasible reductions in unnecessary health care;

"(F) the need to assure that all sectors of the population have adequate access to health care services;

"(G) the impact of such goals on the quality and availability of health care; and

"(H) such other factors as the Board determines appropriate.

"(b) QUALITY GOALS.—

"(1) DEVELOPMENT.—The Board shall, to the extent practicable, develop national goals under section 1171(a)(1) for improving the quality of the health care system of the United States. Such goals shall include recommendations for improving the quality of health care provided in the United States and establish a system of measuring the progress made in achieving such goals.

"(2) DATA AND STUDIES.—The Board shall collect such data and conduct such studies as may be necessary to carry out paragraph (1).

"(c) ACCESS GOALS.—

"(1) DEVELOPMENT.—The Board shall, to the extent practicable, develop national goals under section 1171(a)(1) for improving access to the health care system for all Americans. Such goals shall include recommendations for achieving such goals and establish a system of measuring progress made in achieving such goals.

"(2) DATA AND STUDIES.—The Board shall collect such data and conduct such studies as may be necessary to carry out paragraph (1).

"(d) STATE AND REGIONAL GOALS.—In carrying out its functions under this section, the Board shall develop separate goals for each State and region, based on an adjustment of the national goals, to reflect the demographic characteristics and other relevant characteristics of such States and regions.

"(e) TIMING.—The Board shall, no later than June 30 of each year, develop preliminary goals under this section and, not later than December 1 of each year, develop final goals and the recommended payment rates and other measures necessary to achieve such goals.

HEALTH CARE PROVIDER AND PURCHASER NEGOTIATIONS

"SEC. 1173. (a) REQUIREMENT OF NEGOTIATIONS TO ACHIEVE GOALS.—The Board shall convene appropriate representatives of health care providers and purchasers recognized or appointed as negotiators under section 1174 to negotiate concerning terms and conditions related to the provision of health care to achieve the expenditure goals developed under section 1172(a). The Board shall adopt a negotiating process that shall be followed by such negotiators.

"(b) OBLIGATION TO BARGAIN IN GOOD FAITH.—It shall be the obligation of negotiators participating in negotiations under subsection (a) to bargain in good faith and consistent with the processes established by the Board.

"(c) TIME FOR NEGOTIATIONS.—The negotiations required under subsection (a) shall be commenced not later than July 1, and shall

be completed not later than September 31, of each year unless such time period is extended by the Board.

"(d) SECTORS FOR NEGOTIATIONS.—The Board shall require negotiations under subsection (a) for the achievement of the expenditure goals for physician and hospital care. The Board may require that negotiations also be convened under such subsection concerning other health care sectors of the type referred to in section 1172(a)(1), including subdivisions of sectors, to the extent determined to be appropriate and feasible by the Board.

"(e) CONTENT OF NEGOTIATIONS.—

"(1) IN GENERAL.—Negotiators participating in negotiations under subsection (a) shall attempt to agree on recommendations to be submitted to the Board concerning a health care payment system and uniform payment rates, together with other appropriate recommendations for achieving the expenditure goals developed under section 1172(a).

"(2) ACHIEVEMENT OF GOALS.—In developing recommendations under paragraph (1), the negotiators shall attempt to ensure that such recommended payment system, payment rates, and other recommended measures will, if implemented, will result in the achievement of the expenditure goals developed under section 1172(a).

"NEGOTIATION REQUIREMENTS

"SEC. 1174. (a) NEGOTIATION BY SECTOR.—In each sector selected by the Board under section 1173(d) as a sector in which negotiations shall be conducted, negotiators representing providers of health care and purchasers of health care shall be selected in accordance with this section. The Board shall determine which individuals, organizations, and institutions are eligible for representation as providers or purchasers in each sector.

"(b) HEALTH CARE PROVIDERS.—

"(1) IN GENERAL.—

"(A) PETITION.—An organization (through a representative of such organization) or an individual that desires to be a negotiator on behalf of health care providers under this section shall submit a petition requesting such to the Board. Such petition shall include any authorizations of representation that such organization or individual has received on behalf of health care providers, in such form and meeting such requirements as the Board may require.

"(B) GENERAL APPROVAL.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 25 percent of the health care providers in a sector, as determined by the Board, shall be approved by the Board as a negotiator for providers with respect to that sector.

"(C) EXCLUSIVE NEGOTIATOR.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 50 percent of the health care providers in a sector, as determined by the Board, shall be approved by the Board as the exclusive negotiator for providers with respect to that sector.

"(D) APPOINTMENT.—If no organization or individual submits a petition under subparagraph (A) that contains authorizations of representation from 25 percent or more of the health care providers in a sector, as determined by the Board, the Board shall—

"(i) appoint a negotiator or negotiators to represent such providers; or

"(ii) establish an election procedure for the election of a negotiator or negotiators for such providers.

"(2) INSTITUTIONAL SECTORS.—In the case of a health care sector in which health care services are delivered primarily through institutions or organizations, the Board shall establish a procedure to select negotiators to represent such institutions and organizations that is based on a weighted designation of all such institutions and organizations after consideration of the revenues or number of patients served by such institutions or organizations or based on such other measure as the Board determines appropriate.

"(c) PURCHASERS.—

"(1) IN GENERAL.—

"(A) PETITION.—An organization (through a representative of such organization) or an individual that desires to be a negotiator on behalf of health care purchasers under this section shall submit a petition requesting such to the Board. Such petition shall include any authorizations of representation that such organization or individual has received on behalf of health care purchasers.

"(B) GENERAL APPROVAL.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 25 percent of the health care purchasers in a sector, as determined by the Board, shall be approved by the Board as a negotiator for purchasers with respect to that sector.

"(C) EXCLUSIVE NEGOTIATOR.—An organization or individual submitting a petition under subparagraph (A) that contains authorizations of representation from not less than 50 percent of the health care purchasers in a sector, as determined by the Board, shall be approved by the Board as the exclusive negotiator for purchasers with respect to that sector.

"(D) APPOINTMENT.—If no organization or individual submits a petition under subparagraph (A) that contains authorizations of representation from 25 percent or more of the health care purchasers in a sector, as determined by the Board, the Board shall—

"(i) appoint a negotiator or negotiators to represent such purchasers; or

"(ii) establish an election procedure for the election of a negotiator or negotiators for such purchasers.

"(2) DETERMINATIONS.—If the Board designates employment-based health benefit plans as all or some of the purchasers entitled to be represented in negotiations for a sector, the Board shall establish a procedure for determining whether the 25 percent or 50 percent requirements are met for purposes of subparagraphs (B) and (C) of paragraph (1), based on a weighted designation that considers the number of individuals covered by the health benefits plan of the purchaser, the total expenditures under such plans, or such other measure as the Board determines appropriate. In the case of health benefit plans provided pursuant to a collective bargaining agreement, for purposes of the weighted designation, 50 percent of the costs of or individuals covered under such plan shall be assigned to the union and 50 percent to the appropriate employer or employers. If the Board designates other categories of purchasers, a similar procedure shall be utilized.

"(d) CONTINUED APPROVAL AS NEGOTIATORS, LIMITATION.—

"(1) ESTABLISHMENT OF PROCEDURES.—The Board shall establish procedures for the withdrawal of approvals granted to organizations or individuals under subsections (b)(1) or (c)(1).

"(2) EXCLUSIVE NEGOTIATORS.—

"(A) PETITION FOR INITIATION OF PROCEDURES.—The Board may initiate procedures under paragraph (1) to withdraw the ap-

proval of an exclusive negotiator under subsection (b)(1)(C) or (c)(1)(C), if not less than 30 percent of the health care providers or purchasers in the appropriate sector file a petition with the Board for such withdrawal.

"(B) VOTE ON WITHDRAWAL.—If the Board determines that a petition received under subparagraph (A) is valid, the Board shall arrange for a vote to take place among the appropriate purchasers or providers to determine whether to withdraw the approval that is the subject of such petition. If in excess of 50 percent of such providers or purchasers vote to withdraw such approval, the Board shall certify that such approval is withdrawn and initiate procedures to select a new negotiator or negotiators.

"(3) LIMITATION AND ELECTION.—

"(A) LIMITATION.—With respect to a sector in which no exclusive negotiator has been approved under subsection (b)(1)(C) or (c)(1)(C), the Board may not grant approvals to organizations and individuals under paragraph (1)(B) of each such subsection, as applicable, in a manner that would result in the approval of individuals and organizations representing in excess of 100 percent of the purchasers or providers.

"(B) ELECTION.—In the event that petitions are received (whether or not approvals have previously been granted) under subsection (b)(1)(B) or (c)(1)(C), from organizations or individuals cumulatively representing in excess of 100 percent of the purchasers or providers in a sector the Board shall conduct an election among such qualified organizations or individuals to determine which such organizations and individuals will be approved or have their approval continued.

"(4) PERIOD OF DESIGNATION.—No organization or individual shall be a negotiator or an exclusive negotiator for more than a 5-year period without being recertified as a negotiator or exclusive negotiator in the same manner as the original designation was made under this section.

"(5) TIMING.—Any vote or election held under this subsection to determine the negotiators for a particular year, shall be completed prior to June 30 of that year. Votes or elections completed after such date shall apply to the negotiations for the following year.

"REQUIREMENTS FOR RECOMMENDED PAYMENT SYSTEMS AND RATES

"SEC. 1175. (a) HOSPITALS.—

"(1) NEGOTIATED AGREEMENT.—A payment system for hospitals that is recommended in an agreement negotiated pursuant to section 1176 shall be based on the hospital payment system established under title XVIII of this Act, except that the Board may approve or adopt an alternative payment system.

"(2) ALTERNATIVE PAYMENT SYSTEM.—An alternative payment system approved or adopted under paragraph (1) shall provide for the adjustment of payment rates to reflect the differences in costs between different types of hospitals to the extent that such costs represent appropriate differences in the costs of delivering care efficiently and effectively in different types of hospitals or are necessary to achieve other public policy objectives, as determined by the Board. Such a payment system shall reflect geographic differences in labor and to the extent feasible, other input costs, capital and other needs to maintain adequate access to care and quality of care. To the extent desirable and feasible, the negotiators shall recommend, and the Board shall approve, special treatment for managed care programs.

"(b) PHYSICIANS.—

"(1) NEGOTIATED AGREEMENT.—A payment system for physicians that is recommended in an agreement negotiated pursuant to section 1176 shall be based on the physician payment system established under title XVIII of this Act, except that the Board may approve or adopt an alternative payment system.

"(2) ALTERNATIVE PAYMENT SYSTEM.—An alternative payment system approved or adopted under paragraph (1) shall reflect geographic differences in practice costs insofar as those differences reflect the cost of economical and efficient provision of quality care, and shall promote an appropriate distribution of primary and specialty care. To the extent desirable and feasible, the negotiators shall recommend, and the Board shall approve, special treatment for managed care programs.

"OUTCOME OF NEGOTIATIONS, AGREEMENTS

"SEC. 1176. (a) AGREEMENT.—If a majority of the negotiators (in the case of multiple negotiators) for the providers and a majority of the negotiators (in the case of multiple negotiators) for the purchasers, for a particular sector, agree to recommend a proposal under this part to the Board, such proposal shall be considered to have been agreed to by the negotiators.

"(b) BINDING NATURE OF AGREEMENTS.—If a negotiated agreement is reached, pursuant to subsection (a), concerning a health services rate structure, or concerning any other matter that would lead to the achievement of the goals developed by the Board under section 1172, or an alternative goal accepted by the Board under subsection (c), and such agreement, in the judgment of the Board, will lead to the achievement of such goals, the Board shall promulgate regulations implementing such rates and other matters and such rates and other matters shall be binding on providers and purchasers in the sector to which such agreement applies.

"(c) AGREEMENT ON DIFFERENT GOAL.—If the negotiators reach an agreement, pursuant to subsection (a), concerning a goal that is different than a goal that has been developed by the Board under section 1172, the Board shall adopt such agreed upon goal if the Board determines that it would be in the best interest of the general public to adopt such goal. The Board, on a rejection of such alternative agreed upon goal, may request that the negotiators attempt to reach a negotiated agreement concerning the original goal under section 1172, and such other measures to achieve such original goal, and may promulgate regulations recommending rates and other matters to achieve the original goal.

"(d) EFFECT OF NO AGREEMENT.—

"(1) IN GENERAL.—If the negotiators for a particular sector fail to reach a negotiated agreement, pursuant to subsection (a), concerning a goal established under section 1172, the Board shall promulgate regulations recommending advisory rates and other matters necessary to achieve such goals. Such advisory rates and other matters shall not be binding on health care providers and purchasers.

"(2) CONSTRUCTION.—Notwithstanding any other provision of law, health care purchasers may combine for the purpose of agreeing to pay health care providers for services at rates recommended pursuant to paragraph (1).

"(e) TECHNICAL ASSISTANCE.—The Board shall provide technical assistance to negotiators, including estimates of the effect on expenditure goals of alternative proposals and estimates of utilization changes that can be expected under different proposals. The

Board may recommend a proposal to achieve expenditure goals for the consideration of the negotiators. The Board may make available professional mediation and conciliation services to the negotiators.

"ENFORCEMENT

"SEC. 1177. (a) IN GENERAL.—A health care provider assessing rates other than those required under regulations promulgated by the Board under this part, or failing to comply in any other manner with such regulations, or a health care purchaser paying rates other than those required under such regulations, except in the case of an alternative rate or method established under subsections (a)(2) and (b)(2) of section 1175, shall—

"(1) be ineligible for any assistance under this Act; and

"(2) be liable to the United States for a civil penalty for such failure in an amount not to exceed \$50,000 in the case of an individual and \$500,000 in the case of an organization, as provided for in subsection (b).

"(b) CIVIL ACTIONS.—

"(1) IN GENERAL.—A civil penalty under subsection (a)(2) shall be assessed by the Board on a health care provider or purchaser by an order made on the record after an opportunity for a Board hearing on any disputed issues of material fact and the amount of the penalty. In the course of any investigation or hearing under this paragraph, the Board or its designees may administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

"(2) AMOUNT.—In determining the amount of a civil penalty under paragraph (1), the Board shall take into account the nature, circumstances, extent, and gravity of the act subject to penalty, the ability to pay, the effect on the ability to continue to do business, any history of prior, similar acts, and such other matters as the Board determines appropriate.

"(3) LIMITATION ON ACTIONS.—The Board may not initiate an action under this subsection with respect to any noncompliance described in subsection (a) that occurred before the date of the enactment of this section.

"(c) INJUNCTIVE RELIEF.—The Board shall have the power, upon the initiation of an action regarding noncompliance with a provision of this part, to petition any United States district court, within any district wherein such noncompliance is alleged to have occurred, for appropriate temporary injunctive relief. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant the Board such temporary injunctive relief as the court determines to be appropriate.

"(d) JUDICIAL REVIEW.—Any health care provider or purchaser that is the subject of an adverse decision under subsection (b)(1) or subsection (c) may obtain a review of such decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the provider or purchaser resides, by filing in such court (within 60 days following the date the purchaser or provider is notified of the decision of the Board) a petition requesting that the decision be modified or set aside.

"ROLE OF STATES

"SEC. 1178. (a) ALTERNATIVE SYSTEMS, ETC.—A State consortia described in part D of this title may, with the approval of the Board, establish an alternative payment sys-

tem, rates, and methods for achieving goals developed by the Board under section 1172.

"(b) APPROVAL.—The Board shall approve alternative payment systems, rates, and methods under subsection (a) if Board determines that such alternative systems, rates, or methods would result in a level of health care expenditures in the State that achieves the national goals developed under section 1172, adjusted to the State level. If the Board determines that such national goals would not be achieved through the proposed alternative systems, rates or methods, the rates or other matters that apply to the State under regulations promulgated by the Board shall remain binding in the State. Such Board approval is only necessary where binding payment systems, rates and methods are not promulgated under a negotiated agreement.

"(c) STANDARD FOR DETERMINATION.—In making a determination under subsection (b), the Board shall consider the effect of the alternative systems, rates or methods, with respect to the goals established under section 1172, on the State as a whole rather than on particular health care sectors in the State.

"OTHER GOVERNMENT PROGRAMS

"SEC. 1179. The Board shall promulgate regulations recommending advisory rates and other matters necessary to achieve the goals established under section 1172 for all Federal programs (other than the program under title XVIII of this Act) that reimburse providers on a fee, charge, or cost basis or charge third-party providers on such basis. Such nonbinding rates shall be consistent with the rates promulgated by the Board under sections 1176 and 1178, except that Federal payments resulting from such rates shall be no greater than such payments would have been if determined without regard to this section through the fifth full fiscal year after the date of enactment of this section.

"UNIFORM BILLING AND MANDATORY REPORTING

"SEC. 1180. (a) IN GENERAL.—The Board shall establish a system of uniform billing and reporting, as required under subsection (c), that will enable the Board to determine the progress made in meeting the goals established under section 1172, to provide information for health care providers and purchasers to assist such providers and purchasers in providing and obtaining efficiently provided quality health care, and to reduce administrative costs of the health care system.

"(b) GENERAL REPORTING AND DATA REQUIREMENTS.—The Board shall—

"(1) develop a computerized system for the collection, analysis, and dissemination of data required to be collected under this part;

"(2) establish one or more uniform claims and billing form as required in subsection (c)(2) to be utilized by all data sources and providers;

"(3) audit information provided by health care providers on a sample basis or in situations where there exists reasonable cause for such an audit; and

"(4) issue public reports concerning health care costs and the effectiveness of the health care provided by health care providers.

"(c) DATA COLLECTION.—

"(1) IN GENERAL.—Data sources shall submit to the Board, on the request of the Board, all data required to be submitted under this part in accordance with the uniform submission formats, coding systems, and other technical specifications established by the Board to assure that such in-

coming data is substantially valid, consistent, compatible and manageable.

"(2) UNIFORM CLAIMS AND BILLING FORMS.—Data shall be collected by the Board through the use of one or more Federal Uniform Claims and Billing Forms developed by the Board and utilized by providers and purchasers of health care that shall, at a minimum, include—

"(A) a uniform patient identifier;

"(B) the date of birth of the patient;

"(C) the gender of the patient;

"(D) the ZIP Code of the patient;

"(E) the date of admission of the patient for inpatient hospital services;

"(F) the date of discharge of the patient referred to in subparagraph (E);

"(G) the principal and secondary diagnoses of the patient;

"(H) the principal and secondary procedures to be followed in treating the patient;

"(I) a uniform health care facility identifier;

"(J) uniform identifiers of physicians treating the patient;

"(K) for services provided in an inpatient setting, the total charges of the health care facility treating the patient, segregated into major categories determined appropriate by the Board;

"(L) the amounts of actual payments made to the treating health care facility;

"(M) the amounts of the charges of each physician or professional rendering service to the patient;

"(N) the services provided in an inpatient setting;

"(O) the amounts of actual payments made to each physician or professional rendering service to the patient;

"(P) a uniform identifier of the primary payer;

"(Q) the ZIP Code of the facility where service is rendered to the patient;

"(R) the patient discharge status; and

"(S) such other material as the Board determines necessary or useful to carry out the duties of the Board or to provide adequate information to purchasers of health care to assist such purchasers in appropriately paying for services.

"(3) MEASURE OF SERVICE EFFECTIVENESS.—

"(A) DEVELOPMENT OF METHODOLOGY.—To the extent practical and as rapidly as feasible, the Secretary shall develop and implement a methodology or methodologies that will measure the effectiveness of the health care service provided by health care providers.

"(B) INCLUSION IN UNIFORM BILLING FORM.—To the extent practical and as rapidly as feasible, the Secretary shall include in the uniform claims and billing forms or in other data collection instruments established under subsection (b) data necessary to provide the Secretary with information concerning each service provided by health care providers that is sufficient to enable the Secretary to analyze the quality, cost, and service effectiveness of the provider.

"(4) ADDITIONAL DATA.—The Board may collect additional data, including audited annual financial reports of all hospitals and ambulatory service facilities, medicare cost reports, information on capital expenditures, and any other data that the Board determines necessary to carry out its responsibilities under this part.

"(5) RECOMMENDATIONS.—The Board shall make recommendations to the committees of Congress, the President, and the insurance industry concerning methods to reduce the cost and burden of duplication or excessive reporting requirements imposed on health care providers.

"(d) REPORTS.—"

"(1) IN GENERAL.—The Board, not less than once each calendar year, shall for every health care provider for which sufficient data is available, prepare and make available reports that shall, to the extent practicable and scientifically valid, contain data in a form that will provide the most useful information to purchasers of health care services regarding such providers to enable such purchasers to compare providers on the basis of cost and quality.

"(2) AVAILABILITY.—The Secretary shall advertise and make available all reports prepared under paragraph (1) to the general public, including any dissents submitted by health care providers.

"(3) RECOMMENDATIONS.—The Board shall make recommendations to the appropriate committees of Congress, the President, and the insurance industry concerning methods to reduce the cost and burden of duplicative or excessive reporting requirements imposed on health care providers.

"(e) DEFINITION.—As used in this section, the term 'data sources' means classes of entities and individuals that the Board designates as data sources.

"ANNUAL REPORTS"

"SEC. 1181. Not later than June 30 of each year, the Board shall prepare and submit to the President, the appropriate committees of Congress and the general public, a report concerning the success in attaining expenditure, access, and quality goals developed under section 1172, and containing recommendations for additional measures, if any, that the Board determines are necessary to achieve such goals.

"DEFINITIONS"

"SEC. 1182. As used in this part:

"(1) HEALTH BENEFIT PLAN.—The term 'health benefit plan' means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1))) that—

"(A) provides medical care to participants or beneficiaries directly or through insurance, reimbursement, or otherwise; and

"(B) meets the requirements of section 2721 of the Public Health Service Act.

Such term shall include a small business health benefits plan, as defined in section 2713(1) of such Act.

"(2) MANAGED CARE PLAN.—The term 'managed care plan' has the meaning given such term by section 2108(a)(6).

"(3) PROVIDER.—The term 'provider' means a physician, hospital, health maintenance organization, pharmacy, laboratory, or other appropriately licensed provider of health care services or supplies, that has entered into an agreement with a managed care entity to provide such services or supplies to a patient enrolled in a managed care plan.

"(4) PURCHASER.—The term 'purchaser' means an entity that pays for services of providers, including in the case of a health benefit plan provided pursuant to a collective bargaining agreement, the labor union that has negotiated for such plan on behalf of employees shall be considered to be a purchaser.

"EFFECTIVE DATES"

"SEC. 1183. The Board shall develop the goals under section 1172 for each calendar year beginning not later than the second full calendar year after the date of the enactment of this part. The Board shall establish the negotiating procedures required under section 1173(a) for each calendar year beginning not later than the third calendar year

after the date of the enactment of this part."

(c) CONFORMING AMENDMENTS.—

(1) COMPENSATION, LEVEL III.—Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Members, Federal Health Expenditure Board."

(2) COMPENSATION, LEVEL IV.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Members, Federal Health Expenditure Board."

(d) MEDICARE.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

"FEDERAL HEALTH EXPENDITURE BOARD"

"SEC. 1893. (a) HOSPITAL SERVICES.—Notwithstanding any other provision of this title, in the second full fiscal year after the date of enactment of this section and annually thereafter, the Federal Health Expenditure Board (hereafter in this section referred to as the 'Board') shall, with due regard to the recommendations of the Prospective Payment Assessment Commission, recommend—

"(1) the update factor for the DRG prospective payment rates provided in section 1886(d);

"(2) the DRG recalibration;

"(3) the update factor for excluded hospitals; and

"(4) such other matters relating to reimbursement under this title as the Board shall elect.

In making such recommendations to the Congress, the Board shall also make recommendations for modifications of the prospective payment system under this title. In recommending the update factor for DRG prospective payment rates and for excluded hospitals, the Board shall seek to maintain parity in increases in payment rates with other purchasers of health care services, and, shall over time, seek to achieve comparability in such rates. Such recommendations shall not result in Federal payments greater than such payments would have been if determined without regard to this section through the fifth full fiscal year after the date of enactment of this section.

"(b) PHYSICIAN SERVICES.—Notwithstanding any other provision of this title, in the second full fiscal year after the date of enactment of this section and annually thereafter, the Board shall, with due regard to the recommendations of the Physician Payment Review Commission, recommend—

"(1) appropriate modifications of the resource based relative value schedule provided for in section 1848;

"(2) volume performance standards provided for in section 1848(f);

"(3) updates in the conversion factor, consistent with the volume performance standards, provided in section 1848(d);

"(4) revisions of the geographical adjustment factors provided in section 1848(e); and

"(5) such other matters relating to reimbursement under this title as the Board shall elect.

In making such recommendations to the Congress, the Board shall also make recommendations for modifications of the physician payment system under this title. In making the recommendations described in paragraphs (1), (2), (3), and (4), the Board shall seek to maintain parity in increases in payment rates with other purchasers of health care services, and shall, over time, seek to achieve comparability in such rates. Such recommendations shall not result in

Federal payments greater than such payments would have been if determined without regard to this section through the fifth full fiscal year after the date of enactment of this section."

Subtitle C—State Purchasing Consortia**SEC. 421. STATE PURCHASING CONSORTIA**

(a) PUBLIC HEALTH SERVICE ACT.—Title XXVII of the Public Health Service Act (as added by section 101 and amended by sections 201, 311 and 411) is further amended by adding at the end thereof the following new part:

"PART E—STATE PURCHASING CONSORTIA**"SEC. 2781. STATE PURCHASING CONSORTIA.**

"(a) REQUIREMENT.—

"(1) ESTABLISHMENT BY STATE.—Not later than 1 year after the date of enactment of this part, or the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this part, whichever is later, the State shall establish a State Consortium (hereafter referred to in this section as the 'consortium') which may be a public or nonprofit private entity, or be a member of a Regional Consortium in accordance with subsection (f), that shall carry out the activities described in subsection (d).

"(2) ESTABLISHMENT BY SECRETARY.—If a State fails to establish a State consortium as required under paragraph (1), the Secretary shall develop and implement a State consortium for such State.

"(b) BOARD OF DIRECTORS AND MEMBERSHIP.—

"(1) BOARD OF DIRECTORS.—

"(A) IN GENERAL.—A consortium shall be managed by a board of directors who shall be appointed and serve in accordance with guidelines and regulations developed by the State.

"(B) MANDATORY FUNCTIONS.—The guidelines and regulations developed under subparagraph (A) shall ensure that, for purposes of carrying out the mandatory functions under subsection (d)(1), the board of directors will be composed of insurers, providers and consumers.

"(C) OPTIONAL FUNCTIONS.—The guidelines and regulations developed under subparagraph (A) shall ensure that, for purposes of carrying out the optional functions under subsection (d)(2), the board of directors will be composed of individuals who represent the balanced interests of all interested parties.

"(2) MEMBERSHIP IN CONSORTIUM.—All providers and purchasers of health insurance and health care in the State, including business, labor, and consumer organizations, shall be eligible to become members of the consortium in such State.

"(c) APPLICATION AND PLAN, GRANTS AND TECHNICAL ASSISTANCE.—

"(1) APPLICATION AND PLAN.—

"(A) REQUIREMENT.—Prior to the establishment of the State consortium, the State shall prepare and submit to the Secretary for approval, an application in such form and containing such information as the Secretary may require, including the plan described in subparagraph (B).

"(B) PLAN.—As part of the application submitted under subparagraph (A), the State shall prepare a plan that shall outline the form of the State consortium and that shall include a description—

"(i) of the guidelines applicable to the appointment and service of the board of directors of the consortium;

"(ii) of the manner in which the State will solicit membership for the consortium;

"(iii) of the manner in which the consortium will perform the mandatory functions under subsection (d)(1);

"(iv) of the optional functions that the consortium will perform under subsection (d)(2); and

"(v) of any other information that the Secretary determines appropriate.

"(2) GRANTS.—

"(A) IN GENERAL.—The Secretary shall award a grant to each State to assist the State in paying the costs associated with the establishment and initial operation of the State consortium.

"(B) AMOUNTS.—Not less than \$150,000 shall be provided to each State under a grant awarded under this subparagraph (A), except that additional amounts may be provided to a State if the Secretary determines, based on an application that is submitted by the State for such amounts, that such amounts are needed to help defray the costs associated with optional functions provided by the consortium under the State plan submitted under paragraph (1)(B).

"(C) PLANNING FUNCTIONS.—Except as provided in subparagraph (B), amounts provided under grants awarded under this paragraph shall be utilized for planning functions only.

"(3) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States in setting up the State consortia.

"(d) FUNCTIONS OF CONSORTIUM.—

"(1) MANDATORY FUNCTIONS.—The State consortium shall—

"(A) enroll all small share health insurance companies in the State as members of the consortium for insurers, purchasers and providers;

"(B) establish a claim payment fund and procedures for the payment, by the consortium on behalf of its enrollees, of valid claims submitted by providers or enrollees to the consortium, such fund to be capitalized through public and private contributions and assessments made by the consortium on such enrollees to reflect amounts paid from such fund on behalf of each such enrollee;

"(C) develop, in consultation and with the assistance of the Secretary and consistent with the program established under part D, and employ uniform billing and claim form and procedures for providers of health services covered by enrollees, and for individuals submitting claims directly to the consortium;

"(D) further attempt to reduce administrative costs and burdens on enrollees and providers of health services, through—

"(i) the maintenance of a staff to explain claims procedures (that shall be consistent with claims procedures adopted under title XVIII of the Social Security Act) to providers and enrollees and to provide such other services as may assist providers in receiving reimbursement promptly and at the lowest possible cost;

"(ii) establish, to the maximum extent practicable, a paperless processing system to permit providers to submit claims electronically to the consortium;

"(iii) establish, to the maximum extent practicable, the use of 'smart cards' or other electronic methods for immediate verification by providers of an individuals' health insurance coverage;

"(iv) encouraging providers to submit claims directly to the consortium on behalf of enrollees; and

"(v) the conduct of appropriate utilization reviews;

"(E) carry out any other activities determined appropriate by the Secretary; and

"(F) cooperate with the Federal Health Expenditure Board established under part D.

"(2) OPTIONAL FUNCTIONS.—The State consortium may—

"(A) permit insurers with a large share of the market in a State to participate in the consortium;

"(B) convene negotiations with health care providers and purchasers and others, as appropriate, concerning the availability of health care services, coverage and reimbursement levels for such services, and claim submission and payment procedures (activities undertaken as a result of such negotiations shall be exempt from Federal anti-trust laws if such activities are authorized by the State);

"(C) develop procedures for—

"(i) the allocation of capital among health care providers to encourage an adequate and efficient level and distribution of health care resources;

"(ii) encouraging a rational distribution of health care providers; and

"(iii) encouraging the development of managed care;

"(D) the collection and dissemination of data through a Statewide data organization that is accessible to all interested parties in the State in order to facilitate appropriate decisions by consumers and to encourage efficient behavior by providers;

"(E) coordinate with entities responsible for assuring the quality of health care provided within the State; and

"(F) carry out any other activities that are contained within the State plan and approved by the Secretary and that are designed to improve the quality of health care, access to such care, and to control the costs of such care.

"(3) APPLICABILITY OF CONSUMER PROTECTION LAWS.—Notwithstanding any other provision of law, the provisions of the Consumer Product Safety Act and other Federal consumer protection laws shall apply to the functions carried out under paragraph (1).

"(4) MANAGED CARE.—This subsection shall not be construed as limiting the ability of a managed care plan to select providers eligible to perform services under the plan, or to establish reasonable procedures to be followed by providers participating in the plan, to assure the provision of cost-effective, quality services.

"(5) SMALL SHARE HEALTH INSURANCE COMPANIES.—As used in this subsection, the term 'small share health insurance companies' shall include entities determined appropriate by the Secretary. In making such determination, the Secretary shall seek to minimize the number of sources reimbursing providers directly in the State but shall permit insurers with a market share that is large enough to sufficiently achieve the economies of scale sought through the consortium, to remain independent of the consortium, to the extent that permitting such separate payment sources would not dilute the purpose of the consortium.

"(e) DATA AND INFORMATION.—A State consortium shall collect or provide for the collection of data and information concerning the operations of the consortium and shall provide such data and information to the Secretary on an annual basis.

"(f) REGIONAL CONSORTIUM.—States may enter into an agreement for the establishment of a regional consortium that shall have jurisdiction over all States that are parties to such agreement and that shall be subject to the provisions of this section as if such consortium were established by a single State.

"(g) ENFORCEMENT.—A State that fails to comply with the requirements of this section shall be ineligible to receive assistance made available under this Act.

"(h) STUDY.—Not later than 3 years after the date of enactment of this part, the Secretary shall prepare and submit to the appropriate committees of Congress, a report that shall contain the results of a study conducted by the Secretary concerning the State consortia system established under this section, and whether such consortia are effective in containing health care costs, in expanding the availability of access to such care, and in protecting and enhancing the quality of such care.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section."

(b) SOCIAL SECURITY ACT.—Title XI of the Social Security Act (as amended by section 41) is further amended by adding at the end thereof the following new part:

"PART D—STATE PURCHASING CONSORTIA

"STATE PURCHASING CONSORTIA

"SEC. 1191. (a) MEMBERSHIP IN CONSORTIUM.—

"(1) IN GENERAL.—A State may, with the approval of the Secretary, require that the providers operating under the programs conducted under titles XVIII, XIX, and XXI of this Act in the State, participate in the State consortium for purposes of claims processing and for such other purposes as the Secretary may approve, in the least restrictive manner practicable.

"(2) WAIVERS.—With respect to a State requirement under paragraph (1) that providers under titles XVIII, XIX, and XXI of this Act participate in the consortium, the Secretary may waive such requirement on the request of such a provider, if the Secretary determines, on a budget neutral basis, that such waiver is necessary to protect the access of the beneficiaries of such provider to care provided by such provider, and that such waiver will promote the cost effective delivery of services.

"(b) FUNCTIONS OF CONSORTIUM.—

"(1) MANDATORY FUNCTIONS.—The State consortium shall—

"(A) enroll all small share health insurance companies in the State as members of the consortium for insurers, purchasers and providers;

"(B) establish a claim payment fund and procedures for the payment, by the consortium on behalf of its enrollees, of valid claims submitted by providers or enrollees to the consortium, such fund to be capitalized through public and private contributions and assessments made by the consortium on such enrollees to reflect amounts paid from such fund on behalf of each such enrollee;

"(C) develop, in consultation and with the assistance of the Secretary and consistent with the program established under part C, and employ uniform billing claim forms and procedures for providers of health services covered by enrollees, and for individuals submitting claims directly to the consortium;

"(D) further attempt to reduce administrative costs and burdens on enrollees and providers of health services, through—

"(i) the maintenance of a staff to explain claims procedures (that shall be consistent with claims procedures adopted under title XVIII of this Act) to providers and enrollees and to provide such other services as may assist providers in receiving reimbursement promptly and at the lowest possible cost;

"(ii) establish, to the maximum extent practicable, a paperless processing system to permit providers to submit claims electronically to the consortium;

"(iii) establish, to the maximum extent practicable, the use of 'smart cards' or other electronic methods for immediate verification by providers of an individual's health insurance coverage;

"(iv) encouraging providers to submit claims directly to the consortium on behalf of enrollees; and

"(v) the conduct of appropriate utilization reviews;

"(E) carry out any other activities determined appropriate by the Secretary; and

"(F) cooperate with the Federal Health Expenditure Board.

"(2) OPTIONAL FUNCTIONS.—The State consortium may—

"(A) permit insurers with a large share of the market in a State to participate in the consortium;

"(B) convene negotiations with health care providers and purchasers and others, as appropriate, concerning the availability of health care services, coverage and reimbursement levels for such services, and claim submission and payment procedures (activities undertaken as a result of such negotiations shall be exempt from Federal antitrust laws if such activities are authorized by the State);

"(C) develop procedures for—

"(i) the allocation of capital among health care providers to encourage an adequate and efficient level and distribution of health care resources;

"(ii) encouraging a rational distribution of health care providers; and

"(iii) encouraging the development of managed care;

"(D) the collection and dissemination of data through a Statewide data organization that is accessible to all interested parties in the State in order to facilitate appropriate decisions by consumers and to encourage efficient behavior by providers;

"(E) coordinate with entities responsible for assuring the quality of health care provided within the State; and

"(F) carry out any other activities that are contained within the State plan and approved by the Secretary and that are designed to improve the quality of health care, access to such care, and to control the costs of such care.

"(3) APPLICABILITY OF CONSUMER PROTECTION LAWS.—Notwithstanding any other provision of law, the provisions of the Consumer Product Safety Act and other Federal consumer protection laws shall apply to the functions carried out under paragraph (1).

"(4) MANAGED CARE.—This subsection shall not be construed as limiting the ability of a managed care plan to select providers eligible to perform services under the plan, or to establish reasonable procedures to be followed by providers participating in the plan, to assure the provision of cost-effective, quality services.

"(5) SMALL SHARE HEALTH INSURANCE COMPANIES.—As used in this subsection, the term 'small share health insurance companies' shall include entities determined appropriate by the Secretary. In making such determination, the Secretary shall seek to minimize the number of sources reimbursing providers directly in the State but shall permit insurers with a market share that is large enough to sufficiently achieve the economies of scale sought through the consortium, to remain independent of the consortium, to the extent that permitting such separate pay-

ment sources would not dilute the purpose of the consortium.

"(c) DATA AND INFORMATION.—A State consortium shall collect or provide for the collection of data and information concerning the operations of the consortium and shall provide such data and information to the Secretary on an annual basis.

"(d) REGIONAL CONSORTIUM.—States may enter into an agreement for the establishment of a regional consortium that shall have jurisdiction over all States that are parties to such agreement and that shall be subject to the provisions of this section as if such consortium were established by a single State.

"(e) ENFORCEMENT.—A State that fails to comply with the requirements of this section shall be ineligible to receive payments under section 2109 of this Act."

Subtitle D—Cost Control Grant Program

SEC. 431. COST CONTROL GRANT PROGRAM.

Part A of title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 905. COST CONTROL GRANT PROGRAM.

"(a) IN GENERAL.—The Administrator may award grants and enter into contracts with States, public entities, insurers, health plan administrators, businesses, labor unions, non-profit organizations, and researchers for the development, demonstration, and evaluation of innovative methods for reducing health care costs.

"(b) APPLICATION.—To be eligible for a grant or contract under subsection (a), an entity of the type described in such subsection shall prepare and submit, to the Administrator, an application at such time, in such form, and containing such information as the Administrator shall require.

"(c) PREFERENCES.—In awarding grants or entering into contracts under subsection (a), the Administrator shall give a preference to entities submitting applications under subsection (b) that propose to implement projects, with assistance provided under this section, with the potential to develop programs that could have a significant impact on overall national health care costs.

"(d) CLEARINGHOUSE.—

"(1) ESTABLISHMENT.—The Administrator shall establish a clearinghouse, and undertake such other activities as may be necessary, to disseminate information concerning successful health care cost control methods and to provide technical assistance in the implementation of such methods.

"(2) OPERATION.—The Administrator may reserve not to exceed 10 percent of the amount appropriated under subsection (g) in each fiscal year for the operation of the clearinghouse, the dissemination of information, and the provision of technical assistance under paragraph (1).

"(e) CONSULTATION.—In developing the procedures for awarding grants under this section, the Secretary shall consult with the Federal Health Expenditure Board established under part D of title XXVII.

"(f) MATCHING REQUIREMENT.—In the case of a grant awarded for the conduct of a demonstration program that will provide a direct benefit to the grantee, the Administrator shall not award such grant unless the grantee agrees to provide additional amounts for such program equal to not less than 25 percent of the amount of the grant. Such additional amounts may be in cash or in kind.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be

necessary in each of the fiscal years 1992 through 1994."

Subtitle E—Malpractice Reform

SEC. 441. MALPRACTICE REFORM.

Part A of title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) as amended by section 431 is further amended by adding at the end thereof the following new section:

"SEC. 906. MALPRACTICE REFORM.

"(a) IN GENERAL.—The Administrator may award grants to States for the development and implementation of programs for medical malpractice reforms. Programs receiving such grants shall include efforts to develop alternative methods to resolve liability disputes that fairly protect the interests of all parties involved and may include an appropriate role for the use of medical practice guidelines. No grant shall be awarded that is inconsistent with the goal of—

"(1) reducing excessive health care costs;

"(2) reducing unnecessary or ineffective medical care;

"(3) improving access to quality health care;

"(4) ensuring fair and adequate compensation for and review of injuries arising from medical negligence;

"(5) ensuring reasonable insurance rating and premium setting practices; and

"(6) improving patient protections, disciplinary standards for health care professionals, and the effectiveness of State medical boards.

"(b) TYPES OF GRANTS.—A grant awarded under subsection (a) shall be either—

"(1) a planning grant, to assist the grantee in the development of a program under this section that shall be for a period of not to exceed two years; or

"(2) an operational grant, to assist the grantee in operation and evaluation of the new program referred to in paragraph (1), that shall be for a period of not to exceed five years.

"(c) REQUIREMENT.—An operational grant under subsection (b)(2) shall include a requirement that an evaluation, approved by the Administrator as being adequate, is conducted to determine the effectiveness of the program for which the grant is utilized. A final report on the results of the evaluation shall be prepared and submitted to the Administrator.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section."

SEC. 442. STUDY OF MEDICAL MALPRACTICE.

(a) CONTRACT.—The Secretary shall enter into a contract with the Institute of Medicine, or with a similar independent entity, for the collection and analysis of data and issues, by a group of representatives of interested parties and experts, related to—

(1) ineffective or unnecessary medical testing and practices;

(2) the occurrence of malpractice and malpractice awards (including the number of claims filed and the number of findings of negligence);

(3) the adequacy of existing health care provider licensing and disciplining procedures in preventing malpractice;

(4) the reasonableness of malpractice insurance premiums and rate-setting practices; and

(5) any other issues relevant to the adequacy of current medical practices, of compensation for injuries resulting from medical malpractice, and the impact of legal liability on medical practices.

(b) RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act,

the Institute or entity referred to in subsection (a) shall make available to the Secretary, the appropriate committees of Congress, the appropriate State officials, and to the general public, a report containing the recommendations of the Institute or entity for any desirable medical malpractice reforms.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

Subtitle F—Reducing the Administrative Cost of Assuring Appropriate Utilization of Health Care Services and Improving the Quality of Health Care Services

SEC. 451. ESTABLISHMENT OF A QUALITY IMPROVEMENT BOARD.

(a) PUBLIC HEALTH SERVICE ACT.—Title XXVII of the Public Health Service Act (as added by section 101 and amended by sections 201, 311, 411, and 421) is further amended by adding at the end thereof the following new part:

"PART F—ESTABLISHMENT OF A QUALITY IMPROVEMENT BOARD

"SEC. 2785. ESTABLISHMENT OF A QUALITY IMPROVEMENT BOARD.

"(a) CONTRACT.—The Secretary shall enter into a contract with an entity in each State (such entity shall hereafter be referred to in this section as the 'quality improvement board') to review the quality of health care provided by health care professionals and institutions in each such State and to establish mechanisms to encourage continuous quality improvement.

"(b) BOARD OF DIRECTORS.—

"(1) REQUIREMENT.—The quality improvement board shall, in accordance with Federal guidelines and regulations and in accordance with the requirements of the contract entered into under subsection (a), be managed by a board of directors.

"(2) MEMBERSHIP.—The board of directors required under paragraph (1) shall consist of 15 members, of whom—

"(A) seven members shall be representatives of health care providers, including individuals of recognized excellence in the development, application, and evaluation of health care services, procedures, and technologies;

"(B) four members shall be representatives of insurers and purchasers of health care services; and

"(C) four members shall be health care service researchers and consumers.

"(3) DUTIES.—The board of directors shall adopt policies for the quality improvement board, approve the budget of the quality improvement board, appoint the executive director of the quality improvement board, and shall assume such other duties as the Secretary may prescribe or the board of directors shall determine to be necessary to the proper functioning of the quality improvement board.

"(c) DUTIES OF THE QUALITY IMPROVEMENT BOARD.—

"(1) GUIDELINES.—

"(A) REQUIREMENT.—The quality improvement board shall adopt guidelines for appropriate medical practice and for recommended measures to be taken by providers to improve the quality of care.

"(B) CONTENTS.—Guidelines adopted under subparagraph (A) shall include those of the type developed under the authority of section 912 and such guidelines as the Secretary may specify, and may include additional guidelines developed by professional societies or other appropriately qualified bodies or individuals.

"(2) RECOMMENDED MEASURES.—In cooperation with appropriate professional bodies, associations, and the Joint Commission on Accreditation of Hospitals, the quality improvement board shall recommend measures for continuous quality improvement to be adopted by health care professionals and institutions. Such measures shall include measures specified by the Secretary, appropriate continuing medical education and, for health care institutions, internal quality improvement procedures.

"(3) CERTIFICATION OF PROVIDERS.—The quality improvement board shall periodically review the performance of health care service providers and, based on—

"(A) the conformity of the practice of the provider with the guidelines developed by the board;

"(B) such measures of health care outcomes as may be scientifically valid and adopted by the board;

"(C) adoption by the provider of the measures for continuous quality improvement recommended by the board; and

"(D) such other factors as the board or the Secretary may prescribe; and

may certify a health care provider as an outstanding provider for the purpose of this section.

"(4) LIMITATION ON CERTIFICATION.—A certification under paragraph (3) shall be examined periodically by the quality improvement board to determine if continued certification is appropriate. The quality improvement board may suspend the certification of a provider at any time. At the request of a health plan, insurance company or State agency, the board must reconsider the certification of a provider.

"(5) DATA COLLECTION.—The quality improvement board shall collect and review such data and conduct such inspections and evaluations as are necessary to enable the board to carry out its duties. At the request of the board, insurers shall provide the board with any data collected in the normal course of business as the board determines necessary to perform its duties. The data collected by the Federal Health Expenditure Board under part D and the data collected by the State consortia under part E shall be made available to the board.

"(d) RESTRICTION ON LIMITATION OF PAYMENT FOR SERVICES PERFORMED BY OUTSTANDING PROVIDERS.—A health benefit plan may not deny payment for any service performed or ordered by a provider certified as outstanding under subsection (c)(3) during the period of such certification for any reason other than noncoverage of the provided service under the plan. The plan may not deny coverage on the basis that the service is not medically necessary. Nothing in this subsection shall be construed to prohibit a plan from paying for services performed or ordered by such provider at its normal reimbursement rates.

"(e) RECERTIFICATION AND SUSPENSION OF CERTIFICATION.—A provider certified as outstanding under subsection (c)(3) shall be recertified periodically by the quality improvement board unless the board acts to suspend such certification. Such suspensions, at the request of the provider shall be reconsidered.

"(f) EXCEPTION FOR MANAGED CARE PLANS.—Nothing in this section shall be construed to limit the ability of a managed care plan to choose providers eligible to perform services under the plan or to establish reasonable procedures to be followed by providers participating in the plan in order to assure cost-effective, quality services.

"(g) PLANNING GRANTS.—To facilitate the establishment of a quality improvement board in each State, the Secretary may award planning grants, in amounts that shall not exceed \$200,000 for each State, to private, non-profit or public entities, for the planning, development and implementation of the board and the programs undertaken by the board.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section."

(b) SOCIAL SECURITY ACT.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) as amended by sections 411 and 421, is further amended by adding at the end thereof the following new part:

"PART E—ESTABLISHMENT OF A QUALITY IMPROVEMENT BOARD

"ESTABLISHMENT OF A QUALITY IMPROVEMENT BOARD

"SEC. 1195. (a) DUTIES OF THE QUALITY IMPROVEMENT BOARD.—

"(1) GUIDELINES.—

"(A) REQUIREMENT.—The quality improvement board for a State established under section 451(a) of the HealthAmerica Act (hereafter referred to as the 'quality improvement board') shall adopt guidelines for appropriate medical practice and for recommended measures to be taken by providers to improve the quality of care.

"(B) CONTENTS.—Guidelines adopted under subparagraph (A) shall include such guidelines as the Secretary may specify, and may include additional guidelines developed by professional societies or other appropriately qualified bodies or individuals.

"(2) RECOMMENDED MEASURES.—In cooperation with appropriate professional bodies, associations, and the Joint Commission on Accreditation of Hospitals, the quality improvement board shall recommend measures for continuous quality improvement to be adopted by health care professionals and institutions. Such measures shall include measures specified by the Secretary, appropriate continuing medical education and, for health care institutions, internal quality improvement procedures.

"(3) CERTIFICATION OF PROVIDERS.—The quality improvement board shall periodically review the performance of health care service providers and, based on—

"(A) the conformity of the practice of the provider with the guidelines developed by the board;

"(B) such measures of health care outcomes as may be scientifically valid and adopted by the board;

"(C) adoption by the provider of the measures for continuous quality improvement recommended by the board; and

"(D) such other factors as the board or the Secretary may prescribe; and

may certify a health care provider as an outstanding provider for the purpose of this section.

"(4) LIMITATION ON CERTIFICATION.—A certification under paragraph (3) shall be examined periodically by the quality improvement board to determine if continued certification is appropriate. The quality improvement board may suspend the certification of a provider at any time. At the request of a health plan, insurance company or State agency, the board must reconsider the certification of a provider.

"(5) DATA COLLECTION.—The quality improvement board shall collect and review such data and conduct such inspections and evaluations as are necessary to enable the

board to carry out its duties. At the request of the board, insurers shall provide the board with any data collected in the normal course of business as the board determines necessary to perform its duties. The data collected by the Federal Health Expenditure Board under part C and the data collected by the State consortium under part D of title XI shall be made available to the board.

"(b) RESTRICTION ON LIMITATION OF PAYMENT FOR SERVICES PERFORMED BY OUTSTANDING PROVIDERS.—A health benefit plan may not deny payment for any service performed or ordered by a provider certified as outstanding under subsection (a)(3) during the period of such certification for any reason other than noncoverage of the provided service under the plan. The plan may not deny coverage on the basis that the service is not medically necessary. Nothing in this subsection shall be construed to prohibit a plan from paying for services performed or ordered by such provider at its normal reimbursement rates.

"(c) RECERTIFICATION AND SUSPENSION OF CERTIFICATION.—A provider certified as outstanding under subsection (a)(3) shall be recertified periodically by the quality improvement board unless the board acts to suspend such certification. Such suspensions, at the request of a provider, shall be reconsidered.

"(d) EXCEPTION FOR MANAGED CARE PLANS.—Nothing in this section shall be construed to limit the ability of a managed care plan to choose providers eligible to perform services under the plan or to establish reasonable procedures to be followed by providers participating in the plan in order to assure cost-effective, quality services.

"(e) PLANNING GRANTS.—To facilitate the establishment of a quality improvement board in each State, the Secretary may award planning grants, in amounts that shall not exceed \$200,000 for each State, to private, non-profit or public entities, for the planning, development and implementation of the board and the programs undertaken by the board.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section."

Subtitle G—Use of Practice Guidelines in Federal Health Insurance and Service Programs

SEC. 461. USE OF PRACTICE GUIDELINES IN FEDERAL HEALTH INSURANCE AND SERVICE PROGRAMS.

Guidelines developed under the authority of section 912 of the Public Health Service Act (42 U.S.C. 299b-1) shall, to the extent practical and effective, be utilized in Federal health insurance programs as utilization review screens and as practice guidelines in Federal programs providing health care services either directly or through grantees.

Subtitle H—National Standards for the Promotion of Managed Care

SEC. 471. NATIONAL STANDARDS FOR THE PROMOTION OF MANAGED CARE.

Title XXVII of the Public Health Service Act (as added by section 101 and amended by sections 201, 311, 411, 421 and 451) is further amended by adding at the end thereof the following new part:

"PART G—NATIONAL STANDARDS FOR THE PROMOTION OF MANAGED CARE

"SEC. 2791. NATIONAL STANDARDS.

"(a) PROHIBITIONS.—No requirement of any State insurance, health care or any other law or regulation shall—

"(1) prohibit a managed care plan from freely selecting the health care providers, or

the type of health care providers in a locale, as the participating providers; or

"(2) limit the ability of a managed care entity to negotiate, enter into contracts or establish alternative rates or forms of payment for participating providers, or to require or provide incentives that promote the use of participating providers.

"(b) UTILIZATION REVIEW SERVICES.—Notwithstanding any State law, an insurer or other person or entity may offer utilization review services in any State if such insurer, person or entity has established—

"(1) a procedure that adequately evaluates the necessity and appropriateness of the proposed or delivered health care services;

"(2) a procedure that permits patients and providers to appeal any adverse decisions by the person or entity performing the utilization review services, as provided for in section 2725;

"(3) a procedure that ensures that the person or entity providing the utilization review services is reasonably accessible (five days each week during normal business hours and, where necessary, at other appropriate times) to patients and providers; and

"(4) a procedure that ensures that all applicable Federal and State laws that are designed to protect the confidentiality of individual medical records are followed.

"SEC. 2792. FAVORABLE TREATMENT OF MANAGED CARE PLANS.

"(a) MANAGED CARE PLAN DEFINED.—

"(1) DEFINED.—As used in this part, the term 'managed care plan' has the same meaning given such term in section 2713(7).

"(2) DETERMINATION OF MANAGED CARE PLANS.—In the case of a health benefit plan that is offered by an entity, that is not a self-insured entity, that is subject to regulation by an applicable regulatory authority (as defined in section 2744(c)), consistent with procedures established by the Secretary in consultation with such authorities, such authorities shall be responsible for certifying for purposes of this part and the Social Security Act whether the health benefit plan is a managed care plan. In the case of self-insured entities, the Secretary shall be responsible for providing such certification.

"(b) CONDITION OF STATE FUNDING.—

"(1) IN GENERAL.—No amounts shall be made available under this Act to a State in any fiscal year (beginning with the first fiscal year beginning after the date of the enactment of this section) unless the State is in compliance with subsection (a).

"(2) DEEMED ELECTION; IMPLIED PREEMPTION.—

"(A) IN GENERAL.—A State is deemed to have elected subsection (a) to be in effect in the State as of the beginning of a fiscal year, unless the chief executive officer of a State indicates in writing that the State will not comply with this section. Such an election shall have the effect of preempting the establishment or enforcement of any State law that is in violation of subsection (a).

"(B) CHANGES.—A State is deemed not to have such an election in effect as of the date the Secretary determines that the State is enforcing any law or regulation in violation of subsection (a).

"(c) LIMITATION ON RESTRICTIONS ON MANAGED CARE PLANS.—In order to comply with the requirements of this subsection, a State may not by law or regulation prohibit or unreasonably limit any of the following:

"(1) A State may not prohibit or limit a managed care plan from including incentives for enrollees to use the services of participating providers.

"(2) A State may not prohibit or limit a managed care plan from limiting coverage of

services to those provided by a participating provider.

"(3)(A) Subject to subparagraph (B), a State may not prohibit or limit the negotiation of rates and forms of payments for providers under a managed care plan.

"(B) Subparagraph (A) shall not apply where the amount of payments with respect to a block of services or providers is established under a Statewide system applicable to all non-Federal payors with respect to such services or providers.

"(4) A State may not prohibit or limit a managed care plan from limiting the number of participating providers.

"(5) A State may not prohibit or limit a managed care plan from requiring that services be provided (or authorized) by a primary care physician selected by the enrollee from a list of available participating providers.

"(d) ADDITIONAL DEFINITIONS.—In this part, the definitions contained in sections 2713 shall also apply.

"SEC. 2793. FAVORABLE TREATMENT OF UTILIZATION REVIEW PROGRAMS.

"(a) PREEMPTION OF STATE LAWS RESTRICTING UTILIZATION REVIEW PROGRAMS THAT MEET FEDERAL STANDARDS.—In the case of a health benefit plan that includes a utilization review program, no State law or regulation shall prohibit or regulate activities under such program, except insofar as such law or regulation is consistent with the standards established under subsection (b).

"(b) ESTABLISHMENT OF STANDARDS FOR UTILIZATION REVIEW PROGRAMS.—

"(1) IN GENERAL.—The Secretary shall provide, by regulation, for the establishment of Federal standards for utilization review programs of health benefit plans. Such standards shall be designed to assure, within a plan, the cost-effective and medically appropriate use of services.

"(2) CONTENTS OF STANDARDS.—Such standards shall be established with respect to at least each of the following aspects of utilization review programs:

"(A) The qualification of those who may perform utilization review activities.

"(B) The standards to be applied in performing utilization review.

"(C) The timeliness in which utilization review determinations are to be made.

"(D) An appeals process which provides a fair opportunity for individuals adversely affected by a utilization review determination to have such a determination reviewed.

"(E) Protection for the confidentiality of individually-identifiable information used in the process.

"(3) USE OF GUIDELINES.—Such standards shall, to the maximum extent feasible, be consistent with practice guidelines developed by the Agency for Health Care Policy and Research.

"(4) DEADLINE.—Standards shall first be established under this subsection by not later than 2 years after the date of the enactment of this part. The Secretary may revise the standards from time to time as required to assure, within health benefit plans, the cost-effective and medically appropriate use of services.

"(c) UTILIZATION REVIEW PROGRAM DEFINED.—In this section, the term 'utilization review program' means a system of reviewing the medical necessity and appropriateness of patient services (which may include inpatient and outpatient services) using specified guidelines. Such a system may include preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory procedures, and retrospective review."

Subtitle I—Expansion of Technology Assessment

SEC. 481. EXPANSION OF TECHNOLOGY ASSESSMENT.

Section 904 of the Public Health Service Act (42 U.S.C. 299a-2) is amended by adding at the end thereof the following new subsections:

“(e) **EXPANSION OF EFFORTS.**—In carrying out section 901(b) through subsection (a), the Administrator shall focus on expanding and applying appropriate assessments of existing health care technologies. Such expansion shall be achieved in part, through an evaluation of health services provided to individuals through publicly and privately funded sources.

“(f) **PUBLIC-PRIVATE PARTNERSHIPS.**—

“(1) **ESTABLISHMENT OF PROGRAM.**—The Administrator shall establish a program under which the Administrator shall enter into contracts or cooperative agreements with eligible entities for the establishment of public-private partnerships to undertake technology assessment and related activities in the private sector.

“(2) **ELIGIBLE ENTITIES.**—Entities eligible to receive a contract or agreement under paragraph (1), shall include academic medical centers, research institutions, or a consortia of appropriate entities established for the purposes of conducting technology assessment.

“(3) **APPLICATION.**—To be eligible to receive a contract or agreement under paragraph (1), an entity shall prepare and submit to the Administrator an application, at such time, in such form, and containing such information as the Administrator may require.”

TITLE V—CONTRIBUTION BY EMPLOYERS NOT PROVIDING PRIVATE HEALTH COVERAGE

SEC. 501. CONTRIBUTION BY EMPLOYERS NOT PROVIDING PRIVATE HEALTH BENEFIT PLANS.

(a) **IN GENERAL.**—Subtitle C of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new chapter:

“CHAPTER 26—CONTRIBUTION BY EMPLOYERS NOT PROVIDING PRIVATE HEALTH BENEFIT PLANS

“Sec. 3601. Contribution by employers not providing private health benefit plans.

“SEC. 3601. CONTRIBUTION BY EMPLOYERS NOT PROVIDING PRIVATE HEALTH BENEFIT PLANS.

“(a) **CONTRIBUTION.**—If an employer to whom part B of title XXVII or section 2701(a) of the Public Health Service Act applies elects to have this chapter apply, there is hereby imposed on such employer for each payroll period a contribution requirement in the amount determined under subsection (b).

“(b) **AMOUNT OF CONTRIBUTION.**—

“(1) **IN GENERAL.**—The amount of the contribution required by subsection (a) for any payroll period shall be equal to the applicable percentage of wages (50 percent of wages in the case of an employer described in section 352 of the HealthAmerica Act) paid during such period to employees with respect to whom the employer is required (without regard to the election under this section) to provide health insurance coverage under part B of title XXVII of the Public Health Service Act.

“(2) **APPLICABLE PERCENTAGE.**—For purposes of paragraph (1)—

“(A) **IN GENERAL.**—The applicable percentage for any calendar year shall be the percentage established under this paragraph for such calendar year by the Secretary of

Health and Human Services at the lowest level consistent with maintaining a fair balance between public and private health insurance coverage for employees employed by employers not currently offering health insurance coverage.

“(B) **FAIR BALANCE.**—For purposes of subparagraph (A), the term ‘fair balance’ means, with respect to a year, a balance calculated based on the estimated cost of a fully implemented health insurance plan in that year, and would, if such plan were fully implemented and in effect, result in a ratio between coverage of such employees under the public health insurance plan under title XXI of the Social Security Act and under a health benefit plan under part B of title II of the Public Health Service Act that is not disproportionate.

“(C) **NOT DISPROPORTIONATE.**—For purposes of subparagraph (B), the term ‘not disproportionate’ means a ratio of not greater than 65 percent to 35 percent in comparing coverage under such public health insurance plan to such health benefit plans for a year.

“(3) **WAGES.**—For purposes of this subsection, the term ‘wages’ has the meaning given such term by section 3121(a), without regard to any limitation by reference to the contribution and benefit base under section 230 of the Social Security Act.

“(c) **PAYROLL PERIOD.**—For purposes of this section, the term ‘payroll period’ has the meaning given such term by section 3401(b).

“(d) **ADMINISTRATION.**—For purposes of this title, the contribution required by subsection (a) shall be treated in the same manner as the tax imposed by section 3111(a).”

(b) **CONFORMING AMENDMENTS.**—The table of chapters for subtitle C of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

“Chapter 26. Contribution in lieu of employer coverage.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payroll periods beginning on or after the effective date of this Act.

TITLE VI—ASSURING PROVISION OF HEALTH BENEFITS TO ALL AMERICANS

SEC. 601. ESTABLISHMENT OF AMERICARE.

(a) **IN GENERAL.**—The Social Security Act (42 U.S.C. 301 et seq.) is amended by adding at the end thereof the following new title:

“TITLE XXI—AMERICARE

“TABLE OF CONTENTS OF TITLE

“Sec. 2101. State requirements for participation in AmeriCare.

“Sec. 2102. Basic health benefits.

“Sec. 2103. Cost-sharing provisions.

“Sec. 2104. Supplemental payments.

“Sec. 2105. Health care providers.

“Sec. 2106. Quality and cost-effective care measures.

“Sec. 2107. Administration.

“Sec. 2108. Definitions and special rules.

“Sec. 2109. Payments to States.

“Sec. 2110. AmeriCare trust fund.

“STATE REQUIREMENTS FOR PARTICIPATION IN AMERICARE

“Sec. 2101. (a) **IN GENERAL.**—A State must—

“(1) provide either for the establishment or designation of a single State agency (other than the agency established or designated under section 1902 of this Act) to administer or supervise the administration of AmeriCare;

“(2) provide basic health benefits described in section 2102, subject to cost-sharing provisions under section 2103—

“(A) to any child or pregnant woman who is not otherwise covered under a nongovern-

mental health insurance policy, plan, or program beginning on the first day of the second full calendar year after the date of the enactment of this title;

“(B) to any employee or family member with respect to whom an employer makes a contribution under title V of the HealthAmerica Act beginning on the first day of the second full calendar year after the date of the enactment of this title; and

“(C) to any individual not covered under a health benefit plan under title II of such Act, beginning on the first day of the fifth full calendar year after the effective date described in subparagraph (A);

“(3) provide at least monthly supplemental payments for premiums, deductibles, and other cost-sharing charged to individuals and families as provided under section 2104;

“(4) provide a clear, simple explanation of the basic health benefits and supplemental payments available under AmeriCare through public announcements, mailings, and any other suitable means;

“(5) provide enrollment in AmeriCare as described in subsection (b);

“(6) to the extent required by the Secretary, provide basic health benefits or supplemental payments under AmeriCare to individuals who are—

“(A) residents of the State but are absent therefrom,

“(B) temporarily located in the State but are not permanent residents of any State; or

“(C) formerly residents of the State but are currently United States citizens permanently residing in a country which has reciprocity agreements with the United States;

“(7) provide to any individual covered under a health benefit plan under title II of the HealthAmerica Act, or any employer of such individual, the opportunity to purchase (or have purchased for such individual by the individual's employer) AmeriCare benefits described in section 2102(a)(7) at a separate actuarial premium rate determined by the State and subject to such other cost-sharing provisions as the plan under such title II provides for other benefits under such plan;

“(8) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for coverage under AmeriCare is denied or is not acted upon with reasonable promptness, under rules described in section 2107(b);

“(9) meet the requirements of—

“(A) paragraphs (4), (6), (7), (11), (19), (27), (45), (46), (48), and (49) of section 1902(a),

“(B) subsections (b) and (g) of section 1902, and

“(C) section 1907,

in the same manner as they apply to title XIX of this Act;

“(10) meet the requirements of section 2105 and 2106(c);

“(11) provide that AmeriCare shall be in effect in all political subdivisions of the State, and if administered by such subdivisions, be mandatory upon such subdivisions;

“(12) provide for financial participation by the State equal to the non-Federal share of the expenditures under AmeriCare with respect to which payments under section 2109 are authorized by this title;

“(13) meet any other requirements of this title; and

“(14) in order to insure compliance with this title and to receive the Federal share under section 2109, submit to the Secretary a plan that meets the requirements of this subsection and is subject to rules similar to the rules of section 1904.

“(b) **ELIGIBILITY FOR BASIC HEALTH BENEFITS.**—

"(1) IN GENERAL.—Subject to the provisions of paragraphs (2) and (6) of subsection (a), each individual not otherwise covered under a health benefit plan under title II of the HealthAmerica Act is entitled to basic health benefits under AmeriCare.

"(2) PERIOD OF COVERAGE.—

"(A) GENERAL RULE.—Upon notification of the approval of an application submitted by any individual (or a guardian or representative of such individual), AmeriCare coverage of the applicant begins on the date of such application.

"(B) FAILURE TO MAKE TIMELY NOTIFICATION.—If the State fails to notify the applicant of the applicant's ineligibility within 1 month of the date of the application, AmeriCare coverage shall apply during the period beginning on the date the individual submitted the application and ending on the date the State notifies such individual of such ineligibility.

"(C) EMPLOYER'S CONTINUATION COVERAGE.—Coverage under AmeriCare shall not apply for services provided during a period of hospitalization that begins prior to the date specified in subparagraph (A) or (B) with respect to an individual whose enrollment in an employer-based health plan terminated during such period of hospitalization.

"(D) GUARANTEED MINIMUM ELIGIBILITY PERIOD.—An individual who is determined in a month to be eligible for benefits under AmeriCare shall remain eligible for coverage for a period of not less than 1 year, unless otherwise covered under a health benefit plan under title II of the Health America Act.

"(3) APPLICATION FORMS.—Each State plan shall use a standard Federal application which shall be as simple in form as possible and understandable to the average individual and require attachment of such documentation as deemed necessary by the Secretary in order to insure eligibility.

"(4) ENROLLMENT PROCESS.—

"(A) IN GENERAL.—Each State shall provide for the receipt of AmeriCare applications—

"(i) by mail; and

"(ii) at locations broadly available to the general public, including locations that serve large numbers of indigent individuals (as defined and determined by the Secretary).

"(B) EMPLOYER ASSISTANCE.—

"(i) IN GENERAL.—Any employer who contributes under title V of the HealthAmerica Act in lieu of providing a health benefit plan under title II of such Act shall notify the State of the identities of all employees of that State and shall provide such employees with AmeriCare applications.

"(ii) CHANGE IN STATUS NOTIFICATION.—Any employer shall notify the State of—

"(I) the identities of any employees of that State who become eligible for AmeriCare as the result of changes in employment status; and

"(II) the identities of any individuals (including members of the families of such individuals) who become covered under a health benefit plan under title II of the HealthAmerica Act and who were covered under AmeriCare in such State.

Each employer shall provide employees described in subclause (I) with AmeriCare applications.

"(iii) COLLECTION OF PREMIUMS.—

"(I) IN GENERAL.—Each State may require that employers collect AmeriCare premiums on behalf of the employees of such employer.

"(II) FAILURE TO PAY PREMIUMS.—If a State plan includes the requirement described in subclause (I), the State shall notify the em-

ployee and the Secretary of the failure of the employer to make timely premium payments on behalf of the employee and the employee's family members as required under such plan. Such notification shall be provided not less than 30 days prior to any termination of coverage by the State as the result of such nonpayment of premiums.

"(5) ENROLLMENT PERIODS.—

"(A) IN GENERAL.—Except as provided in this paragraph, any individual may enroll in AmeriCare—

"(i) during an annual open enrollment period (of not less than 1 month) established by the Secretary; and

"(ii) during such other periods (including upon loss of coverage under a health benefit plan under title II of the HealthAmerica Act) as the Secretary shall require in regulations.

"(B) FOR UNDER-POVERTY FAMILIES.—In the case of an individual who is determined to be a member of an under-poverty family, the individual may enroll in AmeriCare at any time.

"(C) PHASE-IN PERIODS.—In the case of any individual who first becomes eligible for benefits under AmeriCare in a calendar year described in subsection (a)(2), the period of enrollment shall continue for the entire calendar year.

"(6) AMERICARE CARD.—The State shall issue an AmeriCare card which may be used for purposes of identification and processing of claims under AmeriCare. AmeriCare cards shall identify (as appropriate) if the individual is eligible for special eligibility benefits.

"BASIC HEALTH BENEFITS

"SEC. 2102. (a) GENERAL BENEFITS.—Benefits under this section with respect to all individuals shall include—

"(1) inpatient and outpatient hospital care, except that treatment for a mental disorder is subject to the special limitations described in paragraph (6)(A);

"(2) inpatient and outpatient physician services, except that psychotherapy or counseling for a mental disorder is subject to the special limitations described in paragraph (6)(B);

"(3) diagnostic tests;

"(4) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(5) preventive services, limited to—

"(A) well child care;

"(B) pap smears; and

"(C) mammograms; and

"(6)(A) inpatient hospital care for a mental disorder for not less than 45 days per year, except that days of partial hospitalization or residential care may be substituted for days of inpatient care according to a ratio established by the Secretary; and

"(B) outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year provided by a provider who is acting within the scope of State law and who—

"(i) is a physician; or

"(ii) meets the standards of subsection (e)(2) and is a duly licensed or certified clinical psychologist or a duly licensed or certified clinical social worker, a duly licensed or certified equivalent mental health professional, or a clinic or center providing duly licensed or certified mental health services; and

"(7) items and services described in section 1905(a)(4)(B) (relating to early and periodic screening, diagnosis, and treatment for children under the age of 21).

(b) EXCEPTIONS.—Subsection (a) shall not be construed as requiring a plan for AmeriCare to include payment for—

(1) items and services that are not medically necessary as determined under rules similar to rules under title XVIII of this Act;

(2) routine physical examinations or preventive care (other than care and services described in paragraphs (4), (5), and (7) of subsection (a)); or

(3) experimental services and procedures as determined under rules similar to rules under title XVIII of this Act.

(c) AMOUNT, SCOPE, AND DURATION OF CERTAIN BENEFITS.—Except as provided in subsection (b), AmeriCare shall place no limits on the amount, scope, or duration of benefits described in paragraphs (1) through (3) of subsection (a).

(d) AMOUNT, SCOPE, AND DURATION OF PREVENTIVE SERVICES.—AmeriCare may limit the preventive services described in subsection (a)(5) pursuant to regulations of the Secretary specifying the content and periodicity of such care. The Secretary shall develop such regulations after consultation with appropriate medical experts.

(e) MENTAL HEALTH CARE.—

(1) INPATIENT CARE.—Inpatient hospital care described in subsection (a)(6)(A) shall include reimbursement for professional care provided to the individual while the individual is receiving such inpatient care, by a physician or duly licensed or certified clinical psychologist operating within the scope of practice of the physician or psychologist, as determined appropriate under State law. Nothing in this subsection shall be construed to modify hospital practices with regard to scope of practice, admitting privileges, or billing arrangements.

(2) STANDARDS FOR CERTAIN PROVIDERS OF OUTPATIENT CARE.—The Secretary shall establish standards that providers referred to in subsection (a)(6)(B)(ii) must meet to be eligible for payment under AmeriCare.

"(f) ENHANCED BENEFITS.—Basic health benefits under this section with respect to special eligibility individuals shall include medical assistance, not otherwise described in subsection (a), in the State's plan under title XIX of this Act, other than medical assistance described in paragraphs (4)(A), (7), (14), and (18) of section 1905(a).

"(g) ADDITIONAL BENEFITS.—As part of AmeriCare, a State may provide for the coverage of health benefits in addition to the basic health benefits described in the preceding subsections of this section, on the condition that the State shall not receive any Federal payment for such additional coverage.

"COST-SHARING PROVISIONS

"SEC. 2103. (a) IN GENERAL.—Except as provided in subsection (b), each State that provides AmeriCare shall provide for cost-sharing as follows:

"(1) UNDER-POVERTY FAMILIES.—With respect to an individual who is a member of an under-poverty family, AmeriCare may not impose any premiums, deductibles or other cost-sharing on such individual.

"(2) NEAR-POVERTY FAMILIES.—

"(A) IN GENERAL.—Subject to subparagraph (C), with respect to an individual who is a member of a near-poverty family that receives benefits under AmeriCare, the amount of the monthly AmeriCare premium for such individual shall be the applicable percentage of the monthly actuarial rate of such State.

"(B) APPLICABLE PERCENTAGE.—For the purposes of this paragraph, the term 'applicable percentage' means 2 percentage points for each 10 percentage point bracket (or any portion thereof) such family's income equals or exceeds the income official poverty line (as defined by the Office of Management and

Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(C) LIMITATION.—The aggregate amount of any AmeriCare premiums imposed on the family of the individual under this paragraph for any calendar year shall not exceed an amount equal to 3 percent of the family income.

"(D) ADDITIONAL COST SHARING LIMITATION.—

"(i) IN GENERAL.—With respect to any individual who is a member of a near-poverty family that receives benefits under AmeriCare, such individual shall, in addition to the AmeriCare premium described in this paragraph, pay the applicable percentage of any AmeriCare deductible or other cost-sharing.

"(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the term 'applicable percentage' means 10 percentage points for each 10 percentage point bracket (or any portion thereof) such family's income equals or exceeds 110 percent of such income official poverty line.

"(3) OTHER FAMILIES.—

"(A) IN GENERAL.—Subject to subparagraph (C), with respect to an individual who is a member of a family that receives benefits under AmeriCare and whose income equals or exceeds an income level that is 200 percent of the income official poverty line (as described in paragraph (2)(B)), the amount of the monthly AmeriCare premium for such individual shall be the monthly actuarial rate of such State.

"(B) LIMITATION.—The aggregate amount of any AmeriCare premiums imposed on the family of the individual under this paragraph for any calendar year shall not exceed an amount equal to—

"(i) in the case of a family whose income equals or exceeds 200 percent of such income official poverty line but is less than 250 percent of such income official poverty line, 3.5 percent of the family income,

"(ii) in the case of a family whose income equals or exceeds 250 percent of such income official poverty line but is less than 325 percent of such income official poverty line, 4 percent of the family income, and

"(iii) in the case of a family whose income equals or exceeds 325 percent of such income official poverty line but is less than 400 percent of such income official poverty line, 5 percent of the family income.

"(C) With respect to any individual who is a member of a family described in this paragraph that receives benefits under AmeriCare, such individual shall, in addition to the AmeriCare premium described in this paragraph, pay 100 percent of any AmeriCare deductible or other cost-sharing.

"(4) PHASE-IN COVERAGE FOR CHILDREN.—With respect to any family described in this subsection, the children of which are the only individuals eligible for coverage under AmeriCare, the percentages described in paragraphs (2)(C) and (3)(B) shall be reduced by two-thirds.

"(b) MONTHLY AMERICARE PREMIUM FOR EMPLOYED INDIVIDUALS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a State plan for AmeriCare shall require an individual whose employer makes a contribution under title V of the HealthAmerica Act in lieu of providing a health benefit plan under title II of such Act to pay an AmeriCare premium equal to the lesser of—

"(A) coverage under AmeriCare for such individual for a period of one month; or

"(B) 20 percent of the monthly actuarial rate of such State.

"(2) With respect to any part-time employee who is a member of a family that receives benefits under AmeriCare and whose income equals or exceeds an income level that is 200 percent of the income official poverty line (as described in subsection (a)(2)(B)) and whose employer makes a contribution under title V of the HealthAmerica Act, the amount of any AmeriCare premium imposed on such employee shall be 50 percent of the amount determined under paragraph (1).

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) MONTHLY ACTUARIAL RATE DEFINED.—

"(A) IN GENERAL.—For purposes of this section, the term 'monthly actuarial rate' means, with respect to AmeriCare in a plan year, the average monthly per enrollee amount that the State estimates, based on actuarial calculations conducted in conformity with requirements established by the Secretary, for enrollees under AmeriCare during the year, would be necessary to pay for the total benefits required under the State plan for AmeriCare (including administrative costs for the provision of such benefits and an appropriate amount for a contingency margin) during the year.

"(B) SPECIAL RULE.—With respect to any State plan for AmeriCare, for any period ending before the date described in section 2101(a)(2)(C), the monthly actuarial rate shall be calculated as if all eligible children in such State participate in such plan.

"(2) APPLICATION ON BASIS OF FAMILY STATUS.—For purposes of this section, a State plan for AmeriCare may provide for the AmeriCare premium to be applied, and the monthly actuarial rate to be computed—

"(A) separately for individuals who have family members covered under AmeriCare and for individuals who do not have family members covered under the AmeriCare; and

"(B) with respect to individuals with such covered family members, separately—

"(i) for individuals who have a covered spouse and one or more covered children;

"(ii) for individuals who have a covered spouse but no covered children; and

"(iii) for individuals who do not have a covered spouse but have one or more covered children.

"(3) ADJUSTMENT FOR COVERED SPOUSE WITH OTHER COVERAGE.—For purposes of this section, if a State plan for AmeriCare charges an individual for a share of the AmeriCare premium, the plan shall establish a separate AmeriCare premium category (or categories) for family coverage in the case of a covered spouse who is receiving primary health insurance coverage from another health benefit plan. The AmeriCare premium for such categories shall be established based on actual or projected plan experience or according to a formula established by the Secretary, and shall take into account the reduction in health insurance costs resulting from such coverage.

"(d) AMERICARE DEDUCTIBLE OR OTHER COST-SHARING.—

"(1) IN GENERAL.—For purposes of this title, the term 'AmeriCare deductible or other cost-sharing' means any deductible, copayment, or coinsurance established by the State plan for AmeriCare as determined under paragraphs (2) and (3) of this subsection.

"(2) LIMITATION ON DEDUCTIBLES.—A State plan for AmeriCare shall not provide, for benefits provided in any plan year, for a deductible amount that exceeds—

"(A) with respect to benefits payable for items and services furnished to any individ-

ual with no family member enrolled under AmeriCare, for a plan year beginning in—

"(i) the first calendar year that begins more than 1 year after the effective date of this title, \$250; or

"(ii) for a subsequent calendar year, the limitation of deductions specified in clause (i) for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year; and

"(B) with respect to benefits payable for items and services furnished to any individual with a family member enrolled under AmeriCare, for a plan year beginning in—

"(i) the first calendar year that begins more than 1 year after the effective date of this title, \$250 per family member and \$500 per family; or

"(ii) for a subsequent calendar year, the limitation of deductions specified in clause (i) for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the limitation of deductions computed under subparagraph (A)(ii) or (B)(ii) is not a multiple of \$10, it shall be rounded to the next highest multiple of \$10.

"(3) LIMITATION ON COPAYMENTS AND COINSURANCE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) through (D), a State plan for AmeriCare shall not—

"(i) require the payment of any copayment or coinsurance for an item or service for which coverage is provided under section 2102(g) in an amount that exceeds 20 percent of the cost of the item or service; or

"(ii) require the payment of any copayment or coinsurance for items and services required under section 2102 (other than subsection (g)) to be furnished in a plan year for an individual after the individual has incurred out-of-pocket expenses under the plan that are equal to the out-of-pocket limit (as defined in subparagraph (E)(ii)).

"(B) EXCEPTION FOR PREFERRED PROVIDERS.—If a State plan for AmeriCare establishes reasonable classifications of participating and nonparticipating providers of items and services, the plan may require payments in excess of the amount permitted under subparagraph (A) in the case of items and services furnished by nonparticipating providers.

"(C) EXCEPTION FOR IMPROPER UTILIZATION.—A State plan for AmeriCare may provide for copayment or coinsurance in excess of the amount permitted under subparagraph (A) for any item or service that an individual obtains without complying with any reasonable procedures established by the plan to ensure the efficient and appropriate utilization of covered services.

"(D) MENTAL HEALTH CARE.—In the case of care provided under section 2102(a)(6)(B), a State plan for AmeriCare shall not require payment of any copayment or coinsurance for an item or service for which coverage is required by this title in an amount that exceeds 50 percent of the cost of the item or service.

"(E) LIMIT ON OUT-OF-POCKET EXPENSES.—

"(i) OUT-OF-POCKET EXPENSES DEFINED.—For purposes of this paragraph, the term 'out-of-pocket expenses' means, with respect to an individual in a plan year, amounts pay-

able under AmeriCare as deductibles and co-insurance with respect to items and services provided under AmeriCare and furnished in the plan year on behalf of the individual and family covered under AmeriCare.

“(ii) OUT-OF-POCKET LIMIT DEFINED.—For purposes of this paragraph, the term ‘out-of-pocket limit’ means for a plan year beginning in—

“(I) the first calendar year that begins more than 1 year after the effective date of this title, \$3,000; or

“(II) for a subsequent calendar year, the out-of-pocket limit specified in subclause (I) for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the out-of-pocket limit computed under subclause (II) is not a multiple of \$10, it shall be rounded to the next highest multiple of \$10.

“SUPPLEMENTAL PAYMENTS

“SEC. 2104. (a) IN GENERAL.—Except as provided in this section, an individual who is enrolled in a health benefit plan under title II of the HealthAmerica Act is not entitled to benefits under AmeriCare.

“(b) ASSISTANCE FOR UNDER-POVERTY FAMILIES.—In the case of an individual described in subsection (a) or an individual whose employer makes a contribution under title V of the HealthAmerica Act in lieu of providing a health benefit plan under title II of such Act, who is a member of an under-poverty family, AmeriCare shall provide for payment of—

“(1) any premiums charged the individual for the applicable category of coverage under the employer's health benefit plan or AmeriCare in which the individual is enrolled, except that AmeriCare is not required to pay for such amount of a premium as exceeds the lowest premium which would be charged the individual for the applicable category of coverage under any health benefit plan offered the individual under title II of the HealthAmerica Act or AmeriCare, as the case may be; and

“(2) deductibles and other cost-sharing imposed on the individual under the employer's health benefit plan or AmeriCare, but only with respect to the basic benefits required under such a plan under such title II or AmeriCare, as the case may be.

“(c) ASSISTANCE FOR NEAR-POVERTY FAMILIES.—

“(1) IN GENERAL.—In the case of an individual described in subsection (a) or an individual whose employer makes a contribution under title V of the HealthAmerica Act in lieu of providing a health benefit plan under title II of such Act, who is a member of a near-poverty family, AmeriCare shall provide for payment of the applicable premium percentage of any premiums charged the individual for the applicable category of coverage under the employer's health benefit plan or AmeriCare in which the individual is enrolled, except that AmeriCare is not required to pay for such amount of a premium as exceeds the lowest premium which would be charged the individual for the applicable category of coverage under any health benefit plan offered the individual under title II of the HealthAmerica Act or AmeriCare, as the case may be.

“(2) APPLICABLE PREMIUM PERCENTAGE.—For purposes of paragraph (1)(A), the term ‘applicable premium percentage’ means 20 percent reduced (but not below 2 percent) by 2 percentage points for each 10 percentage

point bracket (or portion thereof) such family's income equals or exceeds 110 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

“(d) APPLICATION FOR ASSISTANCE.—The State plan for AmeriCare shall use a standard Federal application which shall be as simple in form as possible and understandable to the average individual and require attachment of such documentation as deemed necessary by the Secretary in order to insure eligibility. Such application shall be available to any employee as provided in section 2107(b), may be filed at any time, and shall initiate coverage under the rules similar to the rules of subparagraphs (A) and (B) of section 2101(b)(2).

“(e) PAYMENT OF PREMIUMS.—

“(1) IN GENERAL.—The State plan shall provide that upon the initiation of coverage under this section, an individual shall receive advanced payment of supplemental premium payments for the calendar year from AmeriCare, or in the case of an individual enrolled in AmeriCare, a reduction in the annual AmeriCare premium.

“(2) REQUIREMENT FOR FILING OF INCOME STATEMENT.—In the case of a family which is receiving supplemental premium payments (or a reduction in AmeriCare premiums) under this section for any month in a year, a member of the family shall file with the State, by not later than April 15 of the following year, a statement that verifies the family's total family income for the taxable year ending during the previous year. Such a statement shall provide information necessary to determine the family income during the year and the number of family members in the family as of the last day of the year.

“(3) RECONCILIATION OF PREMIUM ASSISTANCE BASED ON ACTUAL INCOME.—Based on and using the income reported in the statement filed under paragraph (2) with respect to a family or individual, the State shall compute the amount of assistance that should have been provided under this section with respect to premiums for the family in the year involved. If the amount of such assistance computed is—

“(A) greater than the amount of premium assistance provided, the State shall provide for payment (directly or through a credit against future premiums owed) to the family or individual involved of an amount equal to the amount of the deficit, or

“(B) less than the amount of assistance provided, the State shall require the family or individual to pay (directly or through an increase in future premiums owed) to the State (to the credit of the program under this title) an amount equal to the amount of the excess payment.

“(4) DISQUALIFICATION FOR FAILURE TO FILE.—In the case of any family that is required to file an information statement under paragraph (2) in a year and that fails to file such a statement by the deadline specified in such paragraph, no member of the family shall be eligible for assistance under this section after May 1 of such year. The State shall waive the application of this paragraph if the family establishes, to the satisfaction of the State, good cause for the failure to file the statement on a timely basis.

“(5) PENALTIES FOR FALSE INFORMATION.—Any individual that provides false information in a statement under paragraph (2) is

subject to a criminal penalty to the same extent as a criminal penalty may be imposed under section 1128B(a) with respect to a person described in clause (ii) of such section.

“(6) NOTICE OF REQUIREMENT.—The State shall provide for written notice, in March of each year, of the requirement of paragraph (2) to each family which received assistance under this section in any month during the preceding year and to which such requirement applies.

“(7) TRANSMITTAL OF INFORMATION.—The Secretary of the Treasury shall transmit annually to the State such information relating to the total income of individuals for the taxable year ending in the previous year as may be necessary to verify the reconciliation of assistance under this subsection.

“(f) PAYMENT OF OTHER COST-SHARING CLAIMS.—The State plan shall provide that each individual subject to coverage under this section or the health care provider rendering the service shall file claims for the supplemental payment of deductibles and other cost-sharing imposed on such individual under the employer's health benefit plan or AmeriCare, and the State shall make such payments at the option of the individual, to such individual or the health care provider.

“HEALTH CARE PROVIDERS

“SEC. 2105. (a) USE OF MEDICARE PAYMENT RULES.—

“(1) IN GENERAL.—Except as provided in subsections (b) and (c)—

“(A) payment of benefits under the State plan for AmeriCare shall be made in the same amounts and on the same basis as payment may be made with respect to such benefits under title XVIII of this Act, and

“(B) the provisions of sections 1814, 1815, 1833, 1834(c) (other than paragraphs (1)(A)(2)), 1835, 1842, 1848, 1886, 1887 shall apply to payment of benefits (and provision of services and charges thereon) under this title in the same manner as such provisions apply to benefits, services, and charges under title XVIII of this Act.

“(2) IDENTIFICATION OF COMPARABLE PAYMENT METHODS FOR NEW SERVICES.—In the case of services for which there is not a payment basis established under title XVIII of this Act, the Secretary shall establish payment rules that are similar to the payment rules for similar services under such title.

“(3) ADJUSTMENT OF MEDICARE PAYMENT RATES.—

“(A) IN GENERAL.—For purposes of payment for inpatient hospital services, physicians' services, and other services under this title for which payment rates are established under title XVIII of this Act, the Secretary shall adjust the payment rates otherwise established under such title XVIII to take into account differences between the population served under that title and the population served by the State plan or enrolled under health benefit plans under title II of the HealthAmerica Act and such other appropriate factors (such as the special circumstances of hospitals the inpatients of which are predominantly children) as the Secretary deems appropriate.

“(B) CONSULTATION.—In making adjustments under subparagraph (A), the Secretary shall consult with the Prospective Payment Assessment Commission with respect to inpatient hospital services and with the Physician Payment Review Commission with respect to physicians' services.

“(b) ALTERNATIVE METHODS.—In issuing regulations to establish national reimbursement levels under this section, a State may provide for alternative payment systems that apply rates and methodologies that are

not employed in the Federal guidelines described in subsection (a) if such State meets in the aggregate for all health care providers in such State the requirements for national reimbursement levels described in this section.

“(c) PHASE-IN OF MEDICARE RATES.—In lieu of the rates established under the rules described in subsection (a) or (b), the payment of benefits under the State plan for AmeriCare shall be made in the same amounts and on the same basis as payment may be made with respect to comparable medical assistance under title XIX of this Act, and the provisions of such title shall apply to payment of benefits (and provision of services and charges thereon) under this title in the same manner as such provisions apply to payment of comparable medical assistance under title XIX of this Act, except as follows:

“(1) With respect to prenatal and child delivery benefits and infant care benefits—

“(A) 50 percent of the rate differential beginning on the first day of the third full calendar year after the date of the enactment of this title

“(B) 100 percent of the rate differential beginning on the first day of the fourth full calendar year after the date of the enactment of this title.

“(2) With respect to benefits described in section 2102(a)(7) and children outpatient and pediatric hospitalization benefits—

“(A) 50 percent of the rate differential beginning on the first day of the fifth full calendar year after the date of the enactment of this title

“(B) 100 percent of the rate differential beginning on the first day of the sixth full calendar year after the date of the enactment of this title.

“(3) With respect to all other benefits described in section 2102—

“(A) 50 percent of the rate differential beginning on the first day of the seventh full calendar year after the date of the enactment of this title

“(B) 100 percent of the rate differential beginning on the first day of the eighth full calendar year after the date of the enactment of this title.

For purposes of this subsection, the term ‘rate differential’ means with respect to each benefit the difference between the reimbursement rate as determined under subsection (a) or (b) and the reimbursement rate for comparable medical assistance determined under subsection (c).

“(d) NO JUDICIAL OR ADMINISTRATION REVIEW.—There shall be no administrative or judicial review of the payment rates or rules under this section (including adjustments made under this section).

“(e) UNIFORM CLAIMS AND BILLING FORM.—Each State plan shall require the use of any Federal Uniform Claims and Billing Form developed by the Federal Health Expenditure Board under section 1180(b). Additional information may be required by the State plan if approved by the Secretary.

“(f) UNIFORM IDENTIFICATION SYSTEM.—Each State plan shall require each health care provider to use the identification number (if any) such provider uses in furnishing services for which payment is made under title XVIII of this Act or such other identification number specified by the Secretary.

“(g) MULTI-STATE PROVIDERS.—Each State plan shall allow health care providers participating in AmeriCare to participate under any other State plan for AmeriCare.

“QUALITY AND COST-EFFECTIVE CARE MEASURES

“SEC. 2106. (a) APPLICATION OF PEER REVIEW ORGANIZATIONS.—

“(1) IN GENERAL.—The Secretary shall ensure that the quality control and peer review activities described in section 1165 are conducted in the manner prescribed in such section.

“(2) ADDITIONAL CRITERIA.—The Administrator of the Agency for Health Care Policy and Research shall, on an annual basis, and as otherwise determined by the Secretary, advise the Secretary concerning the incorporation of patient outcome measures and practice parameters with respect to care and services furnished under this title in conjunction with the quality control and peer review activities described in paragraph (1) of this subsection.

“(b) ALTERNATIVE DELIVERY AND ADMINISTRATIVE SYSTEMS.—A State may enter into a contract with a private entity or insurer or a State consortium (described under part D of title XI of this Act) to design and implement innovative systems of health care delivery and administrative systems that meet the standards of this title.

“(c) MANAGED CARE.—

“(1) IN GENERAL.—Each State plan shall, as part of AmeriCare, provide for managed care plans in accordance with the requirements of this subsection.

“(2) REQUIREMENTS.—In providing for managed care plans under this subsection, a State shall ensure that—

“(A) managed care plans are, to the extent practicable, selected through a competitive selection process;

“(B) an eligible individual under this title has an option to enroll in any of the managed care plans selected by the State offered by any qualified health care provider (as defined and determined by the Secretary);

“(C) an eligible individual who is receiving benefits under a managed care plan, may, not less often than annually, and without cause, exercise the option to discontinue receiving benefits under the managed care plan and receive coverage under an alternative plan under AmeriCare;

“(D) any arrangements for incentive payments for physicians under a managed care plan must comply with requirements for the provision of quality care that the Secretary shall prescribe by regulation, taking into account, at a minimum, quality care guidelines under title XVIII of this Act; and

“(E) a managed care plan shall provide for a system of rate assessment and adjustment that minimizes risk selection and segmentation (as defined and determined by the Secretary).

“(3) REGULATIONS.—The Secretary shall, not more than 180 days after the date of the enactment of this title, develop and establish by regulation, standards to ensure the quality of care under managed care plans under AmeriCare.

“(e) COST CONTAINMENT DEMONSTRATION PROJECTS.—

“(1) IN GENERAL.—The Secretary shall establish various demonstration projects to enable the States that submit an approved application, to implement cost management initiatives that promote the effective furnishing of care under this title. Such cost management initiatives shall include:

“(A) Programs for contracting with community-based providers (as defined by the Secretary).

“(B) Financial incentives to encourage the delivery of high quality, cost effective managed care under subsection (d) of this sec-

tion, including enhanced payment rates to States with a high percentage of individuals enrolled in managed care plans, to the degree such enrollment results in reduced Federal expenditures.

“(C) Case management, including case-finding and the coordination of social and support services.

“(D) Financial incentives to encourage outreach programs.

“(E) Financial incentives to encourage the use of cost-effective services.

“(F) Measures to encourage an awareness of the costs associated with medical care, including nominal copayments (as determined by the Secretary) and the advantages of preventive care and other cost-effective types of care.

The Secretary shall require each State that submits an approved application to develop plans for conducting a demonstration project under this paragraph, in accordance with requirements that the Secretary shall establish by regulation.

“(2) ENHANCED COVERAGE DEMONSTRATION PROJECTS.—The Secretary may by waiver provide that a State plan for AmeriCare may include as benefits under such plan payment for all or part of the cost of services described in section 1915(c) (other than paragraph (3) thereof).

“ADMINISTRATION

“SEC. 2107. (a) ADMINISTRATION.—

“(1) IN GENERAL.—Subject to paragraph (3), each State shall provide for administration of this title in the same manner as it provides for administration of the plan established under section 1902(a) of this Act. In the administration of this title, the State agency designated under section 2101(a)(1) may delegate or contract with other public or private entities for the administration of the plan for AmeriCare.

“(2) NOTIFICATION OF AMERICARE; APPLICATION PROCESSING.—Any State that submits an application approved by the Secretary may contract with private entities or a State agency other than the agency designated under section 2101(a)(1) to provide notification of AmeriCare to the residents of the State and process and review applications as required under section 2101(a)(6), and sections 2101(b) and 2104(d), respectively.

“(3) ELECTION.—A State, with such notice to the Secretary as the Secretary may require, may elect to have this title (insofar as it provides benefits with respect to individuals under section 2101(a)(2)) administered with respect to that State by the Secretary (or by such agent as the Secretary may designate). The Secretary may not accept such an election unless the State provides assurances satisfactory to the Secretary that the State will make payments to the Secretary toward the cost of implementing this title in the same amounts and at the same time as the State would make payments under this title but for the fact of such an election.

“(4) MULTI-STATE PROGRAMS.—Subject to the approval of the Secretary, any State may submit a joint plan for AmeriCare along with 1 or more other States to implement a regional administration of 1 plan for AmeriCare.

“(5) DATA COLLECTION.—Each State shall submit to the Secretary (in such form and manner as the Secretary determines) for collection and analysis—

“(A) aggregate and per enrollee expenditures for each benefit covered under AmeriCare, including categorization by age, race, sex, and income level; and

“(B) uniform claims collection (by computer) that provide data to assist in the as-

assessment of the amount, type, quality, and location of health care furnished through AmeriCare.

"(b) RIGHT TO REVIEW DENIED CLAIMS.—

"(1) NOTICE.—Each State plan for AmeriCare shall require that the State agency shall provide an individual with written notice concerning the denial of a claim submitted by such individual. Such notice shall include the reasons for such denial.

"(2) PROCESS FOR REVIEW.—Each State plan for AmeriCare shall utilize a fair process for the timely review of claims denied under such plan.

"(3) CLAIM FOR CARE NEEDED FOR LIFE-THREATENING ILLNESS.—In cases in which the failure to provide health care promptly would be life-threatening or result in a risk of permanent disability, the AmeriCare beneficiary shall be entitled to a decision as to whether care will be provided under AmeriCare not later than 1 day after supplying the State with all requested information. In the event of a denial of coverage for such care, the beneficiary shall be entitled to an expedited review of an appeal of such denial within 5 days.

"(4) APPEALS.—Individuals shall be entitled to appeal the denial of a claim submitted by such individual to the State agency. The Secretary shall promulgate regulations establishing procedures to be utilized for appealing denials of claims under AmeriCare that are similar to the procedures established under title XVIII of this Act for appealing denials of claims under such title XVIII, including the right to a trial de novo.

"(c) ADMINISTRATIVE REGULATIONS.—

"(1) INCOME DETERMINATION.—The Secretary and the States shall develop and promulgate by regulation a system for the certifying of income and the reporting of changes of income by individuals within an appropriate period of time for the purposes of determining the amount of any premiums and copayments under section 2103 and the eligibility for supplemental payments of deductibles and other cost-sharing under section 2104, including the use of the social security identification number in tracking such changes and verifying the information at least biannually. Such system shall include rules similar to the rules described in paragraphs (2) through (7) of section 2104(e), including a method for making adjustments for any overpayments or underpayments of such premiums, copayments, and supplemental payments.

"(2) NOTICE OF SUPPLEMENTAL PAYMENTS.—

"(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Treasury, shall, by regulation, require that each employer—

"(i) provide written notification forms to each employee outlining the availability of supplemental payments under AmeriCare in the State in which such employee resides as described in section 2104;

"(ii) coordinate the distribution of standard Federal application forms described in section 2104(d) in conjunction with the provision of written notification under paragraph (1);

"(iii) carry out the requirements of clauses (i) and (ii) without regard to the level of income of any employee.

"(B) CONTENTS OF NOTICE.—In promulgating the regulations described in subparagraph (A), the Secretary shall require the following information to be supplied in the written notification:

"(i) Information relating to the availability of supplemental payments on the basis of family income and size (prepared to coordi-

nate with tax filing units or census information).

"(ii) Information concerning the amount of monthly supplemental payments.

"(c) FAILURE TO PRESCRIBE REGULATIONS.—The failure of the Secretary to prescribe any regulations under this title shall not relieve a State of any responsibility for complying with this title.

"DEFINITIONS AND SPECIAL RULES

"SEC. 2108. (a) DEFINITIONS.—As used in this title:

"(1) CHILD.—The term 'child' means an individual who—

"(A) is under 19 years of age;

"(B) is under 23 years of age and a full-time student; or

"(C) is, regardless of age, unmarried, dependent, and incapable of self-support as a result of a mental or physical disability that existed prior to the individual reaching 22 years of age.

"(2) EMPLOYEE.—The term 'employee' has the meaning given such term under section 2713(a)(2) of the Public Health Service Act.

"(3) EMPLOYER.—The term 'employer' has the meaning given such term under section 2713(a)(3) of the Public Health Service Act.

"(4) FAMILY.—The term 'family' means an individual, and any spouse or child of an individual. In determining if any individual is a child of another individual, rules similar to the rules of section 152(b)(2) of the Internal Revenue Code of 1986 shall apply.

"(5) HEALTH CARE PROVIDER.—The term 'health care provider' means any entity or person eligible to receive payments under titles XVIII and XIX of this Act.

"(6) MANAGED CARE PLAN.—

"(A) MANAGED CARE PLAN.—The term 'managed care plan' means a health benefit plan (as defined in section 1182(1)—

"(i) in which the insurer—

"(I) utilizes explicit standards for the selection and recertification of participating providers;

"(II) has organizational arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for its health services, which program (aa) stresses health outcomes, and (bb) provides review by physicians and other health professionals of the process followed in the provision of health services; and

"(III) contains significant incentives to use the participating providers and procedures provided for by the plan; and

"(ii) which, if it limits coverage of services to those provided by participating providers or permits deductibles and coinsurance with respect to basic health services provided by persons who are not participating providers which are in excess of those permitted under health benefit plans—

"(I) has a sufficient number and distribution of participating providers to assure that all covered items and services are (aa) available and accessible to each enrollee, within the area served by the plan, with reasonable promptness and in a manner which assures continuity, and (bb) when medically necessary, available and accessible twenty-four hours a day and seven days a week; and

"(II) provides benefits for covered items and services not furnished by participating providers if the items and services are medically necessary and immediately required because of an unforeseen illness, injury, or condition.

"(B) MANAGED CARE ENTITY.—The term 'managed care entity' means an insurer, health maintenance organization, preferred provider organization, dental plan organization, or other entity licensed to do business

in a State, that markets managed care plans to groups or individuals or an employer, labor union, or other State licensed entity that provides managed care plans for its employees or members.

"(C) PARTICIPATING PROVIDER.—The term 'participating provider' means a physician, hospital, health maintenance organization, pharmacy, laboratory, or other appropriately licensed provider of health care services or supplies, that has entered into an agreement with a managed care entity to provide such services or supplies to a patient enrolled in a managed care plan.

"(D) UTILIZATION REVIEW.—The term 'utilization review' means a program for reviewing the necessity and appropriateness of health care services provided or proposed to be provided to a patient.

"(7) MENTAL DISORDER.—The term 'mental disorder' has the same meaning given such term in the International Classification of Diseases, 9th Revision, Clinical Modification.

"(8) NEAR-POVERTY FAMILY.—The term 'near-poverty family' means a family whose income equals or exceeds 100 percent of the income official poverty line (as described in paragraph (1)), but is less than 200 percent of such income official poverty line.

"(9) PART-TIME EMPLOYEE.—The term 'part-time employee' has the meaning given such term under section 2713(a)(2)(G) of the Public Health Service Act.

"(10) SPECIAL ELIGIBILITY INDIVIDUALS.—The term 'special eligibility individual' means an individual who on the date of application for benefits under AmeriCare is—

"(A) a member of an under-poverty family; or

"(B) would have qualified for assistance under title IV of this Act or for medical assistance in the State of the individual's residence under title XIX of this Act (as in effect on the date of the enactment of this title);

"(C) or both.

"(11) STATE.—The term 'State' means the 50 States and the District of Columbia.

"(12) UNDER-POVERTY FAMILY.—The term 'under-poverty family' means a family whose income is less than 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(b) DETERMINATIONS OF INCOME.—For the purposes of this title—

"(1) In general.—The term 'income' means—

"(A) adjusted gross income (as defined in section 62(a) of the Internal Revenue Code of 1986), determined without the application of paragraphs (6) and (7) of such section and without the application of section 162(1) of such Code, plus

"(B) the amount of social security benefits (described in section 86(d) of such Code) which is not includable in gross income under section 86 of such Code.

"(2) FAMILY INCOME.—The term 'family income' means, with respect to an individual, the sum of the income for the individual and all the other family members.

"(3) FAMILY SIZE.—The family size to be applied under this title, with respect to family income, is the number of individuals included in the family for purposes of coverage of basic health benefits under AmeriCare or under a health benefit plan (as the case may be).

"(4) TIMING OF DETERMINATION.—Income shall be determined in accordance with one of the following methods, at the option of the applicant, for coverage under this title:

"(A) Multiplying by a factor of 4 the family income of the applicant for the 3-month period immediately preceding the month in which the application for coverage under this title is made.

"(B) Determining the family income of the applicant for the month in which the application for such coverage is made.

"PAYMENT TO STATES

"SEC. 2109. (a) IN GENERAL.—The Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing January 1, 1992—

"(1) an amount equal to the Federal insurance assistance percentage of the total amount expended during such quarter for benefits and supplemental payments under the State plan; plus

"(2) an amount equal to the administrative percentage of so much of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

"(b) FEDERAL INSURANCE ASSISTANCE PERCENTAGE.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the Federal insurance assistance percentage for any State shall be 100 percent less the State percentage.

"(2) STATE PERCENTAGE.—The State percentage for any State shall be equal to—

"(A) the State percentage determined under section 1905(b), minus

"(B) the applicable percentage of such State percentage.

"(c) ADMINISTRATIVE PERCENTAGE.—For purposes of subsection (a)(2), the administrative percentage for any State shall be—

"(1) 50 percent, plus

"(2) the applicable percentage of 50 percent.

"(d) APPLICABLE PERCENTAGE.—For purposes of this section, the term 'applicable percentage' means in the case of each quarter in the following full calendar years beginning after the date of the enactment of this title, the following percentage:

Calendar year:	Applicable Percentage:
2nd	20
3rd	20
4th	15
5th	10
6th	5.

"AMERICARE TRUST FUND

"SEC. 2110. (a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'AmeriCare Trust Fund' (hereafter in this section referred to as the 'Fund'), consisting of such gifts and bequests as may be made and such amounts as may be credited to the Fund under this section.

"(b) TRANSFERS TO FUND.—

"(1) IN GENERAL.—There are hereby appropriated to the Fund amounts equivalent to the net revenues received in the Treasury from—

"(A) contributions required by section 3601 of the Internal Revenue Code of 1986,

"(B) contributions made under section 2723(c)(2) of the Public Health Service Act,

"(C) AmeriCare premiums (as defined in section 2104(6)) collected by employers on behalf of employees, and

"(D) penalties collected under section 2732 of the Public Health Service Act.

"(2) TRANSFERS BASED ON ESTIMATES.—The amounts appropriated by subparagraphs (A), (B), and (C) shall be transferred from time to time (not less frequently than monthly) from

the general fund in the Treasury to the Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the amounts, specified in such subparagraphs, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the amounts specified in such subparagraphs.

"(c) APPROPRIATION OF ADDITIONAL SUMS.—There are hereby authorized to be appropriated to the Fund such additional sums as may be required to make expenditures referred to in subsection (d).

"(d) EXPENDITURES FROM FUND.—

"(1) IN GENERAL.—For the purpose of establishing a public program to provide health insurance coverage to be known as 'AmeriCare', there are authorized and appropriated for each fiscal year from the Fund a sum sufficient to carry out the purpose of this title. The sums made available under this paragraph shall be used for making payments under section 2109 to States that have submitted, and had approved by the Secretary, a State plan for AmeriCare.

"(2) ALLOCATIONS.—Amounts described in subsection (b)(1) shall be allotted to each State under paragraph (1) on the basis of amounts received in the Fund with respect to employees residing in such State.

"(3) ADDITIONAL FUNDS FOR ADMINISTRATIVE EXPENSES.—Amounts in the Fund shall be available, as provided in appropriation Acts, for the expenses of the Health Care Financing Administration or any other Federal agency designated by the Secretary in administering the provisions of this title.

"(e) INCORPORATION OF TRUST FUND PROVISIONS.—The provisions of subsections (b) through (i) of section 1841, as in effect on the day before the date of the enactment of this title, shall apply to the Fund in the same manner as such provisions apply to the Federal Supplemental Medical Insurance Trust Fund, except that any reference to the Secretary of Health and Human Services or the Administrator of the Health Care Financing Administration shall be deemed a reference to the Secretary of Health and Human Services."

(b) ADMINISTRATIVE AND JUDICIAL REVIEW OF CERTAIN ADMINISTRATIVE DETERMINATIONS.—Section 1116 of the Social Security Act (42 U.S.C. 1316) is amended—

(1) by striking "or XIX" each place it appears and inserting "XIX, or XXI", and

(2) by striking "or 1904" in subsection (a)(3) and inserting "1904, or 2101(a)(14)".

(c) UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATIONS.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"REVIEW OF AMERICARE UNDER TITLE XXI.

"SEC. 1165. (a) REVIEW OF AMERICARE UNDER TITLE XXI.—The Secretary shall provide, by regulation, for reviews of the programs under title XXI of this Act by utilization and quality control peer review organizations to be carried out in a similar manner as provided under this part for review of programs under title XVIII of this Act."

"(b) CLINICAL PRACTICE GUIDELINES.—In providing for the review of programs under title XXI of this Act as described in subsection (a), the Secretary shall, in consultation with recognized experts in the field of utilization and quality control review, ensure that, to the extent practicable, the reviews conducted under this section take into consideration clinical practice guidelines, (including guidelines for clinical practice

and other standards developed by the Advisory Council for Health Care Policy, Research, and Evaluation pursuant to section 921 of the Public Health Service Act (42 U.S.C. 299b-1))."

(d) CALCULATION OF FEDERAL INSURANCE ASSISTANCE PERCENTAGE APPLICABLE TO TITLE XXI.—

(1) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary"), in consultation with the chief executives of the States, shall develop recommendations for the calculation of a specific Federal insurance assistance percentage applicable to coverage furnished under title XXI of the Social Security Act (as added by this Act). In a recommended formula for the determination of such Federal insurance assistance percentage, the Secretary shall consider factors related to the following:

- (A) Levels of employment.
- (B) The population of individuals covered under AmeriCare under such title XXI.
- (C) Poverty levels.
- (D) Economic conditions.
- (E) The distribution of urban and rural populations.
- (F) Health indicators, such as infant mortality.

(2) EMERGENCY FUND.—The Secretary shall develop recommendations for the creation of an emergency fund to fund certain benefits under title XXI of the Social Security Act (as added by this Act) in the event a State experiences changes in economic conditions or other conditions that the Secretary determines to necessitate emergency funding.

(3) REPORT.—Upon completion of the recommendations described in paragraphs (1) and (2), the Secretary shall submit a report to the appropriate committees of the Congress that includes such recommendations.

(e) REDUCTION IN PAYMENT FOR HOSPITALS RECEIVING A DISPROPORTIONATE SHARE ADJUSTMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary") shall for discharges occurring on or after the first day of the second full calendar year after the date of the enactment of this Act provide for a reduction in the payment of the disproportionate share adjustment percentage specified in section 1886(d)(5)(F) of the Social Security Act by 1/4 (1/2, with respect to discharges occurring on or after the first day of the seventh such full calendar year) of what the payments to hospitals under such provision would have been but for the enactment of this subsection.

(2) APPLICATION FOR EXCEPTION.—

(A) IN GENERAL.—The Secretary shall, notwithstanding paragraph (1), provide for payment of the full disproportionate share adjustment percentage specified in section 1886(d)(5)(F) of the Social Security Act in any case in which a hospital applies to the Secretary for an exception from the reduction specified in paragraph (1) and it is determined by the Secretary that such hospital shall receive payments resulting from the enactment of title VI of this Act that are less than 200 percent of the amount of reduction of payments specified in paragraph (1) to such hospital.

(B) DETERMINATION CRITERIA.—In making a determination under subparagraph (A) the Secretary shall consider—

(i) the number of patients served by a hospital that are underinsured or uninsured and the costs to the hospital of providing services to such patients in the first full calendar

year after the date of the enactment of this Act; and

(i) such other relevant factors as the Secretary determines appropriate.

(C) **CONSIDERATION OF APPLICATION.**—In the case of a hospital that submits an application to the Secretary under this subsection at least 6 months before the first day of the second full calendar year after the date of the enactment of this Act, the Secretary shall make a determination with regard to such application prior to such first day. With respect to all other applications submitted to the Secretary under this subsection the Secretary shall make a determination with respect to such application no later than 6 months after the date of receipt of such application.

(D) **APPEAL OF DETERMINATION.**—A hospital submitting an application to the Secretary under this subsection may appeal a determination by the Secretary to the Provider Reimbursement Review Board established under section 1878 of the Social Security Act and the provisions of such section shall apply to any such appeal.

(f) **COORDINATION WITH TITLE XIX.**—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by adding at the end the following new section:

“COORDINATION WITH TITLE XXI

“SEC. 1930. (a) The provision of medical assistance under this title shall not apply to any individual eligible for coverage under AmeriCare under title XXI of this Act.

“(b) The Secretary shall, by regulation, provide for appropriate coordination of this title with title XXI of this Act.”

(g) **INCREASE IN TITLE XIX CAP FOR TERRITORIES.**—Subsection (c) of section 1108 of the Social Security Act (42 U.S.C. 1308) is amended by adding at the end thereof the following new flush sentence:

“Notwithstanding the preceding sentence, for each fiscal year beginning after the date of the enactment of the HealthAmerica Act each amount under subclause (C) of each clause of such sentence shall be increased by the AmeriCare percentage increase for the preceding fiscal year. For purposes of the preceding sentence, the AmeriCare percentage increase equals the percentage increase (if any) in the total Federal program costs of title XXI of this Act over such costs of title XIX of this Act (as determined in the fiscal year preceding the effective date of the HealthAmerica Act) for all States.”

(h) **EFFECTIVE DATE.**—The amendments made by this title shall take effect on the first day of the second full calendar year beginning after the date of the enactment of this Act, without regard to whether regulations to implement such amendments are promulgated by such day.

TITLE VII—DEVELOPMENT OF HEALTH SERVICE CAPACITY

SEC. 701. GRANTS FOR EXPANSION OF AVAILABILITY OF PRIMARY CARE SERVICES.

Part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end thereof the following new subpart:

“Subpart V—Emergency Health Care Grant Programs

“SEC. 340D. GRANTS FOR EXPANSION OF AVAILABILITY OF PRIMARY CARE SERVICES.

“(a) **IN GENERAL.**—The Secretary shall award grants to eligible entities to expand the availability of comprehensive primary health services (as defined in section 330(b)(1)) in medically underserved areas.

“(b) **ELIGIBILITY.**—To be eligible to receive a grant under this section an entity shall—

“(1) be—

“(A) a migrant or community health center that receives assistance under section 329 or 330;

“(B) be an entity that meets the requirements of section 329(a) of 330(a) for being a migrant or community health center, though not a recipient of a grant under either of such sections;

“(C) be an entity that does not meet the requirements of section 329(a) or 330(a) for being a migrant or community health center, but that provides assurances satisfactory to the Secretary, including subsequent demonstrable evidence, that such entity will meet the requirements of either such section not later than 2 years after receiving a grant under this section; or

“(D) be an entity that is eligible for a planning grant under sections 329(c) or 330(c); and

“(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(c) **REVIEW OF APPLICATIONS; PRIORITY.**—

“(1) **REVIEW.**—The Secretary shall develop a process and timetable for reviewing applications submitted under subsection (b)(2) to assure that, to the extent practicable, all amounts appropriated under this section are awarded not later than 180 days after the beginning of each fiscal year.

“(2) **PRIORITY.**—In awarding grants under this section, the Secretary shall give priority to—

“(A) applicants that will use amounts received under such grant to provide services in areas with the greatest need for such services and in which the demand for such services can be expected to increase after the implementation of the HealthAmerica Act;

“(B) applicants with a demonstrated ability to expand their operations in the most efficient manner;

“(C) applicants that are migrant or community health centers receiving assistance under section 329 or 330, that propose to use amounts received under such grants to expand their operations, including expansion to new sites, to serve high impact areas (as defined in section 329(a)(5)) or medically underserved populations (as defined in section 330(b)(3)), that are not currently being served;

“(D) applicants that do not receive assistance under section 329 or section 330, but that meet all requirements to receive funds under either of such sections, including, for the purpose of planning the establishment of new centers in areas of high need, entities eligible for planning grants under sections 329(c) and 330(c).

“(3) **SECONDARY PRIORITY.**—The Secretary shall give secondary priority in awarding grants under this section to applicants that—

“(A) propose to meet the requirements of section 329 or 330 within 2 years after the date on which the application is submitted; and

“(B) are serving or propose to serve such populations or areas that are not currently being served or have a proposal for such service pending.

“(d) **USE OF AMOUNTS.**—An entity receiving a grant under this section shall use amounts received under such grant to expand the availability of comprehensive primary health services (as defined in section 330(b)(1)) in medically underserved or high impact areas.

“(e) **REIMBURSEMENT FROM OTHER SOURCES.**—

“(1) **IN GENERAL.**—An entity receiving a grant under this section shall use any and all reimbursements received from other sources for services provided by such entity to—

“(A) compensate for the unreimbursed costs of providing services to patients;

“(B) expand the amounts and types of services furnished;

“(C) serve additional patients or areas; or

“(D) promote the recruitment, training, or retention of personnel.

“(2) **RETURN OF UNUSED AMOUNTS.**—Any amounts of the reimbursements referred to in paragraph (1) that are not used for the purposes described in such paragraph shall be returned to the Secretary, either directly or through adjustments in future grants, and shall be used by the Secretary to make additional or expanded grants under this section without regard to appropriations under subsection (h).

“(f) **FAILURE TO COMPLY.**—

“(1) **TERMINATION OF PAYMENTS.**—In the case of an entity that receives a grant under this section and fails to comply with the requirements of this section, the Secretary shall, after providing such entity with appropriate notice and an opportunity for a hearing, terminate the payment of amounts under such grant to such entity. The Secretary may terminate grants to entities that fail to demonstrate good faith efforts to meet the requirements of this section.

“(2) **ADDITIONAL POWERS OF THE SECRETARY.**—In addition to terminating payments under paragraph (1), the Secretary may—

“(A) sell any property acquired by the entity with amounts received under the grant, or transfer such property to another entity receiving such a grant; and

“(B) recoup (to the extent practicable) assistance previously provided to the entity under this section.

“(3) **INELIGIBILITY FOR FUTURE GRANTS.**—If an entity that is not in compliance with the requirements of this section may be granted a 2-year extension to meet such requirements. If at the end of such 2-year period the entity has failed to comply with such requirements, that entity shall be ineligible for further grants under this section.

“(g) **ADMINISTRATION.**—Not more than 10 percent of the amounts made available under this section may be used for administrative purposes. The costs of administration include—

“(1) the cost of providing, either directly or by grant or contract to nonprofit private entities that represent the recipients of grants under this section, for the identification of areas and populations eligible for assistance under this section; and

“(2) the provision of technical assistance to entities for the planning, development and operation of the service delivery systems supported under this section.

“(h) **AUTHORIZATION OF APPROPRIATIONS.**—

“(1) **IN GENERAL.**—There are authorized to be appropriated and there are appropriated to carry out this section—

“(A) \$58,000,000 for fiscal year 1992;

“(B) \$166,000,000 for fiscal year 1993;

“(C) \$266,000,000 for fiscal year 1994;

“(D) \$350,000,000 for fiscal year 1995; and

“(E) \$426,000,000 for fiscal year 1996.

“(2) **REPORT.**—Not later than September 30, 1995, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the need for further migrant and community health center primary care service capacity development and recommendations concerning the appropriate level of support needed for activities to address such capacity development.

"(3) ADDITIONAL AMOUNTS.—Amounts provided under this section shall be in addition to any amounts appropriated under sections 329 and 330."

TITLE VIII—EFFECTIVE DATE

SEC. 801. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided in this section, titles I and II of this Act shall take effect on January 1 of the second full year that begins after the date of the enactment of this Act.

(b) EXISTING PLANS.—In the case of an employer that, on the date of the enactment of this Act, has in effect a health insurance plan covering the employees of such employer, the amendments made by titles I and II shall not apply to such employer until the date described in subsection (a) or the first day of the second full year after the date of the enactment of this Act, whichever is later.

(c) STATE AND LOCAL GOVERNMENTS.—In the case of an employer whose revenue is raised by a taxing authority, a health insurance plan covering the employees of such employer shall not be required to meet the requirements of part B of title XXVII of the Public Health Service Act until the first day of the third full year after the date of the enactment of this Act. During the period beginning on the effective date prescribed under subsections (a) and (b) and ending on the first day of such third full plan year, employee participation in such plan shall be voluntary unless otherwise required by the plan.

SEC. 802. POLICY RESPECTING ADDITIONAL BENEFITS.

(a) IN GENERAL.—After the date of the enactment of this Act, no employer shall be required under part B of title XXVII of the Public Health Service Act to provide any health benefit in addition to the benefits required to be provided under section 2721(a) of such Act (as in effect on the date of the enactment of this Act) unless—

(1) such additional health benefit is for a service that the AmeriCare plans (under title XXI of the Social Security Act) are required to cover; and

(2) before the enactment of such requirement, the benefits and costs of requiring the provision of such additional health benefit have been analyzed and considered by Congress.

(b) REPORTS.—

(1) IN GENERAL.—In carrying out subsection (a)(2) with respect to the consideration of a proposed additional health benefit, Congress shall request a report from the Institute of Medicine of the National Academy of Sciences or a public or nonprofit entity with expertise relating to health benefits. Any such report shall—

(A) analyze and summarize such proposed additional health benefit; and

(B) contain an estimate of the economic and health impacts of such proposed additional health benefit.

(2) CONSULTATION.—Any such report shall be prepared in consultation with interested members of the public and with individuals and entities having expertise with respect to such proposed additional health benefit.

SUMMARY OF HEALTHAMERICA: AFFORDABLE HEALTH CARE FOR ALL AMERICANS

OVERVIEW

The legislation will assure every American basic health insurance coverage, either through a plan provided by an employer or through a Federal-State public insurance program, called AmeriCare, that will replace

Medicaid.¹ Universal health insurance coverage will be coupled with a comprehensive program to control health care costs and with provision to reflect the special needs and problems of small business.

EMPLOYMENT-BASED COVERAGE

Business responsibility.—Businesses will be offered a choice of providing coverage meeting minimum standards for employees and their families or making a contribution to the public plan. The contribution will be set at a percent of payroll. This contribution will encourage employers to provide health insurance while providing a substantial subsidy to employers, especially small employers, with a high percentage of low-wage or part-time workers. The contribution will be set at a level that will maximize private coverage for the working population without imposing an excessive burden on employers.

If an employer chooses to make a contribution, he or she will be required to facilitate the process of enrollment in the public program by providing his or her employees with enrollment forms and information about how to apply for coverage. States will be given the option to require those employers who elect to make a contribution to the public program to collect the employees' portion of the premium. In the absence of this requirement, employers will be allowed to voluntarily collect premiums on behalf of employees.

Individual responsibility.—Employees will be required to accept coverage for themselves and their families if offered by their employers and pay a share of the premium as well as co-payments and deductibles, if required under the employer plan. A similar obligation will be assumed by workers whose employers make a contribution to the public program. When the plan is fully phased-in, certification of health insurance coverage will be required for each individual claimed as a personal exemption. Certification of coverage will also be required when applying for government benefits such as government loans or food stamps as a condition of receiving benefits.

BASIC BENEFIT PACKAGE

Covered services. Plans must cover: hospital services; physician services; diagnostic tests; limited mental health benefits; 45 days of inpatient care; 20 outpatient visits; prenatal and well-baby care; preventive health benefits; mammograms, pap smears, and well child care.

Cost-sharing. Maximum employee cost-sharing under basic plans is: 20 percent of the premium; deductibles of \$250 per individual and \$500 per family; co-payments of 20 percent (except for outpatient mental health services, for which 50 percent co-payments may be charged); out-of-pocket catastrophic cap on liability for covered services of \$3,000; wage-related cost-sharing may be used for deductible and catastrophic cap; employee premium share and co-payments and deductibles will be subsidized by the public plan for low-income workers (as described in the public plan section below).

Actuarial equivalency. To assure employer flexibility to adapt the plan to the needs of the particular work force, employers may offer plans that do not meet minimum standards as long as the employer contribution to the plan offered is actuarially equivalent, pursuant to guidelines issued by the Secretary, to what would be provided under the basic plan. Under an actuarially equivalent plan, basic services must still be covered

¹ Except for long-term care services.

without limits on scope and duration, except as specified in the basic plan, but the level of cost-sharing could be adjusted. For example, an employer who offered a service that was not required to be covered could require his or her employees to pay a larger share of the premium or charge a higher deductible. An employer with a lower deductible could have a higher catastrophic cap.

EMPLOYEES TO BE COVERED

Full-time workers. If an employer provides private coverage rather than making a contribution to the public plan, all workers and their families working 17½ hours a week or more must be covered. An employer may choose to make a contribution to the public plan for workers employed less than 17½ hours per week even if direct coverage rather than the payment is chosen for other workers. For purposes of computing the wage base for contributions to the public plan, the employer may exclude workers for whom coverage is not mandatory, including employed children covered under a parent's plan and workers with two employers receiving coverage under another employer's plan.

Less than full-time workers. The required employer premium contribution for workers employed 17½ hours per week or more and less than 25 hours a week may be reduced based on the ratio of hours worked to 25. The required contribution for employees working less than 17½ hours per week is at least 50 percent. Employees who are charged premiums higher than 20 percent of the cost of a basic plan as the result of this provision may decline employer coverage and receive coverage through the public plan.

Two family members employed. Each employer is responsible for primary coverage of his or her employee. If a family member is covered under another plan, a worker may decline coverage for that family member. Parents may choose which employer plan will cover their children. A worker receiving primary coverage from an employer may also elect to participate in the plan of another working family member and receive secondary, wrap-around coverage from that plan. In the case of a two-worker family, the primary worker's premium payment, if any, to the primary employer shall be adjusted to reflect savings to that employer as the result of not bearing responsibility for primary coverage of the secondary worker. A similar adjustment shall be made for workers receiving retirement health benefits from a previous employer.

Employed child. Coverage may be waived for a working dependent child covered under a parent's plan.

ADDITIONAL FEATURES

Waiting period. The waiting period for coverage may not exceed 30 days. If the employer elects to impose a waiting period, the employee may elect to receive coverage from the employer during this period by paying 102 percent of the combined employer and employee share of the premium.

Pre-existing condition limitations on coverage. When fully phased-in, no limits on coverage may be imposed based on the existence of pre-existing conditions.

Consumer protection. A set of legal protections will be established for insured individuals, including the right to full information on plan provisions and the right to appeal coverage decisions.

PUBLIC PLAN

Medicaid will be replaced² by a new Federal-State program of public coverage called

² Except for long-term care services.

AmeriCare. The program would be administered by the states subject to national standards for eligibility, reimbursement, and coverage. All Americans not covered by employment-based coverage will receive coverage under AmeriCare.

Benefits under AmeriCare will be the same as for employment-based coverage, except that Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) will be available under the public program. Individuals below the poverty line will have access to optional Medicaid services that the State chooses to provide. Individuals below the poverty line covered by an employment-based plan will also be entitled to receive such services through the public plan.

Specific provisions include:

Premiums.—Individuals below 100 percent of poverty will pay no premium. Individuals between 100 and 200 percent of poverty will pay premiums on a sliding scale basis. Individuals above 200 percent of poverty will pay premiums equal to the average actuarial value of the coverage, capped by a percent of income reflecting ability to pay.

Workers receiving coverage through the public plan will pay 20 percent of the actuarial value of coverage, unless their incomes are below 200 percent of poverty.

Subsidy of low-income workers receiving private coverage through an employer.—The public plan will subsidize the premium share of workers with family income below 200 percent of poverty. Premiums will be completely covered for below-poverty workers for basic plan benefits.

Consortia.—States will be encouraged to establish purchasing consortia to reduce the overall rate of health care cost inflation (see below); AmeriCare and Medicare can participate in these consortia.

Managed care.—States will be encouraged to set up and enroll beneficiaries in cost-effective managed care systems. Safeguards are included to assure that no enrollee will be forced to choose a managed care alternative.

Provider reimbursement.—Providers will be reimbursed at levels at least equivalent to the level that would be provided by the use of Medicare reimbursement rules. Reimbursement will be raised in phases.

Scope and duration.—No limits may be placed on scope and duration of coverage for required services.

Phase-in.—The public plan will be phased-in. All children and pregnant women will be assured coverage in the first phase.

Financing.—The public program would be financed by state and Federal contributions. States would receive an enhanced Federal match, phased out over time, for coverage of newly eligible persons and other new program costs in the public program. This enhanced match would be a specified percent increase over a state's current matching rate for the Medicaid program.

EXPANDING ACCESS THROUGH AN IMPROVED DELIVERY SYSTEM

Insurance coverage alone will not guarantee access to care for many individuals in rural and inner-city areas where there is an inadequate supply of health care providers. Over the next five years, approximately \$1.2 billion in additional funding will be invested in the creation of community health centers to provide primary care services in such underserved areas. This additional funding will provide the capacity to serve an estimated 5.4 million people each year.

REDUCING THE BURDEN OF HEALTH CARE COSTS

Universal health insurance coverage itself significantly reduces the cost of health care

to businesses and individuals currently purchasing insurance. Uncompensated care raises private health insurance premiums an estimated 10-15 percent.

In addition to the reduction in cost-shifting, the program includes a comprehensive program to lower health care cost inflation and total health care costs. The strategy is organized around steps to reduce unnecessary and ineffective care; to reduce the excessive administrative costs of the current pluralistic payment system, and to limit unrestrained price and volume increases by providers. Specific measures include:

REDUCING UNNECESSARY OR INEFFECTIVE CARE

Outcomes research/practice guidelines dissemination.—The Pepper Commission estimated that unnecessary or ineffective health care added as much as \$18 billion annually to health care costs. The legislation will raise the authorization level for the Agency for Health Care Policy and Research by \$50 million, to enable it to conduct additional outcomes research and develop practice guidelines for more procedures. The current emphasis on Medicare services will be supplemented by an equal emphasis on the services that are delivered in the private market. Government programs will be required to use practice guidelines in utilization review activities. Additional measures will be taken to assure dissemination of guidelines, once developed, to providers and payers (see below).

Technology Assessment.—The current public initiative through the Agency for Health Care Policy and Research to analyze the appropriate use of technology will be expanded. Cooperation between the public and private sector and coordination or private sector efforts will be encouraged. Federal matching grants will be available through the Agency for Health Care Policy and Research for private sector technology assessment initiatives.

Encouragement of managed cares.—Managed care works by encouraging use of the most efficient providers and minimizing unnecessary or ineffective care. Managed care will be encouraged by the following measures:

State legislative barriers to managed care will be preempted.

Small businesses (which employ 30 percent of all American workers) will be given guaranteed access to managed care through small business insurance reform (see below).

Through small business insurance reform (see below), insurers will be given additional incentives to develop cost-effective systems of managed care.

The public program will make managed care options available to those not covered by employment-based plans.

The data base necessary for effective managed care will be enhanced by the standardized data and evaluation of providers described below and by evaluation research and development of practice guidelines.

ELIMINATING UNNECESSARY ADMINISTRATIVE COSTS

Four programs will be established to reduce the excessive administrative costs of our pluralistic payment system.

Standardized claims forms.—The Federal Health Expenditure Board (see below) will be required to develop and implement standardized claims and data forms. This will reduce administrative costs for providers, who must now deal with a multiplicity of forms provided by different payers.

Insurance Consortia. (See Encourage State Consortia, below).—By requiring small insur-

ance companies to combine for the purpose of paying providers, the legislation will dramatically reduce the number of payment entities with which providers must deal. This will make possible significant economies of scale in claims processing, facilitate electronic claims processing, and reduce administrative costs of providers.

Quality improvement agencies.—New agencies will be established in each state to work with providers on a program of continuous quality improvement and implementation of cost-effective methods of delivering care, including practice guidelines. Providers periodically certified by the agency as practicing efficient, quality care will be exempt from utilization review by insurers during the period of the certification, not to exceed one year. This step will focus utilization review where it is most likely to be cost-effective and enhance risk-management activities.

Small business insurance reform (see below).—By reducing the costs of the continuous enrollment and disenrollment endemic to the current system of insuring small businesses, by promoting more effective price competition, and eliminating or reducing the high costs associated with medical underwriting, this reform will reduce the average administrative costs associated with selling insurance to businesses of 25 employees or fewer from 25 percent of premium to 15 percent. For companies with ten or fewer workers, where administrative and sales costs are often as high as 40 percent, savings will be even greater.

ASSURE PROVIDER PRICE AND VOLUME RESTRAINT

Federal Health Expenditure Board.—An independent agency with the stature and independence of the Federal Reserve Board will be established to set national expenditure goals, in total and by sectors of the health care industry. Advisory goals will also be established for states and regions. The Board will convene providers and purchasers to conduct negotiations on rates and other methods of achieving the expenditure goals. Negotiators may recommend adjustments of the goals to the Board. The Board will publish recommended rates and other measures to achieve the goals for the use of purchasers and providers. Recommended rates and other measures will be binding if the negotiations are successful unless State Consortia (see below) establish different payment methods, rates, or other measures that could be successful in achieving the goals.

Encourage State Consortia/Innovative cost control programs.—States will be required to establish insurance/purchasing consortia, which would, at a minimum, require insurance companies with small market shares to participate for the purpose of reducing administrative costs. These consortia would also be encouraged to take other cost-containment actions. To encourage states to use consortia, states will be given the flexibility to have both Medicare and AmeriCare participate. States will also be given grants to establish and evaluate these consortia.

Mandatory functions. The consortia will make all direct payments to providers on behalf of insurance companies with small market shares (most of the estimated 1200 insurance companies marketing health insurance) and will work with providers to establish paperless processing and "smart card" systems for reimbursement that will reduce administrative costs and burdens and take advantage of economies of scale. Larger insurers and the public programs will be allowed, and, at state option, required to join these insurance consortia.

Optional functions. Optional functions of the consortia may include: price negotiation; volume negotiation; capital allocation; rational distribution of providers; data collection; consumer protection; promotion of managed care/competition.

If state consortia establish effective methods of achieving overall state goals established by the Federal Expenditure Board, state rates or other methods may be used in lieu of Board published rates.

Develop and disseminate cost and quality data on individual providers.—The Federal Health Expenditure Board will collect, analyze, and disseminate data that will assist purchasers of care and consumers in evaluating the efficiency and quality of individual providers. This will assist in the development of managed care networks, in identifying quality providers for patients, and in encouraging providers to improve their performance.

ADDITIONAL COST CONTROL ACTIONS

Pre-empt state mandates.—The current ERISA pre-emption of state regulation of the content of employer health plans for self-insured plans will be extended to all employment-based health plans. Federal standards will replace state standards.

Malpractice.—A grant program will be established to provide states incentives to experiment with alternatives to the tort system for reimbursing and protecting the victims of malpractice and with the use of practice guidelines in malpractice cases. The Institute of Medicine or similar independent organization will conduct an evaluation of the current status of knowledge about the malpractice problem in all its facets and make recommendations to the Congress.

Health care cost control research and demonstration program.—A new program of health care cost control research grants and demonstrations will be established in the new Agency for Health Care Policy and Research. Grants will be made to develop effective methods of health care cost reduction. A similar program in the '70s led to the development of the DRG program.

SPECIAL PROGRAMS FOR SMALL BUSINESS

The legislation recognizes the special problems faced by small business in providing health insurance to their workers and addresses these problems in a number of ways.

Contribution to public coverage.—By offering businesses the opportunity to make a contribution based on a percentage of payroll instead of providing coverage directly, the legislation reduces the cost substantially to businesses, often small businesses, that employ predominantly low-wage or part-time workers. This alternative is far less costly to such businesses than providing coverage but will assist them in attracting a qualified work force.

Phase-in of small business responsibility.—Small businesses with fewer than 100 workers will be allowed a phase-in period before they are required to provide or contribute to coverage for their workers. For businesses with 25 to 99 workers, the phase-in will be four years. For businesses with fewer than 25 workers, the phase-in will be five years. These transition periods will allow small business insurance reform time to take effect and give small businesses time to plan for the additional costs they will be expected to incur. Businesses with 25-99 workers will have 4 years to voluntarily provide coverage to workers. If at the end of 4 years 75 percent of the currently uncovered employees of these businesses have been covered, then employers in this group will not be required to

provide coverage or pay a contribution to the public program. The same rule will apply for businesses with fewer than 25 employees, except that they will have 5 years to voluntarily provide coverage.

Small business insurance reform.—Federal standards for health insurance sold in the small group market will: remove barriers to access to group health insurance by eliminating pre-existing condition exclusions and denials of coverage on the basis of health status; promote equity in insurance premiums, by moving rate-setting toward a community-rated system; and improve the affordability of coverage for small employers, by preempting state benefit laws and ensuring access to managed care. States will be required to provide information and technical assistance to small employers and consumers seeking to choose a plan.

Special treatment of new small businesses.—Recognizing the fragility of small businesses in their early years, the legislation allows new, small businesses a reduced obligation with regard to providing or contributing toward health insurance coverage. Small businesses with fewer than 25 workers will have no obligation to provide or contribute to coverage during their first two years. In the third year, the contribution they will be required to make to the public plan will be one-half the normal level. In the fourth year, such businesses will be required to fulfill the same obligations as other businesses.

Special treatment of small businesses that have not previously provided coverage.—During the first five years after enactment, small businesses that have not provided coverage to their employees during the year prior to enactment of the legislation will be allowed to buy insurance paying providers under Medicare rules.

This program will allow these small businesses to provide coverage at lower costs and will encourage them to begin to provide coverage voluntarily during the transition period. The Secretary shall study this program and report to the Congress on its effectiveness.

Improved tax treatment for the self-employed.—Currently, the owner-operator of an unincorporated small business is only allowed to deduct 25 percent of the cost of his or her own health insurance premiums from income for tax purposes, and even this deduction is due to expire in December, 1991. By contrast, the cost of health insurance for the owner-operator of an incorporated business is fully deductible. This provision would allow the self-employed owner-operator to deduct 100 percent of the cost of his or her own health insurance premiums up to the value of the premium they paid on behalf of their employees. Owner-operators with no employees would be allowed to deduct 100 percent of the cost of the lowest cost small employer plan meeting the basic benefit requirements available in their area.

Tax credits for small business.—In addition to the improved deductibility of health insurance expenses for the self-employed, small businesses that are not profitable enough to be able to afford to provide health insurance coverage to their workers without difficulty will receive a tax credit to cover up to 25 percent of the cost. This credit will be provided to small businesses with fewer than 60 employees for each full-time employee with a salary of less than \$20,000, except for high-profit firms in which the employer earns more than \$53,400 per year. This credit would be in addition to the deduction currently available for the cost of such in-

surance.

Mr. KENNEDY. Mr. President, I have been working on the issue of affordable health care for many years. Never have we been closer to guaranteeing affordable health care for all our people than we are today.

And never has the need for action been greater, because we face a two-pronged crisis in health care that threatens the health and well-being of every American.

Too many Americans are uninsured and underinsured—and the number is growing every year. No American family can be secure that the health insurance they have today will protect them tomorrow. And health care costs are too high and growing at astronomical rates.

In this rich land of 250 million Americans, 34 million of our fellow citizens have no health insurance whatsoever.

At various times over the next 2 years, 30 million more will have no health care coverage for substantial periods. And another 60 million have insurance that even the Reagan administration said was inadequate.

During the great depression, President Franklin Delano Roosevelt called us to action with his statement that "One-third of a nation is ill-housed, ill-clad, and ill-fed." Today, more than a third of our Nation lacks the basic health insurance coverage that every other industrialized country except South Africa deems a fundamental human right.

A family without health insurance must live every day with the knowledge that an accident or an illness could wipe out the savings of a lifetime. But the danger is more profound than the loss of economic security alone.

Every year, 1 million Americans seek health care, but are turned away because they cannot pay. Another 14 million do not even look for care they need, because they know they cannot afford it.

Two-thirds of the uninsured with serious health symptoms such as spontaneous bleeding or loss of consciousness do not see a doctor. A recent study in Washington, DC, found that almost half of the uninsured people admitted to the hospital could have avoided hospitalization if timely care from a family doctor had been available.

The problem is especially devastating to America's children. Eight million American children have no health insurance. One in every three poor children has no coverage. Forty percent of the Nation's children do not even get basic childhood vaccinations. The United States ranks first in wealth, first in military power—and a dismal first in preventing infant mortality.

Every American child should be guaranteed a healthy start in life, but too many are not getting it. Soaring costs threaten to price health care out of the

reach of working Americans. Today, we are spending in excess of \$700 billion a year on health. Costs are going up twice as fast as wages. Corporate expenses for health care are actually greater than corporate profits. The amount American families pay for health care that insurance did not cover has almost tripled in the last 10 years, from \$63 to \$162 billion.

Exploding costs would be a problem under any circumstances. But these immense expenditures have not brought us the health care system the American people need or that the American people deserve.

They have not kept newborn American infants from dying at rates higher than almost every other industrial country. They have not raised life expectancy as high as 12 other nations. They have not bought insurance for millions of working families or adequate protection for millions more.

Caught between the twin problems of increasing numbers of the uninsured and escalating costs, some of our most important health care institutions are imperiled. Hospitals committed to serving the uninsured are increasingly swamped in a tide of red ink. Half of all public hospitals are operating at a loss. One-third of all rural hospitals are operating at a loss. Six hundred are likely to close in the next few years.

In New York City, it is not uncommon to wait 3 days in an emergency room before a hospital bed becomes available. Forty-one States report similar problems. In Los Angeles, more than half the private hospitals have dropped out of the trauma care system, because they cannot afford the uninsured patients who arrive in the emergency room. Nationally, a third of all hospitals have dropped out of the trauma care system. The message is ominous—"Don't get into an auto accident—whether you are rich or poor, insured or uninsured, your life is at greater risk."

Even in hospitals with a wealthy, well-insured clientele, costs continue to soar. This imbalance is yet another mark of our failure to establish a rational, humane, and effective national health care system. Health care is the fastest growing failing business in America.

The plan we are proposing today builds our current system but corrects its worst faults. It is a practical, achievable proposal that will get the job done.

It will guarantee basic health insurance for every American family, and it will put in place a comprehensive program to control health care costs.

Under the plan, every business will be required to provide health insurance coverage for its workers and their families, or contribute to their coverage under a new Federal-State program called AmeriCare. Two-thirds of the uninsured are workers and their fami-

lies. These Americans work hard—most of them 40 hours a week, fifty weeks a year, but all their hard work can not buy them the health insurance they need, because their employers refuse to provide it.

The vast majority of businesses already assume this obligation. It has been more than half a century since we required all employers to pay a minimum wage, to contribute to Social Security, and to participate in worker's compensation and unemployment insurance. In 1991, the time is long overdue for all employers to provide or contribute to health care.

The unemployed deserve the basic right to health care, too. AmeriCare will make coverage available to them with premiums based on ability to pay.

Coverage under the plan will be phased in over a 5-year period, beginning with coverage for every child. Businesses with 100 employees or more will be required to provide or contribute to coverage immediately. The obligation will be phased in for smaller businesses. By the fifth year, every American will be guaranteed coverage on the job or through AmeriCare.

The plan includes a number of provisions to make it easier for smaller businesses to afford the cost of their increased obligations. These provisions include insurance reform, so that small businesses will finally be able to buy coverage at a fair price, regardless of whether their employees are healthy or not. It includes new tax credits to provide fair tax treatment for the costs of the self-employed and to pay up to 25 percent of the costs of small businesses that might have trouble affording coverage. And it phases in the provisions of the plan so that small businesses will have time to adapt.

Our plan includes the most comprehensive program to deal with the excessive cost of health care ever introduced.

First, it includes strong steps to squeeze unnecessary care out of the system. Studies by the RAND Corp. of selected medical procedures found that 15 to 30 percent, depending on the procedure, were clearly unnecessary or even harmful. A 5-year study of Medicare has found that 10 to 20 percent of care to be unnecessary. The Pepper Commission estimated that as much as \$18 billion worth of medical care annually was unnecessary. Our program will require stepped-up development of practice guidelines so that unnecessary medical care can be clearly identified and eliminated. Managed care, with cost-effective providers, will be encouraged. And outcomes research will be increased so that for many medical procedures whose value is unclear, effectiveness will be established and ineffective procedures eliminated.

Second, the plan will cut billions of dollars in unnecessary administrative costs. The current system is strangling

in redtape that burdens physicians, hospitals, and patients alike. Over 1,200 separate companies are selling health insurance today, and the multiplicity of different forms and payment procedures, as well as the repetitive and inconsistent review of medical practice that results, diverts time and money that could be better spent on medical care. When insurance companies sell a policy to a small business or an individual, as much as 40 to 50 cents of every premium dollar goes to cover sales and administrative costs and profit. This money that stays with the insurance companies doesn't buy even a single band-aid.

Our program will reform the insurance market, so that overhead is reduced and a greater share of premiums is used to cover medical care costs, not insurance company redtape. Billing and claims forms will be standardized, and small insurance companies will be required to join consortia for the purpose of paying doctors and hospitals. Economies of scale and standardization will make cost-effective paperless processing easier to implement and will cut the resources devoted to administration. A new quality improvement program will exempt large numbers of doctors and hospitals from the necessity of wasting time and money justifying tests and procedures to insurance companies.

Third, the plan will end the blank-check payment policies that have allowed doctors and hospitals to charge whatever they want for care. We need the best health care system money can buy, not the most wasteful and expensive one.

Under this program, a new Federal Health Expenditure Board, with the stature and independence of the Federal Reserve Board, will be created. The Board will collect, analyze, and publish data on doctors and hospitals in every community in the country, so that patients and insurers can compare costs and quality. The Board will establish tough goals for total spending, and bring providers and purchasers together to negotiate ways to achieve the goals. And States will be encouraged to take additional steps to control costs.

Finally, the program will end cost-shifting by assuring that every American is covered, and that every business does its fair share. Today, health insurance costs for those who have insurance are as much as 15 percent higher than if everyone were covered. When people cannot pay their medical bills, the costs are picked up in the form of higher charges for everyone else.

My family has been fortunate in always being able to afford the best medical care. The time is long overdue to guarantee every citizen that same access to the care they need. I believe the introduction to this bill marks the beginning of a process that can achieve

that goal, and make decent health care a reality for every American family.

Mr. RIEGLE. Mr. President, today I am introducing S. 1277, Health America: Affordable Health Care for All Americans, with Senators MITCHELL, KENNEDY, and ROCKEFELLER. I want to commend the majority leader for his leadership in this area.

Health America is the product of almost 2 years of work of the Finance Subcommittee on Health for Families and the Uninsured to provide health care coverage for all Americans. In the 101st Congress, the Finance Committee's Subcommittee on Health for Families and the Uninsured was created at my request to enable us to find a solution. At the first hearing of our Subcommittee, the lead off witness was Senator KENNEDY, chairman of the Labor and Human Resources Committee and we agreed to work together—and have done so—along with the majority leader, Senator ROCKEFELLER and others like Senator PRYOR and Senator METZENBAUM. Over the months all points of view have been weighed and balanced in the package we're presenting today.

We began as a bipartisan process. And it is my hope that this legislation will prompt the administration to act now on the crisis of high health care costs and lack of availability of health care coverage.

I first introduced a bill to provide health care to the uninsured in December 1982 in the 97th Congress and introduced bills on this issue every Congress until the 101st when I asked for the creation and became chairman of the Finance Subcommittee. I began by focusing on unemployed people without health insurance and have since broadened to more comprehensive legislation.

America's health care crisis is part of a larger problem of a shrinking American middle class where our people have less and less economic power to meet their basic needs. Skyrocketing health insurance costs for those who have coverage—and the growing group of Americans with no health insurance coverage—are signs that our health care system must be reformed.

While health care reform has many complexities we must not get lost in the detail and lose sight of the fact that this is an urgent issue facing our people.

In Michigan alone, there are a million people today without a penny of health insurance, and 300,000 of them are children. Nationally, an estimated 34 million Americans have no health insurance coverage. Those that do have health insurance are finding their rates rising sharply and their coverage being reduced by rising deductibles, copayments, and diminished benefits. We can and must do better—and that requires the comprehensive health insurance plan we are introducing today.

Mr. President, more than ever before, we need a national strategy for addressing the current health care crisis in this country. Our health care system—the most advanced and sophisticated in the world—is failing us in two important ways. Tens of millions of Americans are without health insurance or the financial resources to purchase health care services when they or families need care. Yet at the same time, our health care system is the most expensive in the world. A more efficient, better designed health care delivery system could provide care to all Americans without utilizing additional national resources.

Every day we read or hear about these issues—and the problems are only getting worse. We now know that even more Americans, over 60 million, lacked health insurance protection for a period of time each year. A recent study I requested from the GAO underscores the fact that the uninsured span all ages, income levels, employment status, ethnic groups, and geographic regions. The uninsured are also more likely to die after entering a hospital and less likely to have certain procedures performed when compared to insured persons. In fact, in Michigan, this subcommittee has heard testimony from people that have since died as a result of delaying medical care specifically because they had no health care insurance.

Health care is increasingly becoming unaffordable for all Americans. In some cases, premiums continue to rise in double digit figures. These pressures on the current system will lead to a complete collapse, leaving millions more without health insurance.

A General Accounting Office [GAO] study I requested shows just one dramatic example of why we need comprehensive reform of our current health care system. The primary reasons for the closing of 60 hospital trauma care units in major urban areas were the costs of treating uninsured people without the means to pay and unreasonably low Medicaid payment rates to hospitals. Hospital trauma centers can't stay open in an environment where they are losing money on the people they must serve. For three hospitals in Detroit, the total losses exceed \$10 million a year for emergency and trauma care alone. Parts of our health care system are collapsing around us while the need for comprehensive health care reform has been stalled by an executive branch largely indifferent to the problem.

When essential services, like hospital trauma centers, are forced to shut down due to inadequate funds we all suffer. Trauma centers are not the only problem, hospital emergency rooms are closing, hospitals are closing down entirely, and doctors are finding it harder and harder to treat a growing number of our people. In Michigan alone, hos-

pitals lost \$350 million last year providing care for those who could not or would not pay. Ultimately, the financial distress of hospitals and doctors that provide large amounts of uncompensated care threatens the quality and availability of this care and, in fact, is threatening to shut down hospitals all across America as well as reduce the number of doctors providing care, particularly in areas where they are needed the most.

The plan we are unveiling today begins the reform process. We've spent the past 2 years analyzing all the relevant data and weighing the viewpoints of the various parties at interest. In fact, in March last year a document of proposed options was distributed for public comment to hundreds of groups, and at least 100 groups in Michigan alone. The principles we have used in designing our program mark a breakthrough that will, in stages over the next 5 years, bring basic health insurance coverage to every person in America.

It does so by implementing important cost-saving reforms at the same time we broaden health insurance coverage—starting universal coverage first with 10 million American children who now lack health insurance and would begin to receive it once the program takes effect. By matching cost-saving reforms with broadened coverage—we can achieve needed efficiencies and cost saving throughout our entire health care system.

This bill strikes a fair and carefully structured balance among competing objectives—and none of the various parties of interest will find it precisely to their liking. I consider that a measure of its practicality and why it should be—and will be—enacted.

Mr. President, Health America addressed two major shortcomings of our health care system—rising health care costs and lack of health care coverage for millions. Our plan would, in stages over 5 years, provide health care for all people who currently do not have health care coverage, building on the current private and public system. Children and pregnant women are covered in the first phase. Of integral importance, we have also developed a significant cost containment program. Our cost containment program makes this bill different from proposals in the past which deal only with access.

About two-thirds of the currently insured get their coverage from their employer. Another 15 percent get their coverage through public programs, primarily the Medicaid Program. That leaves about 16 percent of our population with no coverage at all. Our plan fills in the current gaps in coverage by restructuring the current system. Employers would be encouraged through tax incentives and disincentives to provide coverage; so most people would

get coverage through their employer as they do today.

We have a series of special provisions to ease the burden on small businesses including tax credits, small group insurance market reform and special phase-in periods for coverage. Since we phase in our cost reduction program sooner than the coverage of the uninsured, we hope to make health care plans more affordable for small businesses. Many businesses would like to provide health care coverage but the costs are too high. We hope that making health care benefits more affordable and providing direct tax credits will entice businesses to voluntarily provide coverage. I would also say at this point that we owe Senator PRYOR a debt of gratitude for all his hard work in this area.

Anyone who does not receive health insurance through an employer will have access to our new public health insurance program called AmeriCare.

Unlike Medicaid, which it replaces, AmeriCare is not a welfare program. All people are eligible for its coverage including workers and their families from businesses that do not provide private health insurance.

Also, AmeriCare will provide a uniform health benefit package and higher reimbursement rates for providers—both significant changes from the current Medicaid Program. States would administer AmeriCare within these tighter Federal standards creating a uniform health care program across America. Medicaid now varies tremendously by State. In addition, States usually cover only single women with children and on average cover only some 40 percent of all people living in poverty. We increase funding to the States for AmeriCare during the time the program is being phased-in.

Here is just one example of who would be helped by this type of program.

A remarkable young woman age 28 from Woodhaven, MI, Cheryl Eichler, had Crohn's disease for 13 years. She left a hospital bed in June 1989 to testify before a finance subcommittee hearing in Michigan. Cheryl earned \$12,000/yr (2 times the poverty level) at a 7-11 store but her employer did not offer health care. When she quit her job due to her illness, she did not qualify for Medicaid because as a single woman with no children she did not fit one of the current categories under Medicaid. We tried to help her. Within 6 months she died—and I am convinced her tragic and premature death occurred because she did not receive the proper care she needed at the right time.

AmeriCare could have helped Cheryl Eichler; she would have had immediate access to essential health care services. She would not have had to fit into an arbitrary category in order to get health care. If she had received immediate medical care throughout her illness, I'm convinced she'd be alive today. Our country is diminished by her death. We can and must save lives

like Cheryl's—this program will let us do that.

Our Plan would help those currently insured by the private sector by significantly controlling health care costs. We do this by reducing unnecessary care, decreasing administrative costs, and constraining price increases. Savings to the health care system for part of our cost containment program is estimated at close to \$80 billion over a 5-year period.

Our program is a significant step towards a more rationale health care system. Among many provisions, we establish a new independent Federal Health Expenditure Board that will establish voluntary annual expenditure goals by health care sector and by State or regional. The commissioners appointed by the President and approved by the Senate, on the board would be insulated from the political process. They would convene negotiations between purchasers and providers to establish rates and other cost controlling mechanisms in order to establish fair prices. At the State level, a similar process would occur. Both the Federal and State activities in this area would set forth a process where all relevant players—purchasers and providers—are involved and are intended to help constrain health care prices.

This bill would also go a long way towards reducing unnecessary by expanding the current outcomes research effort to determine appropriateness of care and by expanding technology assessment. We also expect to reduce overall administrative costs by promoting cost-effective managed care systems; providing purchasers better information cost and quality and establishing uniform claims and billing forms to be utilized by all providers. Finally, in order to address the current problems relating to medical liability, we would set up grants to States for short reform or alternatives to this, such as alternative dispute resolution.

IMPACT ON BUSINESS

Experience shows that companies that provide health insurance to their employees are finding that their rates are going through the ceiling because they are indirectly paying for the medical care of uninsured people. The costs of uncompensated health care costs which are shifted to private payers have sharply increased the cost of private health insurance.

This severely damages the ability of U.S. companies to compete internationally. Chrysler's health care cost per vehicle—\$700—exceeds our international competitors' costs by nearly \$500 per vehicle.

Our bill would help American businesses in several different ways. The bill would reduce the current uncompensated care cost shift, often 15 percent of their total health care costs.

Businesses will also be better able to help manage health care costs by par-

ticipating in the Federal Health Expenditure Board and State consortia. Businesses working together will have increased bargaining power with providers encouraging more efficient delivery of health care services. We will also reduce overall administrative costs by standardizing billing and by implementing practice guidelines to determine appropriateness of services, thus reducing unnecessary care.

We also significantly reduce the current cost shift to business from presently inadequate public programs by mandating higher reimbursement rates.

Mr. President, the political dynamics around this issue have changed dramatically. All sectors of society now recognize the need for change and are working to find solutions.

Big business, facing increasingly competitive world markets, must find ways to control health care costs. Small businesses fear government-mandated health benefits for employees and are looking at alternatives to mandates.

State governments are finding that health care costs are an increasingly large percentage of their budgets. The Governors have formed a task force to develop their own recommendations on this issue.

Doctors and hospitals, concerned about the lack of adequate payment for services, want answers to the uncompensated care problem. Insurers are looking for new ways to keep costs down so their customers do not move to other forms of care or to self-insurance.

Health care is now the major issue in the vast majority of collective bargaining negotiations. Organized labor recently united in supporting the need to achieve universal access and significant cost containment, through building on the Nation's existing employer-based system. A majority of consumers, have also overwhelmingly expressed a need for substantial health system reform.

Mr. President, we need to act now on both universal access to health care and rising health care costs. We have done enough study of the issues. It's now time to move forward on a health care program for all Americans. I hope that my colleagues in the Senate will join me in cosponsoring this important piece of legislation to ensure affordable high quality health care for Americans.

Mr. ROCKEFELLER. Mr. President, I am extremely pleased and honored to rise today with the majority leader, Senator MITCHELL, my colleague on the Finance Committee and chairman of the Subcommittee on the Uninsured, Senator RIEGLE, and the chairman of the Labor and Human Resources Committee, Senator KENNEDY, to introduce a bill that would reshape our Nation's health care system.

It has just been a little more than a year ago that the Pepper Commission—which I chaired and on which Senator KENNEDY served—released its recommendations on how to achieve universal access to health care for all our citizens. At that time I said that our job had just begun and hard work lay ahead. Introduction of today's bill is evidence of some of that hard work and brings us even closer to the day when we can say that every American man, woman, and child has decent, affordable health care coverage.

We all know that the current path of rationing health care based on a person's ability to pay is not acceptable, nor are the costs of our health care system sustainable. It is simply immoral to pour billions of dollars into the world's most sophisticated, high-technology health care system—but deny prenatal care to the 433,000 pregnant women who lack health insurance and to lag behind Singapore and 21 other industrialized countries in infant mortality.

Mr. President, I will not spend my time this afternoon outlining the problem, that's the easy part. The hard part is putting forth a solution and, unfortunately, there is not a magic solution or a quick fix to make the inequities in our system disappear overnight, or to slow down health costs. Even a single payer, Canada-style solution, which sounds simple and has a certain appeal, would require a massive shift and reallocation of resources. It took the Canadians 25 years to create their current health care system, and their per capita health costs are rising as rapidly as ours.

Last year, the Pepper Commission recommended a comprehensive strategy with a fair sharing of public and private responsibility. We came to this decision because we felt our mission was to recommend practical, common sense, and enactable answers for health care reform. Because 85 percent of private insurance is provided by employers and because 75 percent of the uninsured are members of working families, we recommended building on our job-based system while at the same time providing special assistance to small employers—which accounts for 65 percent of the working uninsured.

The Affordable Health Care for all Americans Act takes that same job-based approach, including the structural reforms recommended by the Pepper Commission that are vital if participation is required in our health care system.

Foremost among these structural reforms is small group health insurance reform. While we leave insurance regulation and enforcement in the hands of the States, similar to legislation we passed last year for Medicare supplemental policies, we require that Federal minimum standards be met.

To make private health insurance more available, insurance companies would no longer be allowed to engage in cherry-picking the good risks and selecting out the unhealthy, or those deemed likely to incur high medical bills because of where they work or where they live. Insurance companies would be forced to go back to managing risk and to start managing care. We prohibit medical underwriting and huge premium hikes, or outright cancellation of policies, due to changes in an individual's health status.

We preempt over 700 State benefit mandates and replace them with a basic health benefit package. And, in a step designed to make private health insurance even more affordable for small businesses, we allow previously-uninsured small businesses to elect the use of Medicare reimbursement rules. This will give small businesses the market clout they have so far lacked in order to negotiate better deals with providers. We require insurers to offer managed care plans to small businesses if they offer these plans to large employers in the area, while at the same time we preempt State antimanagerial care laws.

In addition to the reforms of the marketplace, we provide a permanent 25 percent tax credit toward the cost of health insurance for employers with less than 60 workers and whose salaries are less than \$20,000. We increase the deductibility of health insurance from the current level of 25 to 100 percent for the self-employed. And, because of our recognition of the fragility of new businesses, we exempt new, small businesses from providing health insurance during a 2-year startup period. The third year of operation, new small businesses would only be required to contribute one-half what would otherwise normally be required under the public program.

Employers have told us, overwhelmingly, they would like to provide health benefits to their workers but that cost and availability often are barriers. So, finally after a period of time, after putting all these reforms into effect and making special assistance available, we measure the success of these efforts. If the vast majority of working uninsured do not have coverage, small firms will be required to either provide basic health benefits directly or contribute toward public coverage for their employees. If most workers are uninsured, the Federal Government must find ways to guarantee coverage for the remaining citizens.

Mr. President, in addition to the special measures targeted toward small businesses, this bill contains a variety of mechanisms to slow down national health care expenditures.

Simply by providing universal access, we will end the cost shifting of uncompensated care that employers—as well

as doctors and hospitals—detest. Through malpractice reforms and outcomes research, we will lessen America's addiction to defensive medicine and to unnecessary tests and surgeries. Through mandatory cost sharing by individuals, we will instill a sense of consumer responsibility and sensitivity to health care costs. Through managed care, health care will be delivered in settings that emphasize quality and appropriateness.

These were all the cost containing tools called for in the Pepper plan, and I am absolutely certain that they will help. But, for various reasons, they fall short of the test. The solution to the access problem requires bigger, and yes, more dramatic ways to contain cost.

Take individual cost sharing. Making consumers more price sensitive has only a limited effect on whether or not an individual initially seeks care. Once initiated, research shows that courses of treatment generally are the same—since those decisions have traditionally been left up to the doctor.

As for outcomes research and practice guidelines, I could not be a bigger believer in the importance of this work—and not just for cost reasons. But practice guidelines, once developed, will need to be disseminated and, more importantly, adopted by practicing doctors. And, just as we will find instances of inappropriate and unnecessary care through outcomes research, we will, no doubt, find instances of underuse of care. So we might need to spend more in certain cases.

Insurance reform is potentially a powerful tool. That's why I will fight proposals that allege reform, but are actually far too weak. We can save almost \$14 billion over 5 years by eliminating medical underwriting and limiting preexisting condition exclusions through small group insurance reform.

This legislation includes several ways to promote managed care and make it more available. Here again, I am a believer. But managed care means many things to many people, and some models are more effective than others. Furthermore, according to CBO's Director, Bob Reischauer, research to date shows only one-time savings from managed care. Managed care has had little or no impact on growth of spending over time.

The chairman of the Finance Committee and a proven leader on health care issues, Senator BENTSEN, has held a series of hearings this past spring on health care reform. At one hearing, the president of Southern California Edison, Michael Peevey, testified in favor of a federally created "all-payor rate negotiation to ensure that every health care payor, no matter how small, can benefit from the low rates negotiated by the largest purchasers." Moreover, he called for a national health expendi-

ture target and limits on capital expenditures.

This comes from the president of a company that has compiled a remarkable record in cost control. Edison saw no increase in its health care costs between 1988 and 1989 and their projected long-term trend rate is down to the 10 to 12 percent range. Even so, at their current rate of increase, their health care costs will double every 6 years.

Mr. Peevey was not alone in calling for dramatic action. Another example: The chairman and CEO of Bethlehem Steel, Walter Williams. Mr. Williams testified that in spite of increased employee cost sharing and extensive managed care programs, their costs rose 26 percent in 1990. His recommendation: Federal cost containment legislation to make sure public and private payors pay the same for health care and regional reimbursement schedules to insure that all payors—pay the same—for the same care. He, too, called for a national health spending target to keep annual increases in health care costs at acceptable levels.

Their calls and others for tougher cost containment have not fallen on deaf ears. If others are to gain access to our health care system, we must simultaneously get a handle on its costs.

Through the creation of an independent Federal Health Expenditure Board, voluntary goals for national, and State-specific, health care spending would be set and a process for national negotiations between providers and purchasers of health care on reimbursement levels would be established. State flexibility and innovation would be preserved through the establishment of State-level consortiums that could perform a variety of cost-saving activities, including further State-level negotiations on reimbursement levels and volume, reduction of administrative costs by streamlining the processing of claims, or capital allocation.

These recommendations stop short of setting mandatory caps on health spending or national payment rates to allow for any necessary adjustments during the transition to universal access. And once fully implemented, we will have the necessary data and information on how well we have done at the job of holding down health care costs, so we can adequately judge where we might need to do more work, or in other areas less.

Mr. President, all together the cost containment measures outlined in this bill have been estimated, by an independent consulting firm, to have the potential to reduce health spending in this country by almost \$80 billion over 5 years. Over time these savings will grow.

My colleagues in the Senate and I have laid out in great detail a way to achieve universal access, while at the same time make a significant dent in the costs of our health care system.

Just a week and a half ago I introduced a bill, S. 1177, that laid out in great detail the recommendations of the Pepper Commission for universal access. While different in some respects, the general approach is the same.

I have said all along that concessions and accommodations will have to come from all corners—from business, from the insurance industry, from health-care providers, and from the public—if we are to have any hope of real change. In other words, no one can demand their first choice and expect to see results. So, for example, although the Pepper bill, S. 1177, includes my preference for a federally run public program to replace Medicaid, I was willing to compromise with my colleagues in order to move the debate, and it is my fervent hope to move health reform legislation along. I know my Senate colleagues would join me in saying to our colleagues and to others that we are open to further debate and discussion to refine or to add or subtract. It is time to take a seat at the table.

The majority leader, Senator MITCHELL, has shown tremendous leadership in introducing this legislation today. I would welcome a similar display of leadership from the White House. I hope introduction of this bill spurs the administration to come up with its own plan for health care reform and not just ignite another round of stone throwing.

In cities, suburbs, and rural towns across America—health care is the pocketbook issue. Over 70 percent of the uninsured are not poor. They are families in which fathers and mothers have lost their jobs because of the recession. They are working people whose employers cannot afford today's insurance rates. They even include people with ample incomes, but who cannot buy insurance because of a health condition or past illness.

The Director of the Office of Management and Budget, Dick Darman, also recently testified before the Finance Committee that he has yet to come up with an intellectually satisfying solution to the problem of the 9 million uninsured children in this country. What about a morally satisfying solution? What about one that admits the cost of inaction is simply unacceptable and that failure to act threatens our future economic security?

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. BENTSEN, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 4, a bill to amend titles IV, V, and XIX of the Social Security Act to establish innovative child welfare and family support services in order to strengthen families and avoid placement in foster care, to promote the development of comprehensive substance

abuse programs for pregnant women and caretaker relatives with children, to provide improved delivery of health care services to low-income children, and for other purposes.

S. 25

At the request of Mr. CRANSTON, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 25, a bill to protect the reproductive rights of women, and for other purposes.

S. 190

At the request of Mr. GRAHAM, the names of the Senator from Utah [Mr. HATCH], the Senator from Massachusetts [Mr. KERRY], the Senator from North Dakota [Mr. BURDICK], and the Senator from Arkansas [Mr. BUMPERS], were added as cosponsors of S. 190, a bill to amend S. 3104 of title 38, United States Code, to permit veterans who have a service-connected disability and who are retired members of the Armed Forces to receive compensation, without reduction, concurrently with retired pay reduced on the basis of the degree of the disability rating of such veteran.

S. 200

At the request of Mr. PRYOR, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 200, a bill to amend the Internal Revenue Code of 1986 to exclude small transactions from broker reporting requirements, and to make certain clarifications relating to such requirements.

S. 239

At the request of Mr. SARBANES, the names of the Senator from Missouri [Mr. DANFORTH], the Senator from Alabama [Mr. SHELBY], and the Senator from Arizona [Mr. MCCAIN] were added as cosponsors of S. 239, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

S. 267

At the request of Mr. REID, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 267, a bill to prohibit a State from imposing an income tax on the pension or retirement income of individuals who are not residents or domiciliaries of that State.

S. 280

At the request of Mr. SASSER, the names of the Senator from Nebraska [Mr. KERREY], the Senator from Wisconsin [Mr. KOHL], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of S. 280, a bill to provide for the inclusion of foreign deposits in the deposit insurance assessment base, to permit inclusion of non-deposit liabilities in the deposit insurance assessment base, to require the FDIC to implement a risk-based deposit insurance premium structure, to establish guidelines for early regulatory intervention in the financial decline of

banks, and to permit regulatory restrictions on brokered deposits.

S. 323

At the request of Mr. CHAFEE, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 323, a bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes.

S. 416

At the request of Mr. DANFORTH, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 416, a bill to amend the Internal Revenue Code of 1986 to make permanent the tax credit for increasing research activities.

S. 489

At the request of Mr. HATCH, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from New Hampshire [Mr. RUDMAN] were added as cosponsors of S. 489, a bill to provide grants to States to encourage States to improve their systems for compensating individuals injured in the course of the provision of health care services, to establish uniform criteria for awarding damages in health care malpractice actions, and for other purposes.

S. 574

At the request of Mr. CRANSTON, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of S. 574, a bill to amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of affectional or sexual orientation, and for other purposes.

S. 597

At the request of Mr. DODD, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 597, a bill to amend the Public Health Service Act to establish and expand grant programs for evaluation and treatment of parents who are abusers and children of substance abusers, and for other purposes.

S. 701

At the request of Mr. COATS, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 701, a bill to amend the Internal Revenue Code of 1986 to increase the amount of the exemption for dependent children under age 18 to \$3,500, and for other purposes.

S. 729

At the request of Mr. BURDICK, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 729, a bill to assist small communities in construction of facilities for the protection of the environment and human health.

S. 749

At the request of Mr. METZENBAUM, the names of the Senator from Georgia [Mr. FOWLER] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 749, a bill to rename and expand the boundaries of the Mound City Group National Monument in Ohio.

S. 812

At the request of Mr. JEFFORDS, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 812, a bill to amend the Federal Water Pollution Control Act.

S. 840

At the request of Mr. DURENBERGER, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 840, a bill to amend the Internal Revenue Code of 1986 to provide a simplified method for computing the deductions allowable to home day care providers for the business use of their homes.

S. 869

At the request of Mr. CRANSTON, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 869, a bill to amend title 38, United States Code, to improve the availability of treatment of veterans for post-traumatic stress disorder; and for other purposes.

S. 882

At the request of Mr. SARBANES, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 882, a bill to amend subpart 4 of part A of title IV of the Higher Education Act of 1965 to mandate a 4-year grant cycle and to require adequate notice of the success or failure of grant applications.

S. 884

At the request of Mr. PACKWOOD, the names of the Senator from Nevada [Mr. BRYAN], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 884, a bill to require the President to impose economic sanctions against countries that fail to eliminate large-scale driftnet fishing.

S. 895

At the request of Mr. PRESSLER, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 895, a bill to amend the Internal Revenue Code of 1986 to allow a deduction from gross income for home care and adult day and respite care expenses of individual taxpayers with respect to a dependent of the taxpayer who suffers from Alzheimer's disease or related organic brain disorders.

S. 914

At the request of Mr. GLENN, the names of the Senator from New York [Mr. MOYNIHAN], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of S. 914, a bill to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as pri-

vate citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 971

At the request of Mr. DECONCINI, the names of the Senator from Washington [Mr. ADAMS], the Senator from Tennessee [Mr. GORE], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 971, a bill to promote the development of microenterprises in developing countries.

S. 1040

At the request of Mr. GLENN, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1040, a bill to provide a Government-wide comprehensive energy management plan for Federal agencies.

S. 1046

At the request of Mr. BIDEN, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1046, a bill to provide for the establishment of an international arms suppliers regime to limit the transfer of armaments of nations in the Middle East.

S. 1072

At the request of Mr. LAUTENBERG, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 1072, a bill to amend title 23, United States Code, with respect to gross vehicle weights on the National System of Interstate and Defense Highways, and for other purposes.

S. 1084

At the request of Mr. MITCHELL, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 1084, a bill to deny the People's Republic of China nondiscriminatory (most-favored-nation) trade treatment.

S. 1121

At the request of Mr. WARNER, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 1121, a bill to authorize funds for construction of highways, for highway safety programs, for mass transportation programs, and for other purposes.

S. 1200

At the request of Mr. BURNS, the names of the Senator from Mississippi [Mr. LOTT], and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 1200, a bill to advance the national interest by promoting and encouraging the more rapid development and deployment of a nationwide, advanced, interactive, interoperable, broadband communications infrastructure on or before 2015 and by ensuring the greater availability of, access to, investment in, and use of emerging communications technologies, and for other purposes.

SENATE JOINT RESOLUTION 73

At the request of Mr. SPECTER, the names of the Senator from Tennessee

[Mr. GORE], the Senator from Montana [Mr. BAUCUS], the Senator from Kentucky [Mr. FORD], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Iowa [Mr. GRASSLEY], the Senator from Tennessee [Mr. SASSER], the Senator from New York [Mr. MOYNIHAN], the Senator from Florida [Mr. GRAHAM], the Senator from Illinois [Mr. SIMON], the Senator from Alaska [Mr. STEVENS], the Senator from Wyoming [Mr. SIMPSON], the Senator from Illinois [Mr. DIXON], and the Senator from Idaho [Mr. SYMMS], were added as cosponsors of Senate Joint Resolution 73, a joint resolution designating October 1991 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 74

At the request of Mr. LIEBERMAN, the names of the Senator from Tennessee [Mr. GORE], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Alaska [Mr. STEVENS], were added as cosponsors of Senate Joint Resolution 74, a joint resolution designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week."

SENATE JOINT RESOLUTION 78

At the request of Mr. BENTSEN, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Idaho [Mr. SYMMS], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from California [Mr. SEYMOUR], the Senator from Michigan [Mr. RIEGLE], the Senator from Tennessee [Mr. GORE], the Senator from Tennessee [Mr. SASSER], the Senator from Michigan [Mr. LEVIN], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Louisiana [Mr. BREAU], the Senator from West Virginia [Mr. BYRD], the Senator from South Dakota [Mr. DASCHLE], the Senator from South Carolina [Mr. THURMOND], the Senator from Delaware [Mr. BIDEN], the Senator from Georgia [Mr. FOWLER], the Senator from Idaho [Mr. CRAIG], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Joint Resolution 78, a joint resolution to designate the month of November 1991 and 1992 as "National Hospice Month."

SENATE JOINT RESOLUTION 117

At the request of Mr. LAUTENBERG, the names of the Senator from Montana [Mr. BURNS], the Senator from Iowa [Mr. GRASSLEY], the Senator from North Carolina [Mr. HELMS], the Senator from Hawaii [Mr. INOUE], and the Senator from Mississippi [Mr. LOTT], were added as cosponsors of Senate Joint Resolution 117, a joint resolution to designate December 7, 1991, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

SENATE JOINT RESOLUTION 121

At the request of Mr. DECONCINI, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from California [Mr. CRANSTON], and the Senator

from Louisiana [Mr. JOHNSTON] were added as cosponsors of Senate Joint Resolution 121, a joint resolution designating September 12, 1991, as "National D.A.R.E. Day."

SENATE JOINT RESOLUTION 126

At the request of Mr. HATFIELD, the names of the Senator from Virginia [Mr. WARNER], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Joint Resolution 126, a joint resolution to designate the second Sunday in October of 1991 as "National Children's Day."

SENATE JOINT RESOLUTION 130

At the request of Mr. LAUTENBERG, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Alaska [Mr. STEVENS], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Delaware [Mr. ROTH], and the Senator from Maine [Mr. COHEN] were added as cosponsors of Senate Joint Resolution 130, a joint resolution to designate the second week in June as "National Scleroderma Awareness Week."

SENATE JOINT RESOLUTION 131

At the request of Mr. LUGAR, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from North Dakota [Mr. BURDICK], the Senator from Indiana [Mr. COATS], the Senator from Ohio [Mr. GLENN], the Senator from Texas [Mr. GRAMM], the Senator from Hawaii [Mr. INOUE], the Senator from Michigan [Mr. LEVIN], the Senator from South Carolina [Mr. THURMOND], the Senator from Vermont [Mr. JEFFORDS], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Virginia [Mr. WARNER], the Senator from Alaska [Mr. STEVENS], the Senator from Ohio [Mr. METZENBAUM], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of Senate Joint Resolution 131, a joint resolution designating October 1991 as "National Down Syndrome Awareness Month."

SENATE JOINT RESOLUTION 138

At the request of Mr. SPECTER, the names of the Senator from California [Mr. SEYMOUR], the Senator from Wisconsin [Mr. KASTEN], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Wyoming [Mr. SIMPSON], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Mississippi [Mr. COCHRAN], the Senator from Delaware [Mr. ROTH], the Senator from South Carolina [Mr. THURMOND], the Senator from Vermont [Mr. JEFFORDS], the Senator from Utah [Mr. HATCH], the Senator from Montana [Mr. BURNS], the Senator from Missouri [Mr. DANFORTH], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Iowa [Mr. GRASSLEY], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Indiana [Mr. COATS], the Senator from Oregon [Mr. PACKWOOD], the Senator from Indiana [Mr. LUGAR], the Senator from Utah [Mr. GARN], the

Senator from Idaho [Mr. SYMMS], the Senator from Idaho [Mr. CRAIG], the Senator from South Carolina [Mr. HOLINGS], the Senator from California [Mr. CRANSTON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Ohio [Mr. GLENN], the Senator from Connecticut [Mr. DODD], the Senator from Illinois [Mr. DIXON], the Senator from Nevada [Mr. REID], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Hawaii [Mr. AKAKA], the Senator from Florida [Mr. GRAHAM], the Senator from Delaware [Mr. BIDEN], the Senator from West Virginia [Mr. BYRD], the Senator from Washington [Mr. ADAMS], the Senator from North Carolina [Mr. SANFORD], the Senator from North Dakota [Mr. BURDICK], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Arizona [Mr. DECONCINI], the Senator from New York [Mr. MOYNIHAN], the Senator from Michigan [Mr. RIEGLE], the Senator from North Dakota [Mr. CONRAD], the Senator from Massachusetts [Mr. KERRY], the Senator from Michigan [Mr. LEVIN], the Senator from Illinois [Mr. SIMON], the Senator from Alabama [Mr. SHELBY], the Senator from Ohio [Mr. METZENBAUM], the Senator from Tennessee [Mr. GORE], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Nebraska [Mr. EXON], the Senator from Kentucky [Mr. FORD], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of Senate Joint Resolution 138, a joint resolution designating August 6, 1991 as "National Neighborhood Crime Watch Day."

SENATE JOINT RESOLUTION 141

At the request of Mr. WARNER, the names of the Senator from Colorado [Mr. BROWN], the Senator from Utah [Mr. HATCH], the Senator from Michigan [Mr. LEVIN], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of Senate Joint Resolution 141, a joint resolution to designate the week beginning July 21, 1991, as "Korean War Veterans Remembrance Week."

SENATE JOINT RESOLUTION 145

At the request of Mr. CRANSTON, the names of the Senator from Nevada [Mr. BRYAN], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Joint Resolution 145, a joint resolution designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week."

SENATE JOINT RESOLUTION 146

At the request of Mr. LAUTENBERG, the names of the Senator from Washington [Mr. ADAMS], the Senator from Hawaii [Mr. AKAKA], the Senator from Delaware [Mr. BIDEN], the Senator from Missouri [Mr. BOND], the Senator from New Jersey [Mr. BRADLEY], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Indiana

[Mr. COATS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from North Dakota [Mr. CONRAD], the Senator from Arizona [Mr. DECONCINI], the Senator from Connecticut [Mr. DODD], the Senator from Kansas [Mr. DOLE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Kentucky [Mr. FORD], the Senator from Ohio [Mr. GLENN], the Senator from Tennessee [Mr. GORE], the Senator from Florida [Mr. GRAHAM], the Senator from Iowa [Mr. GRASSLEY], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Oregon [Mr. PACKWOOD], the Senator from Nevada [Mr. REID], the Senator from Michigan [Mr. RIEGLE], the Senator from Virginia [Mr. ROBB], the Senator from Delaware [Mr. ROTH], the Senator from Tennessee [Mr. SASSER], the Senator from Alabama [Mr. SHELBY], the Senator from Illinois [Mr. SIMON], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Alaska [Mr. STEVENS], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of Senate Joint Resolution 146, a joint resolution designating July 2, 1991, as "National Literacy Day."

SENATE CONCURRENT RESOLUTION 44

At the request of Mr. FOWLER, his name was added as a cosponsor of Senate Concurrent Resolution 44, a concurrent resolution expressing the sense of Congress that the American public should observe the 100th anniversary of moviemaking and recognize the contributions of the American Film Institute in advocating and preserving the art of film.

SENATE RESOLUTION 82

At the request of Mr. SMITH, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of Senate Resolution 82, a resolution to establish a Select Committee on POW/MIA Affairs.

AMENDMENTS SUBMITTED

TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

INOUE (AND OTHERS)
AMENDMENT NO. 283

Mr. INOUE (for himself, Mr. DODD, Mr. LIEBERMAN, Mr. AKAKA, Mr. WELLSTONE, and Mr. METZENBAUM) proposed an amendment to the bill (S. 173) to permit the Bell Telephone Cos. to conduct research on, design, and manufacture telecommunications equipment, and for other purposes, as follows:

At the end of the bill, add the following:

"SEC. 228(a). The Commission shall prescribe regulations requiring that any Bell Telephone Company that has an affiliate engaging in any manufacturing authorized by section 227(a) shall—

"(1) not engage in manufacturing until it has filed and received Commission approval of a plan that ensures—

"That the personnel of the Bell Company affiliates that are engaged in the manufacturing of telecommunications equipment will not participate in the formulation of generic or specific requirements for any such equipment that the Bell Telephone Company will purchase and will not obtain notice of such requirements in advance of unaffiliated firms, and

"That unaffiliated firms have the same opportunity as the Bell Telephone Company and its affiliates to prepare and submit proposals and quotes for telecommunications equipment to be purchased by the Bell Telephone Company and have that equipment evaluated on the merits;

"(2) purchase from unaffiliated firms at least a majority of each type of telecommunications equipment that is comparable to types of equipment manufactured by the Bell Telephone Company or its affiliate; and

"(3) sell, either directly or through its affiliate, to unaffiliated firms a substantial amount of telecommunications equipment manufactured by the Bell Telephone Company or its affiliate.

"(b)(1) Within 180 days after the date of enactment of this Act, the Commission shall adopt regulations defining the requirements in subsection (a), including a regulation defining the term "substantial" as an amount not less than 20 percent. The Commission may not alter the definition of the term "substantial" for five years from the date of enactment of this Act.

"(2) The FCC shall repeal the regulations adopted pursuant to subsection (a) when it determines that the Bell Telephone Company faces effective competition in providing local exchange service. The term "effective competition" shall mean that a majority of the residential subscribers and a majority of the business subscribers in the service area have access to local telephone service provided by an unaffiliated firm and that a substantial amount of residential subscribers and a substantial amount of business subscribers actually subscribe to the services of the unaffiliated firm.

"(3) Within one year of the date of enactment of this Act, the Commission shall report to the Congress on the state of competition in local telephone markets, the prospects for the development of competition, and the particular regulatory, technical, and financial barriers to the creation and maintenance of competition."

D'AMATO (AND OTHERS)
AMENDMENT NO. 284

Mr. D'AMATO (for himself, Mr. DECONCINI, Mr. GRASSLEY, Mr. MACK, Mr. MURKOWSKI, Mr. LIEBERMAN, Mr. LAUTENBERG, Mr. HELMS, Mr. MOYNIHAN, Mr. SHELBY, and Mr. PACKWOOD) proposed an amendment to the bill S. 173, supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . SENSE OF THE SENATE REGARDING THE NATIONAL VICTORY PARADE FOR THE PERSIAN GULF WAR.

It is the sense of the Senate that any country—

(1) for which United States assistance is being withheld from obligation and expenditure pursuant to section 481(h)(5) of the Foreign Assistance Act of 1961; or

(2) which is listed by the Secretary of State under section 40(d) of the Arms Export Control Act or section 6(j) of the Export Administration Act of 1979 as a country the government of which has repeatedly provided support for acts of international terrorism,

should not be represented, either by diplomatic, military, or political officials, or by national images or symbols, at the victory parade scheduled to be held in Washington, District of Columbia, on June 8, 1991, to celebrate the liberation of Kuwait and the victory of the United Nations coalition forces over Iraq.

PRESSLER AMENDMENT NO. 285

Mr. PRESSLER proposed an amendment to the bill S. 173, supra; as follows:

At the end of the bill, add the following:

SEC. 4. ADDITIONAL AMENDMENT TO THE COMMUNICATIONS ACT OF 1934.

Section 220(d) of the Communications Act of 1934 (47 U.S.C. 220(d)) is amended by deleting "\$6,000" and inserting in lieu thereof "\$10,000".

SIMON (AND DECONCINI)
AMENDMENT NO. 286

Mr. SIMON (for himself and Mr. DECONCINI) proposed an amendment to the bill S. 173, supra, as follows:

On page 12, between lines 2 and 3, insert the following new subsection:

"(k)(1) A Bell Telephone Company that manufactures or provides telecommunications equipment or manufactures customer premises equipment through an affiliate shall obtain and pay for an annual audit conducted by an independent auditor selected by and working at the direction of the State Commission of each State in which such Company provides local exchange service, to determine whether such Company has complied with this section and the regulations promulgated under this section, and particularly whether the Company has complied with the separate accounting requirements under subsection (c)(1).

"(2) The auditor described in paragraph (1) shall submit the results of such audit to the Commission and to the State Commission of each State in which the Company provides telephone exchange service. Any party may submit comments on the final audit report.

"(3) The audit required under paragraph (1) shall be conducted in accordance with procedures established by regulation by the State Commission of the State in which such Company provides local exchange service, including requirements that—

"(A) the independent auditors performing such audits are rotated to ensure their independence; and

"(B) each audit submitted to the Commission and to the State Commission is certified by the auditor responsible for conducting the audit.

"(4) The Commission shall periodically review and analyze the audits submitted to it under this subsection, and shall provide to the Congress every 2 years—

"(A) a report of its findings on the compliance of the Bell Telephone Companies with this section and the regulations promulgated hereunder; and

"(B) an analysis of the impact of such regulations on the affordability of local telephone exchange service.

"(5) For purposes of conducting audits and reviews under this subsection, an independent auditor, the Commission, and the State Commission shall have access to the financial accounts and records of each Bell Telephone Company and those of its affiliates (including affiliates described in paragraphs (6) and (7) of subsection (c)) necessary to verify transactions conducted with such Bell Telephone Company that are relevant to the specific activities permitted under this section and that are necessary to the State's regulation of telephone rates. Each State Commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

On page 12, line 3, strike "(k)" and insert "(l)".

METZENBAUM AMENDMENT NOS. 287 THROUGH 289

Mr. METZENBAUM proposed three amendments to the bill S. 173, supra, as follows:

AMENDMENT No. 287

At the end, add the following new section:
SEC. 4. APPLICATION OF ANTITRUST LAWS.—Nothing in this Act shall be deemed to alter the application of federal and state antitrust laws as interpreted by the respective courts.

AMENDMENT No. 288

On page 11, line 3, strike "equipment." and insert in lieu thereof "equipment, consistent with subsection (e)(2)."

AMENDMENT No. 289

On page 3, strike lines 14 through 24 and insert the following:

"(1)(A) such manufacturing affiliate shall maintain books, records, and accounts separate from its affiliated Bell Telephone Company, that identify all transactions between the manufacturing affiliate and its affiliated Bell Telephone Company;

"(B) the Commission and the State Commissions that exercise regulatory authority over any Bell Telephone Company affiliated with such manufacturing affiliate, shall have access to the books, records, and accounts required to be prepared under subparagraph (A); and

"(C) such manufacturing affiliate shall, even if it is not a publicly held corporation, prepare financial statements which are in compliance with Federal financial reporting requirements for publicly held corporations, and file such statements with the Commission and the State Commissions that exercise regulatory authority over any Bell Telephone Company affiliated with such manufacturing affiliate, and make such statements available for public inspection.

GRAMM (AND DOLE) AMENDMENT NO. 290

Mr. GRAMM (for himself and Mr. DOLE) proposed an amendment to the bill S. 193, supra, as follows:

On page 4, beginning with line 10, strike out all through line 17 on page 7.

NOTICE OF HEARING

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, June 18, 1991, beginning at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on a measure currently pending before the subcommittee. The bill is: S. 1029, a bill to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, 364 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact David Brooks of the Subcommittee staff at (202) 224-9863.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, June 5, 1991, at 2:30 p.m., to hold a hearing on the nomination of Sandra Brown Armstrong, to be U.S. district judge for the Northern District of California; Timothy K. Lewis, to be U.S. district judge for the Western District of Pennsylvania; and William L. Osteen, to be U.S. district judge for the Middle District of North Carolina.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WATER AND POWER

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2 p.m., June 5, 1991, to consider S. 106, a bill to amend the Federal Power Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TERRORISM, NARCOTICS, AND INTERNATIONAL OPERATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee

on Terrorism, Narcotics, and International Operations of the Foreign Relations Committee be authorized to meet during the session of the Senate on Wednesday, June 5, at 2 p.m., to hold a briefing on Moscow Embassy construction plans.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, TRADE, OCEANS, AND ENVIRONMENT

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Trade, Oceans, and Environment of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 5 at 10 a.m. to markup the fiscal year 1992 Foreign Assistance Authorization legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on June 5, 1991, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 667, Tribal Judicial Enhancement Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Federal Services, Post Office, and Civil Service, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Wednesday, June 5, 1991, 9:30 a.m. The focus of the hearing will be the enforcement of the Agricultural Quarantine Enforcement Act by the Postal Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. FORD. Mr. President, I ask unanimous consent that the Senate Committee on Agriculture, Nutrition, and Forestry, be allowed to meet during the session of the Senate on June 5, 1991, at 10 a.m., in SD-192, to hold a hearing on the "Circle of Poison: Devastation in the Third World."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, June 5, beginning at 11 a.m., to conduct a hearing on recycling under the Resource Conservation and Recovery Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MANPOWER AND PERSONNEL

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Manpower and Personnel of the Committee on Armed Services be authorized to meet on Wednesday, June 5, 1991, at 9:30 a.m., to receive testimony on the total force policy report, and manpower and force structure plans, in review of S. 1066, the Department of Defense authorization bill for fiscal years 1992-93.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet in open session on Wednesday, June 5, 1991, at 2 p.m., to receive testimony on ICBM modernization, in review of S. 1066, the Department of Defense authorization bill for fiscal years 1992-93.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO COMMANDER RICHARD ILKA, USNR

• Mr. DECONCINI. Mr. President, I rise today to recognize a devoted public servant who will be honored this evening by Renew America with their prestigious Environmental Partnership Award. Along with several of his colleagues, Comdr. Richard Ilka, USNR, of Scottsdale, AZ, will be honored for his outstanding service to protect, rescue, and rehabilitate thousands of sea birds and other marine species placed at risk by the catastrophic oil spills that occurred during and following the Desert Storm Operation.

The wildlife endangered by the oil spills included the Secotra Cormorant and hundreds of other species of birds, 180 species of mullusks, 106 species of fish, 5 species of dolphins, whales, and sea turtles. Thanks to the extraordinary cooperative efforts of the many volunteers and organizations involved with the rescue efforts, thousands of endangered birds and turtles were recovered, nursed back to health, and returned to their natural habitat.

I ask that my colleagues join me in recognizing someone who was involved with the Persian Gulf War in a rather unique position—to save and preserve, rather than to destroy. So often we hear only of the pain and atrocities associated with armed conflicts, but Commander Ilka and others like him were shining examples of American compassion, ingenuity, and competence both during and after the Desert Shield and Desert Storm operations. I believe that Commander Ilka merits our praise and thanks, just as

do our Armed Forces who fought for freedom throughout the conflict. Certainly, their roles are varied and distinct, but their contributions are equally appreciated and valued by a grateful nation. •

THE GUY BEHIND THE TREE

• Mr. SYMMS. Mr. President, newspapers have been filled recently with the news that tens of thousands of men and women in the Pacific Northwest will be put out of work by the U.S. Government's activities regarding the northern spotted owl. This unfolding tragedy is one of epic proportions. Entire communities will be destroyed.

Yet for most Americans the plight of the people of Washington, Oregon, and northern California is far, far away. The cost of this tragedy will be brought home when taxpayers begin paying the millions the courts will order paid because of the unconstitutional takings that will soon occur. However, all of us need to be concerned, right now, about what the Endangered Species Act and other statutes are doing to our economy.

This very point was brought home in an article entitled "The Guy Behind The Tree" which recently appeared in the Miner's News which is published in Boise, ID. The article was written by William Perry Pendley, president and chief legal officer of Mountain States Legal Foundation.

Mr. President, I ask that the article be placed in the CONGRESSIONAL RECORD at this point.

[From the Miner's News, April-May 1991]

THE GUY BEHIND THE TREE

(By William Perry Pendley)

"DON'T TAX ME!"

Former U.S. Senator Russell Long of Louisiana, the once powerful chairman of the Senate Finance Committee, used to say that tax policy was simply: "Don't tax me. Don't tax thee. Let's tax the guy behind the tree."

What was once and always will be true for tax policy is becoming increasingly true for environmental policy. For, while polls indicate a heightened concern by the American people regarding environmental issues, most Americans look to others to achieve whatever goals may result from elevated environmental consciousness.

Thus, while the Earth Day issue of USA Today last year announced "83 percent fear for environment," 65 percent of those surveyed opposed any restriction upon their ability to use their automobiles. A survey of 1,143 Americans conducted last summer by the Associated Press found that 61 percent oppose timber harvesting in "old" forests—such as in Oregon where four out of every 10 jobs is a timber job. Nevertheless, a "strong majority" of those polled stated that they do not engage in so-called "environmentally-ethical shopping" but instead make purchases "mainly on the basis of price and quality."

WE ARE THE PEOPLE

Notwithstanding the tremendous media hoopla regarding environmental issues, a majority of the American people have not

brought into the rhetoric of the environmental elite and their friends in the media. In fact, a survey of environmental views conducted by a New York City marketing and opinion research firm found that the majority of the American people are not active environmentalists.

According to that survey, only 22 percent of the American people could be classified as environmentalists. Those Americans are divided into two groups each consisting of 11 percent of the population: "environmental leaders and activists" and "affluent environmental spenders—people willing to pay—but with little time to get involved themselves." Not surprisingly these individuals are affluent, well-educated, well-employed and live in the Northeast and the far West.

However, the largest single group—consisting of 28 percent of the American people—oppose environmental regulation. An additional 24 percent of the public is not involved in environmental issues or activities. Combined, these two groups—which the research firm classified as "not environmentalists"—represent a majority of the American people.

The remaining 26 percent of the population was described as a "middling swing group whose attitudes and behavior can cut both ways—pro- and anti-environment" and whose members are a "portrait of Middle America." Combining this "swing group" with the 52 percent who are not environmentalists yields a startlingly large 78 percent of the American public.

EARTH DAY VS. ELECTION DAY

In the past when I have recounted these statistics and this analysis, "environmentalists" (that is, members of the elite 22 percent) have assured me that despite their smaller numbers, they will prevail because they are affluent and politically sophisticated.

They may well be right. However, they will prevail only so long as the costs of environmental regulation do not become part of the public debate. For the defeat in the last election of "Big Green" by the voters of California demonstrates conclusively that there is a difference between Earth Day and Election Day.

The defeat of "Big Green" is particularly significant since polls taken when the initiative was first placed on the ballot indicated that 70 to 80 percent of California voters favored its adoption. Thus it appears that when the costs of specific environmental proposals are disclosed to the voters, the lopsided support often attributed to vague and nebulous environmental policies evaporates rather quickly.

Put in the terms of the market survey discussed above, "Big Green" was rejected by the voters of California because the 28 percent (which opposes environmental regulation) was successful in persuading not only the 24 percent (which is uninvolved in environmental issues or activities), but 6 percent of the remaining 26 percent (the "middling swing group") that "Big Green" was simply too costly.

COSTS, BENEFITS AND THE PUBLIC WELFARE

As more Americans learn the true costs of excessive environmental policies, the wisdom of those policies will be questioned much more rigorously. As well, the assumptions and objectives which underlie those policies will be subjected to even greater public scrutiny.

That is exactly what is beginning to happen. At one time the Endangered Species Act was merely the object of derisive humor as the Black-Footed Ferret (a rodent) or the

Furbish Lousewort (a weed) were the cause for the demise of some local project, and with it, tens of jobs. However, the Endangered Species Act is taking on a much more somber complexion since that statute is now responsible for the anticipated loss of 60,000 jobs in the Pacific Northwest, for the slow death of a \$240 million world-class observatory in Arizona, and for a potentially fatal setback to a water project required by a treaty between a Colorado Indian tribe and the U.S. government.

"Wetlands" policy, once regarded as the savior of swamps, bogs, and migratory bird habitat, is now viewed as the reason why a Hungarian emigre will spend the next three years in prison for cleaning a Pennsylvania dump site that he owned; why municipal water projects from San Diego to South Carolina have been scuttled by the Environmental Protection Agency; and why two Colorado farmers have been fined \$40 million by the EPA for protecting their lands from floodwaters.

Unfortunately for wise public policy, even these horror stories are too far removed to have any real meaning for most voters. While all decry such thoughtless abuses of power in the name of "environmentalism," the impact upon the individual citizen is not readily apparent. For too many Americans the victims of such perversions are merely guys behind the tree—the ones who, through no fault of their own, are being required to bear the burdens of environmental policies. What we all need to realize is that very soon it could be us behind that tree.●

SIGHTING OF A CHINESE HIGH SEAS DRIFT NET VESSEL

● Mr. PACKWOOD. Mr. President, for the first time ever, the United States has received documentation that a People's Republic of China high seas drift net vessel has been detected in the Pacific Ocean. At a time when we are trying to eliminate drift net fishing, the detection of another country participating in these fishing activities deals a devastating blow to our legitimate efforts to end the stripmining of our oceans.

The vessel sighted was flying a People's Republic of China national flag, displayed a large red star on both smoke stacks, and had a large high seas drift net ready to be dropped. Radio beacons, spare nets, floats, and other high seas drift netting equipment were photographed on board the vessel.

The vessel was seen in an area where other high seas drift net vessels have been recently sighted illegally fishing for salmon and steelhead. It has been reported that Taiwanese vessels have been reflagged as vessels of the People's Republic of China and this vessel was, apparently, similar in every way to previously documented Taiwanese high seas drift net fishing vessels.

Mr. President, the United Nations passed a resolution in December 1989 calling for an end to high seas drift net fishing by June 30, 1992. The United States has taken a strong stance in support of this position and the Congress has enacted legislation over the

past several years to ensure we move in that direction.

In April, I introduced legislation to put teeth in the U.N. resolution by imposing economic sanctions against countries that continue large-scale drift net fishing on the high seas beyond June 30, 1992. The recent sighting of a People's Republic of China drift net fishing vessel reiterates the need for this legislation and for a continued push by the United States and the United Nations to stop drift net fishing once and for all.●

FAMILY PLANNING

● Mr. GORE. Mr. President, in 1988, I opposed the Reagan administration's rule change that prohibited doctors in federally funded family planning clinics from providing their patients the most complete information available, and in too many instances, critically needed advice. I continue to oppose this policy and these restrictions, even as they are upheld by the Supreme Court.

I believe the Court's decision supporting a gag rule against doctors in federally funded clinics interferes with both the obligation of a doctor to a patient and with the constitutional right of free speech. The ruling presents a threat not only to the health of women seeking care from these doctors but also to the basic constitutional rights of these women and their doctors.

The decision to end a pregnancy is always difficult, painful and complicated for the women involved, for her family, and even for her doctor. But it is a decision that, if made, should be made after a full discussion with all the facts and all the options clearly understood—even when the woman is poor; even when her doctor is employed at a federally funded clinic. And, Mr. President, while some may not support abortion as an option, this information still should be protected as part of a private conversation between a doctor and a patient about a legal activity.

I am an original cosponsor of S. 323, the title X Pregnancy Counseling Act of 1991, and S. 1197, the Family Planning Amendments of 1991, because these measures would restore family planning clinics to their proper role, removing the unconscionable gag imposed first by the Reagan administration and then affirmed by the Supreme Court. It is not only appropriate but also essential to the basic rights of both doctors and patients that Federal resources support family planning programs that allow women and couples to make fully informed decisions about pregnancy.●

GORGING ON RED INK

● Mr. SYMMS. Mr. President, notwithstanding our growing Federal deficit, and our demand of the American people

that they tighten their belts, the Federal Government continues to gorge on red ink. Nowhere is this more true than in the Government's Land Acquisition Program. Last year Congress dramatically increased appropriations for taking land off the tax rolls and putting it in Federal hands. For the 1992 fiscal year the U.S. Forest Service and Bureau of Land Management propose the largest land acquisition budgets in the history of those agencies.

While all Americans will suffer increased taxes and deficits because of this, no one suffers more than the property owner whose rights are trampled by the Federal bureaucracy. The very personal face of this growing tragedy was brought out in an article recently published in the Wyoming Stockman Farmer. The article was written by William Perry Pendley, president and chief legal officer of Mountain States Legal Foundation.

Mr. President, I ask that the article, "Dealing With Goliath: Can David Use A Slingshot?" be placed in the CONGRESSIONAL RECORD at this point.

The article follows:

DEALING WITH GOLIATH: CAN DAVID USE A SLINGSHOT?

(By William Perry Pendley)

The Saint Croix River flows through eastern Minnesota and northwestern Wisconsin where it merges with the Mississippi River near Prescott, Wisconsin. Approximately 30 miles northeast of Saint Paul, Minnesota, in Polk County, Wisconsin, lies the riverfront property of Francis ("Jake") and Elizabeth Bradac.

Since the early 1970's the National Park Service (NPS) has been acquiring property along the river for preservation in the Lower Saint Croix National Scenic Riverway Project. One of the properties condemned by the NPS was that belonging to the Bradacs.

The Bradacs consistently and persistently disagreed with the NPS' determination of the value of their property. As a result of this disagreement, the matter proceeded to court.

Despite the fact that two years before trial the NPS had asserted that the Bradacs' property was worth \$41,000, just one month prior to trial the NPS reduced its appraisal by more than half, to \$19,000. Less than two weeks prior to trial, the Bradacs offered to settle for \$100,000. The NPS counter-offered with \$90,000. However, by this time the Bradacs had an appraisal indicating that their property was worth \$155,000. The Bradacs rejected the counter-offer of the NPS.

At the one-day trial, the jury returned a verdict for the Bradacs of \$170,000. Although the NPS paid that judgement, the Bradacs' attorneys' and experts' fees amounted to \$60,000, thus reducing the Bradacs' recovery to \$100,000—some \$45,000 less than their expert had testified their property was worth.

DAVID'S SLINGSHOT

As Jake and Elizabeth Bradac learned, "negotiating" with the U.S. Government and its agents in the NPS and the Department of Justice is never easy. Mark Twain once quipped that one should never argue with the press since it buys ink by the barrel. A similar caution might be urged upon those contemplating a battle with the largest law firm in the world—the U.S. Government. For even

if a private citizen prevails over the federal government in court, the path is so torturous and the cost so high that such a victory is often a pyrrhic one.

Thus it was that the U.S. Congress adopted the Equal Access to Justice Act, providing that when private citizens prevail over the Government and the position taken by the Government is not "substantially justified," the citizen is entitled to the payment of attorneys' fees and expenses. Congress' reasoning was simple. If the Government takes an unreasonable position and loses, the private citizen should be made whole for battling the unjustified position of his or her government.

For the Davids of the country, the Equal Access to Justice Act is a slingshot to use against the Goliath of the unrestrained power of the federal government, and officials acting in its name. Yet it is little more than a slingshot.

SUBSTANTIALLY JUSTIFIED?

Following their victory, the Bradacs requested that their attorneys' fees and expenses be paid by the U.S. Government. After all, the jury had returned a verdict that represented a 900% increase over the Government's last "appraisal" of the Bradacs' property. Incredibly, the trial court ruled against the Bradacs.

The Bradacs' appeal to the United States Court of Appeals for the Seventh Circuit was denied by a two to one ruling. The majority of the Seventh Circuit's panel held that the position taken by the NPS was "substantially justified" because the appraiser used by the NPS was an "experienced, qualified and competent appraiser." The majority rejected the Bradacs' claim that the NPS had engaged in bad faith during negotiations.

However, the dissent asserted that the NPS's use of an experienced, qualified, and competent appraiser did not answer the question of whether or not the Government's position was "substantially justified." In addition, referring to the Bradacs' "lengthy statement of alleged fact" that the Government had engaged in bad faith negotiations, the dissent concluded that the issue of bad faith had not been properly addressed by the district court.

SUPREME COURT REVIEW

The Bradacs have asked the U.S. Supreme Court to hear their appeal in light of the substantial conflict between and among the various Courts of Appeals as to when, in condemnation cases, the government's actions are "substantially justified."

The Eleventh Circuit has held, for example, that a finding that the U.S. Government was "substantially justified," demands "a neutral and impartial expert" not "one regularly employed by the government." The Tenth Circuit requires a careful review of "[t]he totality of the circumstances as reflected by the record before the court," thus going far beyond a simple review of the qualifications of the appraiser.

Whether the U.S. Supreme Court will hear the Bradacs' appeal is uncertain. However, one thing is certain, without Supreme Court intervention the rights of property owners in this country are in peril. This is particularly the case given the incredible land grab now underway by the U.S. Government.

In the 1991 budget passed by Congress late last year, four federal agencies were given \$301.1 million dollars to buy and to condemn privately-owned lands during 1991. The 1991 budget is a dramatic increase for each of those four agencies—National Park Service (53.6%); U.S. Fish and Wildlife Service

(36.7%); U.S. Forest Service (40.5%); and Bureau of Land Management (24.6%).

This aggressive approach to land acquisition is likely to continue. President Bush's Fiscal Year 1992 budget proposes the largest land acquisition budget in the history of the U.S. Forest Service (a 204% increase over 1991) and the Bureau of Land Management (a 38% rise over 1991).

CONCLUSION

When landowners prevail over the U.S. Government—not in regaining their land but in receiving fair value for that land—the payment received should not be diminished by the fees incurred by the landowner in his or her efforts to prevail over the often oppressive tactics of Government officials. If the Government is able to do to others what it did to Jake and Elizabeth Bradac, then even the slingshot will have been taken out of the hands of the American People.●

ECONOMIC HEALTH OF THE AMERICAN FAMILY

● Mr. COATS. Mr. President, of late, I have been very pleased to witness a renewed emphasis on the economic health of the American family. A significant portion of families in the United States are having greater difficulties making ends meet each month, despite the notable increase in two income families.

A key contributing factor to these escalating difficulties has been the poor treatment the American family has received in the evolution of the U.S. Tax Code. Over the years we have seen the Tax Code revised and structured in a manner that tends to look after a great number of special interests at the expense of the American family.

Because the personal exemption—which was originally intended to reflect the annual costs of raising a child—was not indexed for inflation for some 35 years, it gradually lost a significant portion of its value. As such, I have introduced legislation to double the personal exemption which I hope my colleagues will join me in supporting and moving forward.

Recently I have had the good fortune to read a speech delivered to the Wisconsin Republican Convention by one of the Senate's leaders in fair tax policy, Senator KASTEN. This speech is an excellent summation of some of the areas in the Tax Code which are in need of revision—revisions which would restore tax fairness to American families—the very foundations of our future and, at the same time, revitalize our economy.

I believe Senator KASTEN is right on target in his assessment of what our domestic priorities should entail. I would thus like to have a copy of his speech included in the RECORD for the benefit of my colleagues in the Senate.

The remarks follow:

REMARKS BY SENATOR ROBERT W. KASTEN, JR.

Thank you very much, Tommy. Eva, Nora, and I extend our warm greetings to everyone

here today. We are particularly happy to be here because all of us together have a lot to be proud of. And what better occasion to celebrate our common pride than this Wisconsin Republican Convention!

Earlier this year, the American people showed what they were made of. We stood up to the forces of naked aggression and said America will not tolerate the violation of world peace and freedom by brutal dictatorships.

A couple of weeks ago, I was pleased to be at the joint session of Congress to hear a moving address by Gen. Norman Schwarzkopf. When General Schwarzkopf said that the defeatists and the flag-burners were wrong—that America would rally behind our troops until complete victory was ours—I recognized that we Republicans had indeed been successful in capturing the hearts of our country.

Make no mistake: It was the Republican commitment to freedom that made our victory possible.

So we Republicans have a lot to be proud of. But for the Republican Party, and for America, the best is yet to come, because we have a fight on our hands right here in America, a fight to liberate American families from the heavy hand of Federal over-taxation and over-regulation.

And after the battle of Kuwait, I ask you: Who doubts that we can win this fight?

We Republicans were the freedom fighters of the 1980's. We held the line against the Soviet Union, and the result was freedom in Eastern Europe. We cut taxes and gave Americans more freedom to work, save, and invest. The result was the greatest economic boom in history.

As Republicans, we started the 1990's with a willingness to undertake new challenges. We liberated Kuwait, and yes we can liberate the American family and make it the greatest force for prosperity that mankind has ever known.

Just like in the Persian Gulf, we are confronted by forces that are scared of freedom. The Democratic Party wants to saddle our entrepreneurs with costly burdens—all kinds of Federal mandates—that limit the freedom of the people to invest and produce.

The don't think the American people are smart enough to make their own economic choices. We know that this is wrong and we will oppose them.

The Democrats want to divide Americans against each other. For them, one person getting rich means another has to get poor. We Republicans know that's absolute nonsense. We want to build an America in which all of us share an expanding economic pie, because after all, we are Americans, and that means we're in this together.

As if trying to divide Americans by income weren't bad enough, the Democrats are even trying to create racial divisions. We believe in the dream of Martin Luther King: an America where people are judged by the content of their character rather than by the color of their skin. That's why I and the Republican Party say no to racial quotas.

Bureaucratic mandates, class envy, and racial division—this is the Democrat vision of America, and it is our task as Republicans to make sure that the Democrats never get the chance to make it happen.

We Republicans have another vision for America, a vision based on expanding the freedom and the opportunities of American families.

Families are the building blocks of civilization. Without strong families, America will not survive. That's why the fight to res-

cue American families is crucial to our success as a nation.

The family is not only the transmitter of our culture. It is also the underpinning of our economic strength. The most important habits that young people form take root not in school or on the street, but at home with Mom and Dad.

That's why it is essential that we make the family stronger. I think we ought to invest in families by increasing their earning power.

One of the ways we can do that is by doubling the value of the personal income tax exemption.

The declining value of the personal exemption is one of the most important reasons the tax burden on working families—especially families with young children—has risen so much over the last few decades.

In 1950, the personal exemption was the equivalent of over \$3,000 in today's dollars. Today, the personal exemption is only \$2,050.

Look what this erosion means for the average family. In 1950, a family of four with no other exemptions could deduct over 70 percent of its income from taxation. Today, that same average family would be able to deduct less than one-fourth of its income due to the personal exemption. Clearly, it's time for a change. I think we ought to start sending this money back to the men and women who earned it.

Federal spending this year will consume more than \$1 in \$4 of America's gross national product. We're sending too much money to feed Washington's spending habits, and not letting families keep what they have earned.

Doubling the personal exemption, and doubling the exemption for dependents under age 18, would put us back on the right track.

It comes right down to a question of investment. Do we want to invest America's wealth in the Federal Government, or do we want to invest in our No. 1 source of human capital, the American family?

For me, as a Republican, as a husband, and as a father, the choice is clear. American families need to keep more of the money they earn, so the Federal Government had better start making do with less.

We have to restore the tax incentive for individual retirement accounts. This is the best possible boost we could give to young families trying to save for their children's future.

Our pro-family tax policy is pro-growth. Unlike the Democrats who think that middle-income families exist for no other purpose than to serve as juicy tax targets, we Republicans believe that families already pay far too much in taxes.

Enough is enough. Until Congress gets spending under control, I say absolutely no to a single penny in new taxes.

If we let families keep their resources to save and invest, we will spark an economic boom of historic proportions. What a terrific legacy to leave our young people!

The bottom line is freedom. We Republicans believe that the more freedom American families enjoy, the better off America will be. That's why in education, we stand for choice—the freedom of parents to choose where, what, and how their children will be taught.

That's why in welfare policy, we support what Gov. Tommy Thompson is doing to keep families intact. Only when the family works is there hope for the young people to exercise their freedom in a climate of opportunity.

The Republican message to Wisconsin families is this: We trust you. We know that you

are America's only hope for the future, and that if only you have the freedom to do so, you will build an America we can all be proud of.

The Republican Party will help you in every single way we can, and we will be successful, because we know that you are behind us.

It will be tough at first, because the Federal bureaucrats and the tax increasers still have a lot of power—but we know that victory will be ours, because we know that we are doing the right thing for America's families.

And doing the right thing gives you all the power in the world. Ask the people of Kuwait, and ask Wisconsin families once our policies have become the law of the land.

We have a lot of work to do. We have elections to win. We have policies to enact. Together, we will accomplish these great tasks, and make Wisconsin and all America grateful for the effort we made.

We Republicans are performing a vital service. We have a strong record and a message of freedom. The future is ours; let's keep up the great work!*

CREST HOUSE

• Mr. SYMMS. Mr. President, those of us from the West have seen an increasing tendency by the U.S. Forest Service to put an end to the multiple use of our national forests. Despite the clear intent of Congress, as expressed in the Multiple Use and Sustained Yield Act, forest supervisors, in decision after decision, are saying "no" to oil and gas exploration, "no" to mining, "no" to timber harvesting, and "no" to off highway vehicle use. Incredibly, the U.S. Forest Service recently said "no" to the needs of visitors to one of our national forests.

The highest road for motorized travel in North America is in the national forest 35 miles west of Denver, CO. Just below the 14,264-foot summit lies the ruins of the Crest House—an historic structure built of native stone and boulders in the tradition of Frank Lloyd Wright. From 1941 until 1979, when it burned down, the building offered shelter, food, and an alpine rescue station for the millions who visit the mountain. Even though the Forest Service received more than \$500,000 to rebuild the building, it recently decided it would not do so. The position of the Forest Service is that the concrete platforms and portable commodes now atop the mountain is all that visitors need.

This incredible tale, plus a good bit of fascinating American history, appears in the Canyon Courier of Evergreen, CO. The article was written by William Perry Pendley, president and chief legal officer of Mountain States Legal Foundation.

Mr. President, I ask that the article, Crest House, a Place to Refresh and Reflect, be placed in the CONGRESSIONAL RECORD at this point.

The article follows:

[From the Canyon Courier, May 8, 1991]

CREST HOUSE, A PLACE TO REFRESH AND REFLECT

(By William Perry Pendley)

If ever an artist popularized the American West, it was Albert Bierstadt who, in 1859, ventured into the frontier. What he painted when he returned astonished the world and inspired generations of Americans. For in his hand, the American West became a mythical, ethereal place, a dreamlike and beautiful land.

In the summer of 1863, Bierstadt journeyed some 35 miles west of Denver and found himself gazing up at a peak which—at 14,264 feet—towered over all around it. To the east, over the foothills far below, stretched the Great Plains. To the west towered the Rocky Mountains, angular and rock-strewn, punctuated with alpine lakes and covered—below timberline—with a lush carpet of pine and shimmering aspen.

For Bierstadt, who had seen and who was to see many beautiful sights, the experience was singular. On his return, he did two things. He painted what he saw and called it "A Storm in the Rockies," and he named the Peak Mount Rosalie, after his future wife. Although his painting became famous, the name he gave the mountain lasted only 32 years. In 1895, the Colorado General Assembly changed the name to Mopunt Evans, after Colorado's second territorial governor.

Others wanted to see the view that inspired Bierstadt. Even before 1920, roads began making their way toward Mount Evans. In 1922, construction of a highway to the summit was begun. In 1930, what is now called Colorado Highway 5, or the Mount Evans Highway, was completed. It is the highest road for motorized travel in North America, and the third-highest in the world.

Beginning at 10,650-foot Echo Lake, the Mount Evans Highway climbs slowly, switching back and forth in a 14-mile trip to the summit. The road passes through an ecological exhibit where flora and fauna flourish, including a rare and beautiful stand of ancient bristlecone pine. At 11,500 feet the highway passes through timberline and into tundra whose abundant arctic and alpine wildflowers are world-famous. While wildlife abounds, including bighorn sheep, elk, deer, fox, badger and an occasional black bear and cougar, the most frequently sighted wildlife are Rocky Mountain goats, which stand in cautiously in the roadway or watch visitors from rocky perches overhead.

Each year more than 150,000 visitors to Colorado drive to the top of Mount Evans. Since the highway was completed, millions have been there.

In the late 1930s, three Colorado civic leaders decided that those millions of visitors needed a structure from which to better enjoy all that Mount Evans offered. For Mount Evans—the 15th highest peak in the lower 48—can be brutally cold, even on summer days, and the weather can change quickly and dramatically. As well, reasoned these men, the view is so spectacular that it warrants the length of stay that would be permitted only if one were able to take liquids and refreshment.

In 1940, construction began on what became known as the Crest House. Famed Colorado architect Edwin Francis thought it his best work, noting that he had been inspired by "the moon, stars and heavens." In 1941, the Crest House was completed. Built of native boulders and stone, the building was later deemed eligible for historic landmark status.

Over the years it served millions of visitors. Crest House employees assisted hundreds of lost, stranded, injured or ailing visitors to a summit where the atmospheric pressure is 60 percent that of sea level. The Crest House also functioned as a vital communications center for many daring rescues by the Alpine Rescue Team, during which Crest House employees provided first aid to trauma victims in "the golden hour"—the critical first 60 minutes following traumatic injury.

All that came to an end on Sept. 1, 1979, when a propane fire destroyed the Crest House. The U.S. Forest Service, which by then owned the Crest House, received more than \$500,000 in damages and insurance which it could have used to rebuild the structure.

Incredibly, after years of study, the Forest Service decided not to rebuild the Crest House. The Forest Service ignored the pleas of Clear Creek County, of nearby Idaho Springs, of the Alpine Rescue Team, and of a thousand visitors to Mount Evans. The Forest Service also appears to have ignored federal law, which requires government agencies to use money received for the loss of facilities to replace those facilities. Most incredible of all was the Forest Service's response to those who thought the Crest House met a safety need: "there is no requirement or obligation for the Forest Service to ensure the presence of people on a relatively continuous basis at the summit of Mt. Evans for safety related purposes."

What a far cry from the day in 1941 when the local forest ranger wrote to the original operator of the Crest House: "The Summit House meets a very outstanding public need, and the Forest Service is anxious to cooperate with you in any particulars that may serve to meet this need more fully."

The Mount Evans Company—the operator of the Crest House at the time of the fire—has filed a lawsuit against the Forest Service to restore this Colorado landmark and to enhance the experience of Mount Evans visitors.

Unfortunately, the Forest Service decision may be part of a trend away from so-called "intensive" uses. If it is, it is a dangerous trend that bodes ill for those no longer young, or hardy enough, or able and willing to enjoy a view—even as magnificent as that from Mount Evans—without a place in which to rest, to refresh, and even to reflect.

For it is in such a place as the Mount Evans Crest House—out of the wind and the cold—that one could look out upon a jagged sawtooth ridge that meanders West to yet another 14,000 foot peak—Mount Bierstadt—and think of the man who first showed this view to the world. One might even be inclined to make a toast, "To Rosalie."

Editor's note: William Perry Pendley, a Wyoming attorney, is president and chief legal officer of Mountain States Legal Foundation in Denver.♦

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

♦ Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objec-

tive of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Karen Robb, a member of the staff of Senator DECONCINI to participate in a program in Indonesia, sponsored by the USIA and the Government of Indonesia, from August 17 to September 1, 1991.

The committee has determined that participation by Karen Robb in the program in Indonesia, at the expense of the USIA and the Indonesian Government, is in the interest of the Senate and the United States.♦

OUR OWN NATURAL RESOURCES

♦ Mr. SYMMS. Mr. President, all Americans are filled with pride and patriotism over the heroic efforts of the brave men and women of our military services who performed so valiantly and ably in the Persian Gulf. Yet we cannot allow our euphoria to prevent us from learning what lessons we must learn from that experience. I believe one of the most important lessons that we can learn from this war—America's first over resources—is that we must develop our own natural resources.

As a westerner who represents a mining State that very point is brought home to me as I see the internal struggles in central and southern Africa as well as Russia where many of the most important mineral resources occur. This point is further made by the debate in this body over the future of mining in this country. I only hope that some future Congress is not asked to send young men and women into combat over mineral resources that, but for the opposition of environmental groups, we could have developed here in this country.

This point and others were made in a speech before nearly 2,000 of the country's top young military officers at the Naval Postgraduate School. William Perry Pendley, a member of the Secretary of the Navy's Advisory Committee on the Naval Postgraduate School, and a former aide to this distinguished body, delivered an inspirational and thoughtful address which should be read by every American.

Mr. President, I ask that Mr. Pendley's remarks be placed in the RECORD at this point.

The remarks follow:

ENVIRONMENTAL ISSUES AND THE MILITARY OFFICER

(By William Perry Pendley)*

WHAT A GREAT DAY

Welcome to the "Wyoming Expatriate Lecture Series." I understand that last month

* Mr. Pendley, a former Captain in the U.S. Marine Corporation, is a member of the Secretary of the

you heard from two men from Casper, Wyoming—Secretary of Defense Dick Cheney and Assistant Secretary for Legislative Affairs, David ("Dedge") J. Gribbin, III. Today you get to hear from someone from Cheyenne, Wyoming.

I see on the news that Secretary Cheney is in the Middle East today, telling the troops that they will not be out of the "DMZ" within the next 48 hours, soon to be home, soon to be receiving the kind of greeting that they deserve.

As I have traveled around this country in the weeks since the end of the war, in every city, large and small, in every village and hamlet, in every airport, I have seen the signs "Welcome Home." To those brave men and women who served in the Middle East, "Welcome." To those who supported them here and abroad, throughout the Fleet, "Welcome Home."

As General Normal Schwarzkopf said on his return to the United States, "What a great day to be a soldier. What a great day to be an American." What a different day from the day I and thousands of others came home during the Vietnam War.

LESSONS LEARNED

We have learned, and are yet to learn, many lessons from the War in the Persian Gulf.

We learned that American technology, ingenuity, know-how and creativity work.

We learned that our weapons work. Just ask Saddam Hussein.

We learned that our men and women can fight and win a war. We are yet to learn if our diplomats can win a peace.

We learned also how to deal with the press.

I must tell you that the American people have had it up to here with the media. The media's standing in the public's eye has never been lower. Although you have recently heard a lecture on the media, I cannot discuss the media and the military without making two points:

First, it is ironic that censorship in the Persian Gulf War came first from the media, not the military. It was the media which demanded that the military cut short its daily briefings and go on "background" so that the media could be the conduct for information on the war. So much for the media's real objective, control of the news.

Second, when a CNN reporter left Baghdad in the middle of the air war, he refused to be debriefed by the military, saying that he was first and foremost a journalist, not an American. So much for the media's orientation.

RESOURCE WAR I

Today, as we welcome home our fighting men and women, I want to discuss yet another lesson we must learn from the war in the Persian Gulf. That lesson is that political decisions made here at home will determine if the sons and daughters of America will fight on foreign shores.

My good friend, Jim Webb, former Secretary of the Navy, one of the most highly decorated Marine Corps officers from the Vietnam War, and one who, with many of you, "rode the green bench" at the Naval Academy, has written yet another outstand-

Navy's Advisory Board on the Naval Postgraduate School. He is President and Chief Legal Officer of Mountain States Legal Foundation in Denver, Colorado. These remarks were delivered as part of the Naval Postgraduate School Superintendent's Guest Lecture Series on May 7, 1991.

ing novel. Jim told me that his novel, "Something To Die For," is "a cautionary tale." I recommend it to each and everyone of you. In it Jim sees a Washington, D.C., filled with cynicism and political intrigue, in which the nation's leaders send men to die for nothing in Ethiopia.

Yet I see another force at work. For there is something unique about the war in the Persian Gulf other than the swiftness of our victory. That is, it was the first war America has ever fought over resources.

America, on whom God has surely shed his grace; America, blessed with rich farmlands and forests, with ore and oil, has fought a foreign country over energy. Yes, we fought to rid the world of a despot—of the Hitler of our age. But we also fought, in President George Bush's words in his State of the Union address, because, "[w]e cannot allow control of the world's oil resources to fall into [Saddam Hussein's] hands." Or like the bumper sticker I saw on a pickup truck outside Roswell, New Mexico, "Kick His Ass. Take His Gas."

It may be the first war America has ever fought over resources, but I fear that it will not be the last. It will not be the last unless we change our policies. But before I discuss what we must do, I need to discuss where we are today.

WAR ON THE WEST I

To do that I must go back some 14 years to the administration of the first graduate of the Naval Academy ever to be elected President of the United States, Jimmy Carter. After his election, his administration engaged in policies that were widely perceived of as a War on the West: a war on our water projects, a war on our water law, and a war on our mining, timber and other resource policies.

His policies yielded opposition, heated opposition. It was called the "Sagebrush Rebellion," and it catapulted the man who called himself a Sagebrush Rebel—Governor Ronald Reagan—into the presidency in a landslide.

That would seem to be the end of the story. But it is not. What is happening now is yet another "War on the West." This time by a Republican president and the response to it is being called the "SageBush Rebellion."

The grass roots uprising that we are seeing all across the West, from the 100th meridian to the Cascade Mountains, is what John Lancaster of the *Washington Post* calls "an honest-to-goodness phenomena."

I AM AN ENVIRONMENTALIST

It all began in 1988 when Vice President George Bush, in the midst of the presidential campaign, said "I am an environmentalist." When I heard that I worried. I worried because for 20 years or so, westerners have been at odds with the leaders of the environmental groups as they have sought, so it would seem, to shut us down.

I worried even more when I heard President Bush's first State of the Union address. As you know, State of the Union addresses are usually lacking in specific detail. But in his first State of the Union address, President Bush said two very specific things about natural resources issues.

First, he said he wanted to increase the National Park Service's land acquisition budget from zero to \$200 million a year. That is the budget the federal government gets to take property out of private hands, off of the tax rolls and put it into federal ownership. This aggressive federal land acquisition policy has continued. Next year, two land management agencies—the U.S. Forest Service and the Bureau of Land Management—will

have the largest land acquisition budgets in the history of those agencies.

Second, President Bush placed three Outer Continental Shelf (OCS) sales off limits to exploration and development. Those sales were supposed to bring into the federal treasury more than \$450 million in bonus bids alone, not to mention jobs, revenues, taxes, and yes, even oil and gas.

Taken together, these two initiatives reduced revenues to the federal government by more than \$650 million. Think about that the next time you worry over the shrinking Department of Defense budget.

Shortly after the President's announcement, Congress placed the majority of the OCS off limits to exploration and development. You should know that there is enough oil in the OCS to replace all of the oil we get from the Persian Gulf for the next 25 years. It should be apparent to those of you in uniform that Congress is less concerned about sending the sons and daughters of middle America to war than about confronting the environmental groups on developing domestic energy.

We are not running out of oil in America, we are running out of the will to develop it:

—exploration for oil and gas on U.S. Forest Service lands has dropped by 60% in the last five years;

—the OCS is largely unavailable for exploration;

—the Arctic National Wildlife Refuge—an area the size of South Carolina in which we need to explore an area the size of Dulles International Airport—is off limits;

—our country is 80% dependent on foreign sources for the fuel we use to create nuclear power.

There is oil to be found in America. Recently a major new find was announced in the Gulf of Mexico, the largest find in the last 20 years. It may be as large as the North Sea.

After I heard President Bush's first State of the Union address, I wondered what would happen next.

WAR ON THE WEST II

Water Law

The answer wasn't long in coming. It happened in a place I now call home, Denver, Colorado. For nearly 100 years the people of Colorado have looked to an area called Two Forks—the two forks of the South Platte River—as our source of water for the future. Forty units of local government—no federal or state money was involved—spent \$47 million performing the environmental studies to build the project. They agreed to spend \$90 million in mitigation measures to make local environmental groups happy, but that was not enough. National environmental groups went to their friend Bill Reilly, Administrator of the Environmental Protection Agency, and said, "Veto this project."

That is exactly what Bill Reilly did. He sent his Regional Administrator from Atlanta—which gets 80 inches of rainfall a year—to Denver—which gets 13 inches of precipitation a year, mostly in snow, to tell Denver whether it needed the water. He concluded that we do not. Bill Reilly's suggestion as to where Denver gets its water for the future is to mine water from deep aquifers or to close down farmers in northern Colorado.

Ever since gold was panned here in California, westerners have been in control of their water. We have decided when and how and where we get it. But with Bill Reilly's decision that is no longer the case.

Timber Jobs

I hope you have been following the tragedy that is unfolding in the Pacific Northwest, as 60,000 men and women face the loss of their jobs due to the Northern Spotted Owl. Four out of every ten jobs in Oregon is a timber or timber-related job. Imagine what would happen to your home towns if 40% of the people lost their jobs. That is beginning to happen now in Washington, Oregon and northern California, at a cost of \$47.5 million per Spotted Owl.

No Net Loss

President Bush traveled to my home State of Wyoming and announced a national "no net loss of wetlands" policy to protect bird habitat. That sounds great at the stratospheric levels at which the President and his duck hunting buddies operate—and I'm for shooting birds. But in the bowels of the bureaucracy where even the deserts are "wetlands," it is a problem primarily because of the definitions we lawyers use.

We have a joke in the practice of law: "How much water does it take to have a stream in interstate commerce?" For if you have a stream in interstate commerce, Congress can pass a law about it and a bureaucrat can regulate it. The punch line is, "only so much water as to float the first page of a Supreme Court opinion." No wonder we have problems with the President's "no net loss of wetlands" policy.

In western Colorado, near the town of Carbondale live two old gentlemen, Dennis and Nile Gerbaz. Their father came here from Italy in the early 1900's. For seventy years these men have lived in harmony with the land, raising their cattle and growing potatoes, oats and barley along the Roaring Fork River.

A few years ago a neighbor got a government permit to do some work on the river. But because of the work that was performed the river flooded their land—about ten acres. Dennis and Nile didn't like that so they asked for a permit to correct the problem created by the work permitted by the Government. The Government not only denied the permit, it refused to come out to see the situation.

The following spring, rocks and trees and debris created a dam which prevented the river from flowing in its historic channel. Instead, the river was diverted onto the land of Dennis and Nile Gerbaz, flooding some 20 acres and washing away 5 feet of top soil over a two acre area. That was too much, even for these two gentlemen. They went to a lawyer, learned that the law permitted them to take action, without a permit, to protect their land, and so they did.

They took the obstruction out of the river, rebuilt the levee that had been washed away, and returned the river to the channel in which it had flowed for decades. Then one day, the EPA came to their home and ordered them to report to federal court to pay a fine of \$45 million. You see, it is the Government's position that when the river flooded their land it created a "wetland" that they could not dewater without a permit.

Dennis and Nile Gerbaz are not alone. Hundreds of land owners all across America have been victimized by the federal government under the Administration's new "wetlands" policy.

Desert Tortoise

Here in California, in the desert, the Desert Tortoise is in danger of becoming extinct. The U.S. Government has determined that the cause is predation by the common raven. According to the Government docu-

ment, "raven predation will lead to the extirpation of the tortoise population." I didn't know what "extirpation" meant. I had to look that one up. It means "to pull up by the roots." So I think of "extinction" as going out with a whimper, and "extirpation" as going out with a bang.

The Government decided to get rid of some 1,500 ravens. But the American Humane Society filed a lawsuit saying that would be inhumane to the raven. So the Government settled the lawsuit to save the cost of litigation after the Humane Society agreed that the Government could kill 1,500 ravens. However, the Government did not agree quickly enough, for the Humane Society added another condition. The Government could only kill ravens it could "positively identify as habitually preying on tortoises."

Thus, the Government denied itself the ability to end the predation that was threatening the tortoise with extinction. So what did the Government do? It took action against the miner, and the rancher, and the off highway vehicle enthusiast, and it shut down the fastest growing city in the country, Las Vegas, Nevada.

I was in Las Vegas a few weeks ago. Listen to the agreement that the U.S. Government has demanded of the people of Las Vegas and surrounding Clark County. In exchange for the ability to build on 22,000 acres in downtown Las Vegas, 400,000 acres in the county will be set aside for a tortoise habitat on which no ranching will be permitted, from which miners will be evicted, and on which no off highway vehicle activity will be permitted.

Telescopes

In southeastern Arizona, the University of Arizona and a number of other prestigious institutions are attempting to build a world-class observatory. Originally, they wanted to build 17 telescopes, but they "negotiated" with the Forest Service and it reduced the number from 17 to 13 to 10 to 7 telescopes. The University of Arizona still could not build due to environmental objections, so a law was passed by Congress to cut through the red tape.

Senator John McCain of Arizona stood on the floor of the U.S. Senate and announced that with the signing into law of this bill the telescope project would go forward. No more delays, said Senator McCain. Now, said Senator McCain, we will be able to do what the Soviet Union cannot do, because only we have the technology and ingenuity to build these telescopes.

But Senator McCain was wrong. The Sierra Club filed a lawsuit on behalf of the Red Squirrel which is endangered and the project is on hold at a cost of \$25,000 a day to the University of Arizona. How ironic. We can beat Red Ivan, but we can't beat the Red Squirrel.

Wilderness

President Bush signed into law the Nevada Wilderness bill over the protests of Congresswoman Barbara Vucanovich, who represents every county in Nevada except Clark County. There are no wilderness areas in Clark County, unless you count the Las Vegas strip.

Killing Birds To Save Them

Have you heard of the latest efforts of the U.S. Government? Late last year the Justice Department apparently concluded that it did not have a good enough case against Exxon. So Justice Department lawyers went to the U.S. Fish and Wildlife Service and asked it to kill several hundred birds, dip them in oil, and throw them into Prince William Sound

so the lawyers could calculate how many birds were killed in the spill.

Incredibly, the Fish and Wildlife Service agreed. Thus it killed several hundred birds from two Alaska wildlife refuges, dipped them in oil, and threw them into Prince William Sound. This is the same Fish and Wildlife Service which recently fined a mining company \$500,000 for accidentally killing 25 birds in Nevada.

So much for the legacy, thus far, of the environmental president.

THE NATURE OF THE BEAST

Recently two professors named Popper from Rutgers in New Jersey came to Denver, Colorado, to discuss what they call "The Buffalo Commons." Their thesis is that mankind was never meant to live on the Great Plains. This should come as a surprise to those of you from North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma. The Poppers believe that sooner or later all of those people will be gone; it ought to be sooner, so that the Government can put the buffalo back on the prairie.

Of course, this is a ridiculous, ludicrous proposal affecting, as it does, the larger part of nine states. But for many of those I represent, this very thing is happening now, as ranchers, farmers, miners, oil men, and timbermen are being forced off of the land. Along with them will go the hundreds of small communities which depend upon those activities, which depend upon resource development to exist.

We believe that we are locked in a battle for economic survival, yet we have a consensus, compromise, go-along, get-along, wet-finger-in-the-wind, will-of-the-wisp Administration that does not understand the nature of the battle, the nature of the beast with which we are engaged.

It reminds me of the time years ago when the Environmental Protection Agency decided to ban the poison that woolgrowers were using to kill the coyotes that were eating their sheep. Instead of that poison, the EPA proposed that woolgrowers use a chemical that would render the coyotes sterile. An EPA official embarked upon a tour of the West to explain that to all of us.

The tour ended in Wyoming, in one small town where the folks filled the elementary school cafeteria to hear a bright young man from EPA explain the Government's proposal. Finally, one old boy walked up to the microphone and said, "Sonny, I don't think you understand the nature of the problem. You see, the coyotes are killing and eating the sheep. They're not raping them."

A NATIONAL PROBLEM

This is not just a western phenomena. It is happening all across the country. Government regulation regarding "threatened" and "endangered" species is stifling critical economic development and the utilization of natural resources and facilities nationwide: from the Northern Spotted Owl in Washington, Oregon, and California to the Sea Turtle in Louisiana, to the Red Cockated Woodpecker in Texas. "Wetlands" designation has stopped legitimate development activities all across the country and has subjected landowners, farmers and ranchers to heavy fines and imprisonment. The EPA has vetoed vital municipal water projects from San Diego to South Carolina and from Dade County, Florida to Denver, Colorado.

It is not just private activity either. The Desert Tortoise may well stop expansion of the U.S. Army's Fort Irwin and its vital desert warfare training. One interesting battle yet to be waged is one between two Wyo-

omingites, Secretary of Defense Dick Cheney, and U.S. Fish and Wildlife Service Director, John Turner.

While these are national problems, the impact of these policies is being felt the most in the West. There, where the federal government owns much, if not most of the land, small and rural counties are being devastated. As a result, the National Association of Counties—representing the elected officials of the 3,000 counties nationwide—last year designated ten American communities as "endangered."

ENVIRONMENTAL PASSION

There is an environmental passion in this country that the media is now exploiting. You cannot pick up a newspaper or magazine; you cannot turn on the radio or television; why you cannot even go into the grocery store, without being confronted with some "Save the Earth" propaganda.

While much good has come over the last twenty years from our heightened concern with being good stewards of the planet, I am concerned about this passion, as I fear any passion which acts without regard to Constitutional liberties, without regard to the Fifth Amendment of our Constitution, without regard to the rights of the individual.

We are seeing a new day, that is the radicalization of the environmental movement. The problem is not always with the rank and file of environmental organizations but more often with their leadership. The question is, what do they want? Last year on Earth Day, I heard the leaders of three major environmental organizations say that the free enterprise system, the American system of government was not adequate to protect the environment, that we needed to have fundamental change in our system of government. Even Bill Reilly, Administrator of the EPA, once called property rights "a quaint anachronism."

On the fringe of these organizations are the terrorists—those who "spike" trees, "spike" trails and attempt to topple ski lifts—and the animal rights advocates—those who say "A rat is a pig, is a dog, is a boy." I don't know about you, but I'd rather lose a dolphin while it was performing a hazardous underwater mission than lose a young man or woman in one of your commands.

I fear that much of the environmental rhetoric is anti-people, the kind of rhetoric which states that the human race is "a cancer on the planet." I heard an environmental leader the other day say that the word "more" is a four letter word, a dirty word. Well for the 71% of the American people who do not have a discretionary income, it is not a dirty word. What we see from so many environmental leaders is a dangerous elitism, an elitism that ignores the needs of most people; an elitism that ignores the needs of our high technology civilization, our need for energy, for ore, for timber. These elitist don't have the answers for where we get what we need. They are just in the business of stopping activity.

Shortly after war broke out in the Persian Gulf, a friend sent me a bumper sticker that read, "If You Like Iraqi Oil, You'll Love Russian Timber." The question in this country is where do we get the resources that we need—the energy, the minerals, the timber—if we don't develop them here. The answer is that we get them from foreign countries, countries like Iraq, South Africa and Russia. Yet if we are truly global citizens we should recognize that the Soviet Union doesn't just have a terrible human rights record, it has an abysmal environmental record. It is America that has an outstanding record on

wisely developing our forests. For there are more trees today than when I was the age of my sons, who are ten and seven.

There is also a strong anti-technology thread that runs through much of the rhetoric we hear from the leaders of the environmental movement. They have no faith in the ability of American technology to deal with the environmental challenges which we are facing. Of course, these are the same people and types of people who said your weapons would not work.

WEIRD SCIENCE

One of the major problems we face in America today is what I like to call weird or political science. There are two bodies of scientists today. On the one hand are those who know what they are talking about, who seek peer approval, who publish in scholarly journals and who do not talk to the press. On the other hand are those who don't know what they are talking about, who do not seek peer approval, who talk to the press and who publish in *People* magazine. Unfortunately, the latter are helping to make or influence major decisions in this country, including critical issues of environmental policy.

Let me give you some examples of weird science. The Spotted Owl allegedly lives only in old growth. Yet scientists, true scientists, know that, particularly here in California, the Spotted Owl lives, thrives in new growth.

While we are talking of old growth—and I'm a fan of old growth, we've saved millions of acres of it in wilderness areas and parks—what is this fascination with old growth, particularly by those who say they are concerned with global warming? They should know what every scientist knows, that acre-for-acre the best photosynthesis factory of any land-based vegetation is new growth.

As for the Red Squirrel that stopped the telescope project in Arizona, hear what the Fish and Wildlife Service's Biological Opinion says about the squirrel, "The Red Squirrel, on seeing an intruder will become fixated, will forget to collect cones, and will starve to death in the winter."

But the weirdest science of all is "Dr." Meryl Streep on apples. You remember when Meryl Streep said there was 4,000 to 5,000 cases of cancer every year from Alar alone and helped to drive the price of apples from \$14 a box to \$9 a box when they could be sold. While I have great respect for Meryl Streep as an actress, she's no scientist. Yet she felt no compunction about testifying as she did before a U.S. Senate Subcommittee. As a result of the controversy over Alar, hundreds of orchardmen and women went bankrupt. Thus, some 200 years after Marie Antoinette said, "Let them eat cake," an American actress says, essentially, "I don't mind paying \$3 for an organic apple. Do you?"

It reminds me of the sign I saw at a timber rally in Forks, Washington. Every man, woman and child was inside the gymnasium to learn what the community could do to keep its timber-dependent economy alive, to survive as a town. Outside, standing in the rain, was a little boy with a sign held high: "It's not The Owls, It's The Loons."

Let me give you some real science. In the deserts of California and Nevada, modern technology has saved many desperate communities and counties. Through a process called heap leach mining, dirt is piled atop thick plastic, a weak cyanide solution is passed through it and out the other end comes millions and millions of dollars in gold.

There was an unfortunate side effect, the weak cyanide solution was collected in ponds, birds flying over mistook the ponds

for the Caribbean, and landed in them. We lost as many as 10,000 birds. We don't want that to happen. The mining companies have changed their practices so now it does not happen. But that is not enough for some environmentalists. They want to stop the mining because if they can stop the mining they can render the desert uneconomic and turn it all into a park.

I want to put those bird kills into perspective. Two British scientists have helped me do it. They did some research on the 5 million household cats in England. They concluded that the 5 million household cats in England kill 20 million birds a year.

I called my friends at the American Humane Society. "How many household cats in America?" "Fifty seven point five million," they replied, "not counting the Toms."

I figured that out myself. I had the old math. Our 57.5 million household cats are killing 230 million birds a year. Then I noticed a footnote. It said that the scientists were off by half because cats only bring home half their kills. One of my lawyers asked, "What half?" The real number is that America's cats kill 460 birds every single year. So I say, before we get rid of those mines, we get rid of our cats. Better yet, we can send the cats out to kill the ravens that are eating the tortoises.

You men and women of the Naval Postgraduate School, you with scientific training, need to be involved in these scientific issues. Thus, I congratulate the Naval Postgraduate School for undertaking work on finding the facts regarding global warming.

WHAT DOES IT MEAN

Let me return now, to where I began. That is, why did our Commander-in-Chief, in the midst of the 1988 campaign, say "I'm an environmentalist." What does it mean?

Meg Greenfield, editor of the editorial page of *The Washington Post* says that the word "environmentalist" is not big enough. Thus while the leaders of environmental organizations say they are environmentalists, so do my clients, the rancher, the farmer, the miner, the timberman, the oil and gas explorer. For they live on and love the land.

I have waited in vain for George Bush to use the bully pulpit of the presidency to help the American people understand what it means to be a true environmentalist; that we can protect the environment and preserve our economy. Unfortunately, the president has been distracted with other matters. I fear we shall never hear it from him. That is why all across the country people are rising up in opposition to the agenda of organized environmental groups.

The times are changing. We can see that nowhere more clearly than here in California with the defeat last year of "Big Green" and "Forests Forever." Of course, you say, they were defeated, they were stupid. Yet when both got on the ballot some 60% of Californians said they were voting "yes." There is a difference between Earth Day and Election Day.

A market research survey by the highly regarded Roper organization in New York has some startling statistics. It reveals that only 22% of the American people are hard core environmentalists. Some 52% are against excessive environmental regulation. Another 26% are sitting on the fence. I believe that the people who I represent are in the majority.

Yet many issues remain before us. The public must understand the decisions that are being made and what those decisions mean for each and every one of us. You, men and women of the military, need to be in-

involved. As scientists, as citizens, and as warriors you have a unique role to play.

For it is your predecessors-in-arms who have paid the price for the freedoms which we enjoy. Let those sacrifices and deaths not be in vain. Let us not sweep away our precious liberties in a lemming-like hysteria over the environment. It is you—and your sons and daughters, and mine—who may be asked to fight yet another war for resources.

Your heritage and your future duty cries out for your knowledgeable involvement in these battles. Join with me and millions of other Americans who say we can have it all—a clean and healthy environment and freedom!

Thank you.●

HONORING THE WISCONSIN 128 AIR REFUELING GROUP

● Mr. KASTEN. Mr. President, I rise today to share with my colleagues the Desert Storm/Desert Shield remembrances of Col. Gene A. Schmitz, commander of the Wisconsin 128th Air Refueling Group. I found this firsthand account of the war effort to be fascinating reading and quite different from the often-impersonal news accounts of the war.

As you recall, on April 11, I alerted the Senate to the praises of the 128th from Air Force Lt. Gen. John B. Conaway. General Conaway indicated that "the allied air accomplishments would not have been possible without air refueling provided by these units" and recognized the 128th for their excellent performance in the Persian Gulf.

In addition to General Conaway's remarks, the 128th has received much praise and recognition from many quarters. The latest is being chosen to fly over the National Victory Parade on June 8, 1991. The 128's tanker will be one of only three tankers and the only Air Guard tanker chosen to participate in the national parade. This is indeed a tremendous honor.

Colonel Schmitz' personal digest vividly details the efforts that have earned such high praise. The problems, concerns, teamwork and many accomplishments of the Wisconsin 128th Air Refueling Group are laid out in fascinating detail. I highly recommend that my colleagues take the time to read this extraordinary account of men and women at war.

Mr. President, I ask that Colonel Schmitz' remembrances be inserted into the RECORD.

The material follows:

AIR NATIONAL GUARD AT THE 1706 AREFW

The Air National Guard (ANG) first landed at Cairo West on 28 Dec 90. Within the next 5 days 10 KC-135E aircraft, 15 crews and 196 additional personnel from the 128th Air Refueling Group, Milwaukee, Wis., and 5 KC-135E aircraft, 7 crews and 105 additional personnel from the 141st Air Refueling Wing Fairchild AFB, Washington arrived to set up operations. Everyone had a lot of apprehension about living in tents, living in the desert, facing the pressure of a high-threat terrorist area, interfacing with active duty

personnel, dealing with cultural problems in a strange land, working with Egyptian Air Force host base troops and wondering constantly what was in store for the war effort.

Everyone was pleasantly surprised how comfortable a tent could be, especially one with a wood/canvas floor, heat and air conditioning, windows and wood doors. The absence of closets, chest of drawers, tables and chairs were soon solved through carpentry, supplies and ingenuity. The wing commander had done a marvelous job preparing the base for our arrival. Tent city was fully operational, all the service functions were in place, bunkers had been cleaned out, offices had been built, fuel bladders were operational, ramp space secured and engineering services completed. It didn't take long to move in and settle down.

The first few days were spent getting organized, familiarizing oneself with base facilities, establishing procedures and getting acquainted with our co-workers.

A strong underlying current flowing through the aircrew force was a deep anxiety regarding the nature of our top secret mission and the questioning concern of terrorist activity that might affect takeoffs and landings. Just how real was the threat of being shot down by a hand-held surface to air missile in the hands of a terrorist?

The first order of business was to insure crews received several flights for familiarity, local area checkout and Egyptian air space exposure. Besides flight proficiency, the crews would spend days and nights reviewing and hanger flying tactical departures and arrivals, formation procedures, retrograde actions, enemy target identification, escape and evasion, chemical defense equipment review and survival considerations. It was a very intense two-week period of training, scheduling and learning. An acute interest was evident throughout the operation area.

In the aircraft maintenance area; refueling operations, towing, repositioning and fixing aircraft took on a new meaning. All these areas were done in a manner different from State-side operations. Enough praise cannot be given to the maintenance community and their efforts to maintain in-commission rates and mission capable status for the KC-135E aircraft. Although we started with 15 aircraft, we basically operated with 14 airframes after the first 3 days of the war. We knew in advance that aircraft parts would be a problem. One aircraft was cannibalized to keep the remaining birds operational. Despite this arrangement, the real credit still goes to the entire maintenance community for keeping the aircraft flying around the clock. Our back shops fixed parts on many occasions rather than wait for replacements. Ingenious methods were used to secure non-repairables. Maintenance troops often utilized their civilian skills or previous AFSC's to help in other non-assigned areas. The tremendous cooperation, spirit of unity and team work enabled the maintenance troops to produce 20, 21 and 22 sortie days on over 10 occasions. For the 43 day war the average sortie rate was 15.2. No one, except our maintenance people, would have believed such a level of performance could be achieved. It is one of the real success stories of Cairo West.

Let us not forget the hard work and long hours required of the life support and personnel equipment section. Our high sortie rate took its toll on equipment. However, a mission was never without the proper chemical defense, survival and personal gear, parachutes and rations required for combat support refueling flights. The real story emerges when you realize that these same life sup-

port personnel also provided 24 hour transportation coverage for crews traveling to and from their aircraft. What a demonstration of cooperation, positive attitude and hard work.

The security of ramp space created another challenging problem. Where do we park all those aircraft? Closed runways and taxiways were pressed into service. 3 separate ramps were established: East, west and south. The east and west ramps were separated by an active runway that created a new set of obstacles for the maintainers. Ground refueling operations also proved to be challenging. Where was the hydrant and pipe-line system? No such luck. The crew chiefs soon learned how efficient and effective fuel bladders and R-14 refueling carts can be. The refueling system worked perfectly and the initial doubts about their sustainability soon went away.

One of the most important factors that Air National Guard personnel bring to an operation is experience. When the average age of the pilots, navigators and boom operators is 40, when the average flying time for these crewmembers is 3300 hours, when the average years of military service is 15 years, when the average age of the crew chiefs is 44 and when junior officers and bottom-three enlisted ranks are rare; then you know you have lots of experience. If you combine these facts with the reality that the Air National Guard has the best maintained aircraft in the world; you can be assured that you have a tremendous fighting force ready and able to handle any mission.

The 1st two weeks of operation at Cairo West required lots of issues to be worked, lots of details to be handled and lots of problems to be solved. Some of the major items were:

- Widening some taxiways and parking spaces.

- Securing 2 aircraft tugs.

- Increasing fuel supply and storage capability.

- Securing airspace for combat departures.

- Obtaining required airspace for formation flying.

- Establishing viable aircraft parts supply system.

- Badgering CENTAF into securing enough refueling drogues to equip our fleet since 90% of our missions required drogues.

- Ensuring adequate supply of fresh water for tent city.

- Working security issues with Egyptian Air Force.

- Beefing up security police equipment and defense positions.

- Solving a whole host of tent city and MWR issues associated with base population growth.

- Obtaining imminent danger pay and associated benefits for Cairo West.

- Determining proper Egyptian airspace deconfliction procedure for air defense exercises and war time missions.

- Identifying and correcting ground and flying safety hazards.

- Exercising base disaster preparedness program.

- Establishing strong command and control function.

- Establishing battle staff function.

Two solid weeks of problem solving, preparations, exercising plans, working details, establishing procedure and brain storming paid handsome rewards. When the conflict started on 16 Jan 91 we (all 850 troops in the 1706 AREFW) were ready!

Because of the great distance to our air refueling tracks, we were the first Desert

Storm tankers to launch. Our first takeoff time was nearly 2 hours prior to the official start of hostilities. The 1st 4 waves of tankers that launched were electrifying. Tension within the aircrews force and throughout the entire base was sky high. What was in store at the refueling track? Would the Iraqi Air Force retaliate in mass? What were the risks, the odds, the threats, the problems to be faced. Clearly, this was a historic time. How would we perform? Would anyone not return? Although every single aircrew member was most fearful of their impending mission, not one person wavered in their assignments.

Well, everyone performed admirably. Although the first 3 days carried a lot of excitement, tension and worry; the crews, the maintenance and support personnel all performed with distinction. For 43 consecutive days we flew around the clock. Despite the pace, despite the long grueling schedule, despite the level of participation and activity, despite the lack of adequate sleep, despite the 1,001 annoyances; everyone kept working with utmost determination. When the cease fire finally came on 28 Feb 91, we had compiled a superb record, an enviable set of statistics, an achievement unsurpassed.

Our combat support missions were flown in tracks located in the northwest part of Saudi Arabia. 90% of our refuelings were drogue missions with receivers from the aircraft carriers Kennedy & Saratoga operating in the Red Sea. The carrier-based receivers would meet the tankers piecemeal until 15 to 30 were joined up in our formation as we orbited in prune and raisin tracks. Once joined, the wave of fighters and tankers would proceed down track. These were our primary pre & post strike tracks. Let's not forget the other wonderful locations where we spent so much time: Gopher, Tangerine, Orange, Chuckberry, Melon, Banana, Grape, Raspberry, Marionberry, Loganberry, Doonesbury, Bone and Fairway. Navy receives that struggled to stab our drogue baskets were F-14, F-18, A-6, KA-6, EA-6, A-7 and EA3B. Almost the entire U.S. Air Force inventory has been on our boom sometime during this conflict. EF-111, F-15, F-16, RF-4, EC-135, MC-130, B-52 and A-10's. Deconfliction with other tracks, tankers, receivers and tactical traffic was a constant battle. Track extension to the north by AWACs also proved challenging and interesting. There were even a few flights that enjoyed penetrating Iraqi airspace. The crews never worried much (want to bet) about Iraqi air defence systems. Our intelligence shop provided daily and sometimes hourly updates on AAA, SA-2, SA-8, and other sundry threats so the crews knew exactly where not to go. Our intelligence personnel deserve much credit for providing volumes of information about the enemy response, threat area, search and rescue information and tons of information about Scuds, order of battle and progress of the war.

From 16 Jan to 28 Feb 91 we flew 650 combat support sorties, refueling 2831 receivers, offloaded 29,016,200 pounds of fuel and expended 3277 flying hours. But the best and most important accomplishment is this. Not one tasked sortie was missed and not one receiver lacked a tanker—100% mission effectiveness. The period from 1 Mar to 6 Mar 91 was devoted to cease-fire positioning, politics and declaration of peace in the AOR. During that time we provided refueling support for F-15 cap, A-10 cover and Navy cap. We accomplished 18 sorties, filled up 61 receivers, flew 95 hours and offloaded 441,000 lbs of fuel.

The Air National Guard also played a key role in the security of Cairo West air base. 44 members of the 127th Security Police Flight from Selfridge ANGB Michigan and 44 members of the 112th Security Police Flight from Pittsburgh ANGB, Pennsylvania arrived a short time before the KC-135 Refueling Squadron and maintenance contingent. Pittsburgh descended on the camp on 20 Dec 90 followed by Selfridge on 26 Dec. They combined their forces with 70 security police from Minot AFB, Mather AFB and Aviano Air Base to provide the best possible security protection for the highest terrorist threat area in the entire AOR. State-of-the-art equipment included night vision goggles, M-60 machine guns, M-203 rocket launchers and HUMMV's provided constant perimeter, post, patrol, gate and fortified defense manning. The entire security force performed admirably regardless of sandstorms, thunderstorms, searing heat and bitter cold nights. Egyptian language problems, rabid dogs, VIP escorts, E2-C crash security, Threatcon Charlie, political Egyptian assassination and aggressive tent-city occupants. Nothing could deter these fine troops from their #1 duty of protecting the personnel and property of Cairo West.

The credit goes to the crews, the maintenance community, the superbly maintained aircraft, the POL folks, the operations staff, the dining hall workers and all base support functions and of course the command structure. The ANG had the privilege of working side by side with active duty personnel who had deployed from 42 separate bases located in Europe, Asia, and the United States. What a team effort! What a wonderful performance! What a record!

The 13 Air National Guard tanker units, with their significant tanker fleet, was heavily tasked for the redeployment of aircrafts to the States from locations all along the air bridge route. Cairo West was willing to do its share of the redeployment, we were ready to work around the clock during the redeployment operation. We were also ready to get back home to resume our civilian careers and get our civilian lives back in order. When we were mobilized, we became the active Air Force. We worked side-by-side with our Air Force brothers. Hopefully it was difficult to tell us apart—except for the age difference. Now it is time to become guardsmen again, to be different than active duty personnel. The entire experience was challenging, rewarding and exciting. All of us will never forget these past 4 months. They have been most memorable.

CEASE-FIRE AND REDEPLOYMENT HISTORY

The cease-fire for the Iraqi war occurred at 0100Z (0300L) on 28 February 1991. This news was met with much jubilation. It triggered an immediate and spontaneous tent city base-wide party and celebration. No one in camp was allowed (nor wanted) to sleep as the news spread through all 110 tents. Cairo West residents realized that they had been an integral part of the greatest show of air power in the history of the U.S. For 43 days they worked around the clock and now their concerns, fears, fatigue and performance had paid off. The war was over. A few days later the troops at Cairo West found out just how well they had performed. BG Pat Caruana/17th Air Division Commander visited Cairo West on 2 March. He displayed figures for the air campaign which included a breakdown of the air refueling operation. His charts emphasized sorties, receivers, flying time and offload. As we compared our accomplishments with the totals for all the tankers in the AOR, our success and record became ob-

vious. Our 15 tankers represented 6% of the 225 total tankers in the AOR. However we flew 7% of the sorties and 8% of the flying time, refueled 8% of the receivers and offloaded 7½% of the fuel. Those figures tell us that no one did better than we did. Perhaps someone may have tied our record, but no one exceeded it. The real accomplishment, if you disregard numbers, is that no one sortie was lost, not one receiver went without a tanker-100% mission effectiveness. And speaking of records, the crews always want to know who holds the 1706th flying records. Here are a few:

During the war—longest flight 25 Feb, 7.4 hours, Hemingway; biggest offload 22 Feb, 100,000 lbs, Gronland.

Redeployment—longest flight 3 Mar, 7.5 hours, Katerinos; biggest offload 10 Mar, 104,000 lbs, Alves.

One might tend to think that the cease-fire would create a lull in our activity. Not so. For 43 days of the war we flew around the clock, and since the cease-fire, we have continued to fly around the clock. We maintained that schedule for 98 days (16 Jan to 14 Apr). During the war our highest daily sortie count was 23 and our lowest was 8. The cease-fire period figures show a high of 15 and low of 2 sorties. Our low count of 2 sorties occurred on 1 March, the day after the cease-fire. For those 1st 6 days in March we were immediately and tasked to refuel the F-14 and F-18 Navy carrier fighter caps F-15 caps, and A-10 cover missions. These cap missions over Iraq were flown to enforce the cease-fire and provide a continual show of force. As anticipated, Cairo West proved to be a key location for the redeployment of U.S. aircraft to Conus. The Saudi Arabian and Oman Governments wanted all U.S. warplanes off their civilian fields ASAP. For Saudi, it was concerned about Ramadan (holy period for Muslims—17 March through 30 April) and the annual pilgrimages to Mecca and Medina. So Jeddah, Dubai, Abu Dhabi and King Khalid international were vacated on 7 & 8 March 91. In a matter of days, the AOR reduced its number of tankers from 225 to 57. The only location left with tankers were Riyadh, Seeb, Al Dhafra, Masirah and Cairo. Diego Garcia tankers left the 2nd week of March to complete the exodus.

Civil unrest began to develop in Iraq around the second week in March. Saddam attempted to use his remaining helicopters and fixed wing fighters to attack the rebels. President Bush immediately ordered F-15 caps to be flown around the clock to suppress the Iraqi fighters and enforce the conditions of the cease-fire. This F-15 cap required up to 15 sorties a day in gopher track. At the same time the air bridge business began to flourish. The first redeployment occurred on 7 March 91 when 48 F-15Cs from the 1st TFW (Langley) stationed at Dharan and 18 B-52s stationed at Jeddah were refueled overhead Cairo. We used a random enroute refueling track that closely followed airways. The track started at Ras Nasrani (a town in eastern Egypt) to Metro (reporting point in the southeastern Mediterranean). This track was then used for all future redeployments. Here is a summary of all our redeployment missions.

Date	Receive	From	To
7 Mar	46 F-15	Dhahran	Langley
8 Mar	2 B-52	Jeddah	Langley
9 Mar	3 B-52	Jeddah	Barksdale
10 Mar	14 B-52	Jeddah	Griffiss
11 Mar	18 F-111	Taif	Lakenheath
12 Mar	2 MC-130	Sharjah	Pope
	27 F-16	Al Dhafra	Shaw
13 Mar	24 F-16	Al Dhafra	Shaw
	12 F-111	Taif	Upper Heyford

Date	Receive	From	To
14 Mar	24 F-15	Al Kharj	Seymour Johnson
	12 F-111	Taif	Lakenheath
	2 E-3A	Riyadh	Tinker
15 Mar	12 F-111	Taif	Upper Heyford
16 Mar	12 F-16	Al Minhad	Moody
17 Mar	24 A-10	King Fahd	Myrtle Beach
18 Mar	24 F-16	Al Minhad	Hill
	24 A-10	King Fahd	Myrtle Beach
20 Mar	24 F-16	Al Minhad	Hill
	1 RC-135	Riyadh	Offutt
21 Mar	26 A-10	King Fahd	England
22 Mar	13 F-4G	Shaikh Isa	Ft Wayne
23 Mar	20 A-6	Shaikh Isa	Cherry Point
	12 F-14G	Shaikh Isa	Ft Wayne
24 Mar	12 FA-18	Shaikh Isa	Beaufort
25 Mar	24 A-10	King Fahd	England
26 Mar	14 EF-111	Taif	MT. Home
27 Mar	2 KC-10 (7AV-8)	King Abdul Aziz	Cherry Point
	6 EA-6B	Shaikh Isa	Cherry Point
29 Mar	25 F-16	Doha	Terrojon
30 Mar	13 KC-10 (16 F-117)	Khamis Mushait	Tonopah
1 Apr	24 F/A-18	Shaikh Isa	Beaufort
	1 RC-135	Riyadh	Offutt
2 Apr	23 F/A-18	Shaikh Isa	Beaufort
3 Apr	4 KC-10 (8 F-117)	Khamis Mushait	Tonopah
5 Apr	8 F/A-6	Shaikh Isa	Spangdahlem
7 Apr	11 RF-4C	Shaikh Isa	Birmingham Muni, AL
	1 E-3A	Riyadh	Tinker
9 Apr	4 KC-10 (20 AV-8B)	Shaikh Isa	Rota
10 Apr	6 EA-6B	Shaikh Isa	Rota
11 Apr	23 F-15C	Tabuk	Zaragoza

40 redeployers in 30 days (579 aircraft) were handled with ease. On 30 March, because we had one aircraft NMC and 2 aircraft at Moron AB for phase inspection, two Air Force Reserve "E" models from Moron flew in to assist in the F-117 drag. That was the only help received for all the redeployments. One must remember that from 1 March to 14 April, we received daily taskings for F-15 caps in addition to our redeployment schedule. Our record for this 45 days following the cease-fire is 338 sorties, 989 receivers, 1298.8 flying hours and 14,687,100 pounds of fuel offloaded. Again I'll make the boast. Not one mission was canceled, not one receiver went without a tanker—100% mission effectiveness.

A recap of our flying performance.

Date	Sorties	Receivers	Hours	Offload
30 Dec-15 Jan	62	171	284.9	1,454,100
16 Jan-28 Feb	650	2,831	3,277.1	29,016,260
1 Mar-14 Apr	338	989	1,298.8	14,687,100

The issue of not being in the AOR and therefore not receiving all the assorted benefits caused much consternation and unrest for several months. By a stroke of luck Senator Robert Kasten happened to be in Cairo for a meeting with President Mubarak. A visit to Cairo West by the Senator, on 8 Jan. 91, allowed the troops an opportunity to address this AOR issue. Senator Kasten single-handedly took on the top military officials in the Pentagon. In a matter of weeks, Egypt was authorized imminent danger pay, which triggered the free mail, tax break and savings plan.

The Cairo West ground war from 1 March to 14 April was not quite as successful. Family separation, the return of active duty tankers to the States, the appearance of abandonment by the NGB of Milwaukee and Spokane to the Egyptian desert, family crisis and employer demands created waves of discontent, low morale, complaints, frustration and demands by some of the troops. Rumors were rampant. At least 5 new creative stories appeared in the camp daily. Commander's calls and letters of explanation were utilized to keep things in perspective. An aircrew exchange program and maintenance personnel return policy was successfully initiated. Additionally, the 17th Air Division Commander reduced our crew ratio

from 22 crews to 18 crews on 23 March. Here is a summary of personnel who were involved in early returns.

Names deleted to preserve privacy.

On 15 Mar 91, four crewmembers (Black, Anderson, Scarpace, Harper and Amyx-Photo) visited the USS America underway in the Red Sea. They arrived at the carrier via a Navy C-2 turboprop to observe carrier operations and talk with Navy flight crewmembers about air refueling operations. They presented the ship with a video tape of ANG and Navy air refueling operations, talked with the ship's c/o Rear Admiral Katz, who is the commander of the cruiser destroyer group two and ship captain, Kent Ewing. Both the captain and admiral expressed their thanks and appreciation for the Air Force tankers. They stated that the Navy aircraft are extremely limited and impacted in the choice and amount of ordinance because of carrier limitations. So the Air Force tanker allows the Navy to go further, deliver a bigger payload and consequently have a greater impact to the cause.

On 27 March, 5 Milwaukee crews and 1 Spokane crew along with other OPS and maintenance personnel departed Cairo West after a Rickenbacker crew (Elking, Goetz, Mathias and Hamilton) flew in with a Spokane aircraft. Prior to Rickenbacker's arrival, a Pittsburgh crew (Uptegraff, Schill, Barrett, Inwood) arrived on 24 March. Priorities and an elaborate selection process allowed the following Milwaukee troops to leave on 27 March:

Names deleted to preserve privacy.

On 3 April, five crews from Elelson and one crew from McGuire arrived at Cairo West. This contingent allowed the following personnel to redeploy to home station on 4 April:

Names deleted to preserve privacy.

The redeployment date for the ANG at Cairo West became the #1 topic after the cease-fire. By the 7th of March, Milwaukee and Spokane were the only ANG tankers left in the AOR. A message on 7 Mar and another on 10 Mar stated our redeployment date was 10 April. Although we didn't like the idea of having to stay that long, most of the people accepted it. We were just in the wrong place at the wrong time. Besides, no one in the ANG stateside was being demobilized and our ANG tanker friends in the States were involved in east coast TTF, Pony Express cargo/PAX hauling from the AOR and alert. The big difference is that they didn't have the family separation. On 21 March, the 17 AD/CC (COL Bob Hennessy) informed me that 18 April or beyond would most likely be our redeployment date. This new date was totally unacceptable—our 10 April redeployment date was now gone, we suddenly had no firm date to plan around and the uncertainty of the immediate future and long range tanker needs in the AOR were untenable.

It was time for the NGB and our ANG tanker community to come to the rescue. Through many phone calls, discussions and persuasive comments, the NGB finally took two hard stands: One—the NGB will swap out all ANG troops by 15 April and the NGB will withdraw all ANG troops by 30 April from Cairo West. We immediately put together a 32-page master plan for the swap out. It was sent to Andrews Support Center—Norm Miller, Pentagon—John Deaton, HQS SAC—Steve Bailey, 8th AF—Ron Gill, 141 AREFW—Dennis Hague, 171 AREFW—Bob Chrisjohn. The NGB worked the plan, we worked our end of the deal. By 1 Apr 91 the ANG tanker community had identified 15

aircraft, crews, operations personnel and maintenance with COL Jim McIntosh and McGuire as lead unit. They were ready for the impending swapout. Out of the blue, on 5 Apr, Cairo West received a message from 8th Air Force and HQS SAC stating that the active duty 'R' models would swapout our 'E' models no later than 15 Apr 91. The 'R' models would come from Mont-de-Marsan, France; Andravida, Greece; Zaragosa, Spain and Lajes, Azores. That tasking sure had an international flavor to it. The new commander, Col Bob Plebanek and staff arrived on 7 Apr to site survey and subsequently established the following schedule:

"R" in	Date	"E" out	Tail No.
1	8	0	
0	9	1	1503
3	10	2	3603, 1434(S)
3	11	2	2604, 2600(S)
3	12	3	0111, 3141(S), 1509(P)
3	13	3	1456, 1431, 1501(S)
2	14	2	0024, 1519
	15	2	3612, 1445(S)

S=Spokane.
P=Pittsburgh.

With morale ski high, load plans, schedules, personnel selections, packing, phone calls, and last minute shopping surged ahead. On 14 April the last aircraft and personnel from Wisconsin and Washington completed the swapout—En Sha Allah.

MWR was a most important aspect and exceedingly critical function to the health, attitude and well being of all the troops. Who will ever forget the Ramada and the Russian dancing girls, tours to the Pyramids—Sphinx—museum—Citadel—coptic Cairo complete with lunch at the Mena House; tours to Fayoum—Alexandria—and the Suez Canal (Ismailia); special events at the Maddi House—horseback riding to Sakkara—Bedouin dinner at the Oasis and best of all, the dinner cruise on the Nile complete with entertainment (skinny belly dancers). Of course we would not do justice to these exciting events if one was not reminded of the pushy, obnoxious street vendors with all their wares and "free" gifts. And let's not forget the sights and sounds of the Khan el Khalil and our hunt for the best prices for gold jewelry, in particular those beloved kartouche deals. Camellot and Tent City is indelibly etched in the deepest corner of our minds along with those world famous hangouts—Dusty's Diner, Sand Rock Cafe, rec center, movie tent and weight room and don't let slip from your mind all the 1001 uses for Baraka bottles. Finally, who could ever forget the place we loved and hated the most—depending on our luck—the post office or was it those wonderful tent latrines and showers.

The Egyptian language barrier was formidable. Air traffic control was unbearable, because each day on the airways, the learning curve started at step one. Between the controllers, cab drivers, tour guides and hotel personnel we did manage to pick up a few phrases:

In Sha Allah—If God wants.
Sabah El-Khair—Good morning.
Messa El-Khair—Good evening.
Kaif Halek—How are you.
Afwan—Welcome.
Al Hamdo Lilellah—Thank God.
Kowayess—Good.
Mumtaz—Excellent.
Saida—Hello.
Ma Assalama—Good bye.
Ma Feesh Moshkela—No problem.
Tayyarten—2 machines.
Samak El-Ott—Catfish.

Shukran—Thank you.

Min Fadlak—Please.

The Cairo West operations language barrier also caused an occasional problem. Several repetitious phrases seemed to vibrate through the tents now and then: War is hell, when do I get a day off, there is nothing we can do about it and that's the way it is. No problem, everything eventually worked itself out.

Milwaukee and Spokane are most proud of the Cairo West operation. It was a great test of will, personality and resolve. It was also a proving grounds for an individual's character, leadership ability, professionalism and dedication—both good and bad. A tremendous amount of knowledge, insight and talent was gained by this adventure. It truly is an experience we will ponder and discuss for decades. The good experiences will be long remembered while the bad situations will quickly fade away.

GENE A. SCHMITZ,
Colonel, USAF,
Commander, 1706 AREFW(P).●

TRIBUTE TO DR. RONALD G. BLANKENBAKER

● Mr. COATS. Mr. President, it is with great pleasure that I rise today to recognize Dr. Ronald G. Blankenbaker of Indiana for his years of service as chairman of the National Committee on Vital and Health Statistics. This committee serves as adviser to the Department of Health and Human Services and is critical to the exchange of health information in our Nation. Dr. Blankenbaker will retire from his position as chairman of the committee this year.

Dr. Blankenbaker's years as chairman of the National Committee on Vital and Health Statistics have seen the growth of the committee in prominence and effectiveness. Under his leadership, the committee has made great progress in improving the provision of health data to the American public. Throughout his life, Dr. Blankenbaker has been committed to the betterment of health care for Hoosiers and all Americans. He has been actively involved with legislation affecting the health industry on a local, State, and national level. In addition, he has served on numerous boards, councils, and committees whose primary concern is to improve the way health care is provided in this country. His tenure as chairman of the National Committee on Vital and Health Statistics caps off a long career of contributions to the field of health care.

At this time, I would like to commend Dr. Blankenbaker for his distinguished years of service in a field of growing importance to our Nation. I would also like to offer him my best wishes for continued success.●

HONORING THE 890TH TRANSPORTATION COMPANY

● Mr. KASTEN. Mr. President, I rise to honor the 890th Transportation Com-

pany from Green Bay, WI. Today, after almost 7 months overseas, the 890th returns home to Wisconsin from the Persian Gulf.

In Saudi Arabia, the 890th was responsible for hauling all types of supplies, from food to ammunition. And, from the accounts that I have received, the 890th performed their job exceedingly well under some very difficult circumstances. In fact, other commands would not have been able to perform their missions without the tremendous support from the 890th.

Now, with their mission completed, these citizen-soldiers are returning to their families and friends, and starting to resume their normal lives. They can be justifiably proud of their many accomplishments. I am sure the memories from this experience will remain with them forever.

On behalf of myself, the State of Wisconsin and, in fact, the entire country, I welcome home these unsung heroes of Desert Storm/Desert Shield. We thank them for their many sacrifices on our behalf and wish them continued success in civilian life.●

TRIBUTE TO EASTSIDE COMMUNITY INVESTMENTS, INC.

● Mr. COATS. Mr. President, I stand today in recognition of an exemplary Hoosier institution, the Eastside Community Investments Inc., recipient of the Fannie Mae Foundation Award of Excellence for the Production of Low-Income Housing.

Each year, the Fannie Mae Foundation seeks to recognize and reward outstanding nonprofit institutions working to procure and maintain affordable and comfortable housing for low-income Americans. This inspirational program has elevated organizations across the Nation to a new level of consciousness of the assistance needed by so many deserving citizens.

On May 21, 1991, the Fannie Mae Foundation awarded grants totaling \$215,000 to 19 finalist organizations chosen from a field of over 100 applications. Six of the finalists were selected as awardees to receive grants of \$25,000 each in recognition of their creativity, determination, and dedication in producing the finest examples of affordable and safe housing.

The Eastside Community Investments Inc.'s Day Care Homes Cooperative was honored with one of the six awards of excellence. The foundation recognized the Indianapolis-based group for its innovative and successful program in which Eastside renovated 10 abandoned homes and converted them into family day care businesses. However, the success of this program is also due to the fine residents of the cooperative. ECI has staffed its neighborhood day care groups with its own residents by training every adult female of

the 16 units of the cooperative as a day-care provider.

Since its incorporation in 1976, ECI has bought, rehabilitated, and sold 175 boarded and vacant homes, creating 75,000 square feet on multi-tenant industrial space. Currently, restoring boarded and vacant units to productive use.

Finding affordable housing is an increasing problem in many U.S. cities. However, with the example set forth by ECI, part of the solution may be found on the path it has so bravely blazed; rehabilitating resources available to us and utilizing the abundance of talent and energy present in the people of the cooperatives. I join in extending my congratulations and best wishes to the people of Eastside community. I am confident we will hear of their continued success.●

COMBATING INTERSTATE FLIGHT TO AVOID PAYING CHILD SUPPORT—S. 1002

● Mr. D'AMATO. Mr. President, I rise today to lend my support to S. 1002, legislation which would impose a criminal penalty on those who avoid making child support payments by fleeing to another State. The severity of this problem necessitates that Congress act now to eradicate this tragic practice of delinquency.

As we all know, a divorce is a very traumatic experience for any couple, especially when children are involved. In the vast majority of divorce settlements, the husband agrees to pay a particular sum of money to his wife in support of their children. What few people are familiar with, however, is how frequently these commitments are broken. Millions of mothers, many below the poverty line, have seen their dreams of a better life for their children fade away because of the nonpayment of child support.

My own State of New York has been hit particularly hard by this delinquent behavior. In 1989, those New York mothers on public assistance who sought help from the State in collecting their child support payments received only 40 percent of the total amount owed to them. This left hundreds of thousands of children without the assistance they were promised.

What is most astonishing is the way in which many fathers avoid paying their child support—they move to another State making it difficult, at best, for the mother to collect. This abandonment of our Nation's children must be curbed and this bill will do just that. S. 1002 makes it a Federal crime for a parent or legal guardian to violate their child support obligations by fleeing to another State. An offender would face a fine or prison sentence for the first violation and up to 2 years in prison for further offenses. This legislation will serve as a credible deterrence

against committing such an irresponsible act.

Our children are the key to the future of this country, but without a secure economic foundation, many of them will have little chance for success. Today, this foundation is disappearing for many families due to the nonpayment of child support. I commend my friend, Senator SHELBY, for bringing this important issue to the attention of this body, and I urge my colleagues to join us in cosponsoring this legislation.●

GOODBYE COLUMBUS: LET'S PAY ATTENTION TO THE FLIGHT OF LATIN AMERICA'S INDIANS

● Mr. CRANSTON. Mr. President, recently I introduced the Pan-American Cultural Survival Act of 1991, S. 748, a bill designed to assist the indigenous peoples of Central and South America to take part in the emerging democracies of the region, as well as to help them protect their lands and our common environment.

Next year, we in the American Hemisphere will be marking the 500th anniversary of the arrival of Europeans to our common shores. A time of celebration for many, it will also be a time we rejoice in the fact that all but one of our Latin American neighbors have now joined the community of democratic nations.

Mr. President, 1992 will not be a time of celebration for the indigenous peoples of the Americas, however. The date it commemorates marked the beginning of a tragic onslaught against a people, a culture, and a way of life.

In countries such as Peru, Ecuador, and Guatemala, this gloomy clash of cultures continues, to the terrible detriment of native peoples. The lack of opportunities for full participation in their countries' own democracies is, perhaps, the greatest threat to the survival of the rule of law itself in these fragile political ecosystems.

Just last week, hundreds of Ecuadorian Indians seized that country's Congress building following a series of paramilitary attacks against native communities there, including one that resulted in the death of Julio Cabascango, secretary of human rights and founder of the Imbabura Peasant and Indian Federation.

Although the Indians eventually abandoned the parliament building, they put the political parties on notice that—unless their concerns were addressed—politicians would be barred from entering Indian communities during political campaigns, no small threat in a nation whose indigenous population may be as high as 30 percent of the total.

The protesters also threatened that the Indians might create their own congress. Ecuador has had three freely elected administrations since return-

ing to democratic rule in the late 1970's. Yet, clearly, the failure to address the concerns of indigenous peoples means democracy there is still incomplete.

Mr. President, I take this opportunity to urge that Ecuadoran President Rodrigo Borja take all the necessary steps to assure that Julio Cabascango's murderers are brought to justice. I also urge him to take immediate measures to bring paramilitary actions in Indian areas to a halt.

In addressing the problems of indigenous peoples in Latin America, I want to emphasize that the plight of native Americans in this country has also been a great source of embarrassment. While some of the problems they face have been dealt with through enactment of legislation to promote their well-being, we still have a long way to go. This being said, however, it is important to recognize that the indigenous peoples of Latin America are faced with threats to their very existence.

The Pan-American Cultural Survival Act of 1991 addresses many of the concerns expressed by indigenous peoples, and has been endorsed by, among others, Ember Iguaran Silva, the president of the Indigenous Parliament of America. The bill has also received support from such well-regarded groups such as the Society for Applied Anthropology; the Environmental Defense Fund, the National Wildlife Federation, and the Rainforest Foundation.

S. 748 seeks to strengthen the hemisphere wide trend to democracy. It also is designed to help protect our common natural inheritance from depletion, by assisting indigenous peoples take meaningful and representative roles in their own democracies.

If this bill became law, U.S. policy would include support for indigenous peoples, particularly in countries in which they are numerically significant but still largely disenfranchised.

We are linked, as fellow humans, to the fate of indigenous peoples because the areas in which many of them live—the rainforests of Central and South America—are vital sources of oxygen and biological diversity, the importance of which modern science is only beginning to understand.

And, we are linked as democrats because the revolution of freedom and liberty sweeping our hemisphere will always be incomplete without the incorporation—on their own terms—of the indigenous peoples into democratic institutions and practices.

This is particularly true in Guatemala, Bolivia, Ecuador, and Peru, where Indians comprise either a majority, or an important minority, of the population. In each of these countries, indigenous communities find themselves marginalized from the political mainstream, with their numbers find-

ing scant echo in institutions of democratic governance.

Mr. President, today many of the indigenous peoples of our hemisphere are trying to incorporate themselves into the newly emerging democracies in which they live, even as they confront enormous threats to their very existence.

The Pan-American Cultural Survival Act of 1991 seeks to help ensure a fair shake for indigenous peoples and a new partnership between nations in efforts to foster sustainable development.

It will help further to consolidate democracy in the hemisphere by assisting indigenous peoples to take meaningful and representative roles in their nations' democratic institutions and practices.

It will also assist them to protect their land and cultures.

The Secretary of State, together with the Director of the Agency for International Development, would be required to issue a report to Congress on the status of indigenous peoples in Central and South America. The bill would also mandate the inclusion of the plight of indigenous people as a topic in and of itself in the State Department's yearly human rights report.

AID would be required to create, where appropriate, the position of cultural survival officers. Modeled after the recently created Women-in-Development posts, the cultural survival officers will work with indigenous peoples to develop strategies for their political empowerment and cultural survival.

The bill also directs the Secretary of State and the Secretary of the Treasury to include, where appropriate, the question of cultural survival in all bilateral or multilateral debt reduction efforts and in other developmental initiatives.

Mr. President, S. 748 is an important step in making the protection of indigenous peoples and the lands where they live an integral part of U.S. foreign policy. It will also help make more effective—through the inclusion of the people who are this hemisphere's first inhabitants into the political process—the emerging democracies of Latin America.

Mr. President, I ask that a selection of letters I have received in support of S. 748 be printed in the RECORD, as well as various newspaper articles on the subject.

The material follows:

THE RAINFOREST FOUNDATION,
New York, NY, May 30, 1991.

Hon. ALAN CRANSTON,
U.S. Senate, Washington, DC.

DEAR SENATOR CRANSTON: On behalf of the Board of Directors and members of the Rainforest Foundation in the United States, we would like to commend you on the introduction of the Pan-American Cultural Survival Act of 1991. We strongly support its passage.

The Rainforest Foundation works in partnership with indigenous people in Brazil to protect the rainforest and the human rights of its inhabitants.

As this act makes clear, the fate of the rainforest, the indigenous people who live there and the planet are inextricably linked. In strengthening U.S. support for indigenous peoples and cultures this legislation is strengthening the efforts to protect and preserve ecosystems which are critical to the survival and well being of humanity.

Passage of this act will be an expression of the U.S. commitment to both human rights and the environment.

We applaud this initiative.

Sincerely,

STING,
Co-Founder,
Rainforest Founda-
tion.

TRUDIE STYLER,
President, Rainforest
Foundation.

BOARD OF DIRECTORS RFF INC.

Miles Copeland, Susie Field, Jeffrey Hollender, Joshua Mailmain, Louis McCagg, Sandy Pittman, Jonathan Rose, Trudie Styler, Rose Styron, Steve Viederman.

THE SOCIETY FOR
APPLIED ANTHROPOLOGY,
Washington, DC, May 31, 1991.

Senator ALAN CRANSTON,
Senate Hart Building, Washington, DC.

DEAR SENATOR CRANSTON: As President of the Society for Applied Anthropology, a professional association of applied anthropologists encompassing some 2,000 members world wide, I wanted to express strong support for the principles and objectives of S-748, the Pan American Cultural Survival Act of 1991.

Anthropologists have long believed that indigenous societies in this hemisphere and elsewhere have a right to meet the powerful challenges posed by industrial societies in ways that enable them to continue their own cultural identities. As S-748 and your speech in the Senate of March 21st make clear, those options have almost never existed. The hemisphere's remaining, relatively independent indigenous cultures are being rapidly extinguished, depriving their members of livelihood, health, cultural rights, and dignity.

Passage of S-748 would be a bold and dramatic affirmation that we, as citizens of this hemisphere, recognize and respect the cultural distinctiveness of our indigenous neighbors. I applaud the articulate and firm stand reflected in S-748 and earnestly hope it can be adopted.

Yours truly,

CAROLE HILL,
President,
Society for Applied Anthropology.

NATIONAL WILDLIFE FEDERATION,
Washington, DC, June 1, 1991.

Hon. ALAN CRANSTON,
U.S. Senate, Washington, DC.

DEAR SENATOR CRANSTON: I am writing in strong support of S. 748, a bill you recently introduced in cooperation with Senators Kennedy, Kerry, D'Amato and Wirth. By helping to give indigenous peoples a stronger voice in how natural resources are managed, this piece of legislation would take us a step further toward the achievement of a strong conservation ethic in the remaining wild areas of Central and South America.

We have all seen or heard of the unprecedented destruction of the rainforests, and other tropical ecosystems, in the Western

hemisphere. In Brazil alone 20 million acres—equivalent to about 30,000 square miles—of tropical forest were destroyed in 1987. Unfortunately, the time-honored ways of indigenous peoples, those best able to preserve the forests, often perish with the fires. Their cultures are under siege almost everywhere in the tropical Americas.

It seems obvious that those people with the greatest knowledge of the forest would be best suited to using it sustainably. The indigenous peoples of the Amazon basin have lived harmoniously with the great forest for millennia. Today, they promote and develop sustainable use policies. The Coordinating Body for the Indigenous Peoples' Organizations of the Amazon Basin (COICA), representing more than a million indigenous dwellers of the Amazon Basin, states in its landmark agreement with the U.S. environmental community: "... to develop programs of management and conservation is an essential alternative for the future of the Amazon." Recognition of these peoples' traditional land rights, and protection as a basic human right, is the key to finding better ways to use and preserve the forest.

The Pan-American Cultural Survival Act may send just the right message to Central and South American governments: to avoid repeating the terrible mistakes of the U.S. they must observe the rights of their indigenous peoples. With democratic freedoms now blossoming all over our hemisphere, it serves everyone's interests to insist on a voice for these residents of the forest. The future of their home, and one of our greatest gifts of Nature, depends on it.

On behalf of the National Wildlife Federation's 5.5 million members and supporters, I thank you for introducing this vital piece of legislation.

Sincerely,

LYNN A. GREENWALT,
Vice President,
International Affairs.

ENVIRONMENTAL DEFENSE FUND,
Washington, DC, June 4, 1991.

Senator ALAN CRANSTON,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR CRANSTON: We strongly support the proposed Pan American Cultural Survival Act of 1991.

The fate of the indigenous peoples of the Americas, as the proposed legislation recognizes, is intimately linked to the fate of the most fragile and threatened ecosystems of the continent. Efforts to preserve tropical forests in particular which do not take into consideration the needs and wishes of their indigenous inhabitants are unlikely to succeed. Indigenous peoples have the greatest understanding of the biological wealth of the continent, as well, in many instances, the most direct interest in the defense of threatened ecosystems.

The legislation further recognizes that the political empowerment of indigenous peoples, be they unrepresented minorities, as in Brazil, or disenfranchised majorities as in many Andean countries or Guatemala, is a key test of democratic institutions.

In our view, human rights and environmental protection will be well served by this legislation.

Sincerely,

BRUCE RICH,
Director, International
Program.
STEPHAN SCHWARTZMAN,
Anthropologist.

[Voz de los Andes, May 28, 1991]

Ecuador: INDIANS SEIZE NATIONAL CONGRESS MEETING ROOM

Members of the Confederation of Indian Nationalities and Amazonian People have paralyzed parliamentary activities because they have seized the sessions room of the national congress to demand a solution to the grave problems that this Ecuadorian sector is facing.

[Begin recording of Luis Macas, president of the Confederation of Indian Nationalities] We have come to the Chamber of Representatives to make known some aspects of life in the Indian communities. We came here to present our proposal for a reform to the Constitution.

We first did this two years ago, and we still do not have an answer. We received no answer from the previous congress and we have received no answer from the current congress.

We have come here to tell the deputies to work.

Another point, the main reason for our presence here, is to request amnesty for more than 1,000 fellow Indians who are facing legal proceedings.

The charges against them have nothing to do with criminal cases. This is a matter of political persecution against Indian leaders. That is what we have come to tell the president of the national congress, to ask him to grant, once and for all, amnesty so that more than 1,000 compañeros may move freely throughout Ecuador.

It is being said that we live in a state of full democracy and liberty. Let them allow us to do at least this. The legal proceedings against our compañeros and leaders began at a national level after the Indian uprising.

Another point is that the International Labor Organization [ILO], in line with agreement 169, has guidelines that have to do with recognizing the existence of the Indian population in various countries. We have presented this document to the current congress so that it may endorse this ILO agreement. This has not been done yet.

These are the three points we have come to present to the president of congress and to the party leaders who will be meeting soon. We will then know what their position will be. [end recording]

Luis Macas said that democracy has been reinstated in the country, but the state still fails to pay attention to the Indians' problems and needs.

INDIANS LEAVE CONGRESS BUILDING, ISSUE DEMANDS

QUITO, 29 May (AFP).—Today, hundreds of Indians left the Ecuadorian Congress building after issuing a deadline of 24 hours for the political parties to receive them, or the politicians would be barred from entering Indian communities during the next electoral campaign and the Indians would create their own congress.

The Indians adopted the aforementioned position after a meeting with the leaders of the political parties in Congress failed. At this meeting, the new requests made by the Indians, which are described as urgent and indispensable by the Confederation of Indian Nationalities of Ecuador (Conaie), should have been discussed.

Yesterday, approximately 1,000 Indians took over a chamber of Congress, demanding amnesty for 1,000 Indians who were tried or jailed after the three-day uprising that took place exactly one year ago. In addition, the Indians requested a constitutional reform declaring Ecuador as a multi-nation state.

Congress President Edelberto Bonilla had convened the representatives of the political groups represented in Congress. Representatives of only four of 11 political parties attended the meeting, however, which prompted the Indian leaders to react negatively.

Conaie President Luis Macas said that the Ecuadorian Indians will give the leaders of the political parties in Congress 24 hours to sign an agreement committing themselves to seeking a solution to the Indians' requests.

Macas warned that, should the political leaders fail to meet their demands, the Indians will ban all political parties from entering their communities during the general elections scheduled for next year. If this comes to pass, he did not rule out the possibility of a new uprising in the Indian communities. Macas also announced that the Indians, who, according to him, represent 40 percent of the Ecuadorian population, will create their own congress "to govern themselves."

In May 1990, approximately 150 Indians took over an old church making a series of demands. Six days later, thousands of Indians staged a rebellion that brought the country to a standstill for three days but prompted the beginning of talks with the government, which have been suspended twice. The Indians are now demanding, as a condition for resuming the talks with the government, the resignation of Luis Luna, director of the Ecuadorian Agrarian Reform Institute [Instituto Ecuatoriano de Reforma Agraria] (Ierec).

The Indians, who are proposing a list of 16 demands, are urging a solution to the problem posed by peasants without land, among other things. The government has not yet been able to meet their demands.

Meanwhile, the church has begun buying land to give to landless peasants, through a system of flexible credits. The church has received financing from the government resulting from the purchase of the foreign debt.

[Vistazo, Apr. 18, 1991]

INDIANS NOTE PRESENCE OF PARAMILITARY GROUPS; EVENTS CHRONICLED

[Report by Mariana Neira and Cecilia Moreno: "Paramilitary Groups for Killing Indians"]

Following the Indian uprising in June of 1990, the entire country appealed to the government to take concrete measures to soothe tempers. Instead, the authorities have apparently let the situation get out of hand and there is now talk of paramilitary bands and "militarization" which, in the guise of "civic action," seems to be geared toward restoring order in rural areas.

In view of the situation, which is particularly noticeable in Chimborazo and Imbabura Provinces, Congress set up special committees. In Chimborazo, the committee is made up of socialist Segundo Serrano, Gustavo Espinoza Chimbo, from the ID [Democratic Left], and Social Christian Bolívar Cevallos. Representing Imbabura are Diego Delgado, socialist, Xavier Muñoz, from the DP [Popular Democracy Party], and Robert de la Torre, from FADI [Broad Front of the Left].

PROBLEMS GENERATES DIVISIONS

Investigations by the deputies revealed, in the specific case of Chimborazo, that 11 percent of the land is in the hands of landowners, while the rest is owned by Indians. The deputies nevertheless join with the military and the Church in their dramatic description of the situation prevailing among

this group of Ecuadorans, a situation that has led to a state of violence which Deputy Serrano attributes to inadequate application of agrarian reform and the corruption of certain officials in IERAC [Ecuadoran Institute of Agrarian Reform and Settlement]; the president of the Agricultural Center and the Chimborazo Chamber of Agriculture, Diego Chiriboga, to land trafficking by a number of Indian leaders; the regional head of IERAC, Mauro Andino, to landowners and lawyers who stir up confrontations and invasions; Monsignor Victor Corral, bishop of Riobamba, and the parish priest of Tixan, Pedro Torres, both of whom are labeled as communists, and to the fact that Indians want a better life.

But at the very same time that these causes were being debated, fronts were being opened up. Serrano says some 30 percent of all Indians (60,000) are controlled by the evangelists, who are in favor of military raids in rural areas. These two sectors enjoy the favor of landowners.

Another curious fact observed by the deputy is that 90 percent of the Chimborazo Indians (180,000) do not belong to Conaie [Confederation of Indian Nationalities of Ecuador], which has become the standardbearer for the Indians' demands.

PARAMILITARY BANDS

Division into bands took a different turn with bombings at the court of Riobamba, attacks on Andino's house, and threats against Father Torres. At the same time, intimidating fliers were put out signed by Frenae (Ecuadoran Nationalist Front). On 16 February, Indian leader Calixto Albino Chicaiza Paca and a minor were kidnapped in Riobamba by three individuals, including Marco Toapanta, who tortured and held them for three days in Loja. A rumor began to circulate telling of paramilitary bands in Chimborazo. General Jorge Andrade, commanding officer of the Galapagos Brigade, says that "we travel the length and breadth of this province with our staff of officers, enlisted men, and many civilian employees, but have never seen a paramilitary band.

Serrano agrees with the military official: "I have traveled over only a few ranches on which they say there are bands, but I met no one. What I did see was that some ranches had hired private security, but the owners said it was to meet the wave of violence unleashed in Alausi, Chunchi, and Guamote."

Chiriboga demands the first and last names of landowners who have paramilitary bands. "We can say that they (the Indians) are the ones who have paramilitary bands because they pay people from other communities to come help with their raids carrying shotguns, sticks, and machetes."

TERROR IN IMBABURA

The death of Cayetana Farinango in Imbabura led to reports of armed elements called paramilitary bands on several ranches.

For socialist Deputy Enrique Ayala, "the solution chosen by Imbabura landowners was to hire mercenaries from outside the province. We have seen Blacks illegally dressed in military uniforms and carrying illegal weapons such as submachine guns. Their job is to create awareness in the community that a new invasion cannot occur."

In the opinion of Ignacio Perez, president of the Zone 1 Chamber of Agriculture, a feeling of insecurity spread throughout the rural area causing ranch owners to hire guards. "These are armed guards from companies legally recognized by the Ministry of Government and Ministry of Defense. We emphasize

that they are not paramilitary bands and we do accept the fact that there are legitimate, recognized security guards."

MILITARIZATION

Something else is afoot in Chimborazo: Soldiers from the Galapagos Brigade decided to go into Indian communities, in their words, to do social work. To date, of the 1,300 communities in that province, 872 have received some attention from the Armed Forces.

General Andrade says such "community actions" have always been carried out, "but it is true that some time ago, we began giving more aid to the community because we were aware that the situation of the Indians, particularly on the barren plains, is critical. We are also aware that the problem is not one of land, but of a lack of basic education, and it is to that fact that we have addressed our attention."

He then described what is being done in Chimborazo: Agreements were signed with education officials to provide teachers where there were none and 40 were placed. Technical education is supplied, along with education about tourism and handicrafts. Such knowledge is imparted on Saturdays by the Brigade and breakfast and lunch are served. Military buses are used for transportation.

At the same time, free medical care is supplied at the hospital and through the military hospital bus. Repair work is done on roads, bridges, and schools. Communities that had transportation only once a week are now served daily by the military to enable them to take their products to market. Arid zones are being reforested and better breeds of sheep and cattle are being introduced.

Andrade says that everything is done in consultation with them. "When they ask for it, we, either I or someone representing me, go into the communities with a team made up of a psychologist, agronomist, public relations director, and hospital director, who analyze what the community is asking for. We have thus broken down the invisible wall that existed between Indians and soldiers. They trust us because what we offer we immediately provide. No one can say we are militarizing or putting guns in their hands so they can kill their brothers."

According to the general, only in Chunchi was there a case of resistance to such action.

HELP WITH ULTERIOR MOTIVES?

For Monsignor Corral, there are two aspects to the military presence: "First, they are setting up schools and providing aid for the Indians. Second, that presence is disturbing and dividing the Indians. One must know the Indian culture, understand that for them, the land they want to recover is vital to their cultural setting.

Deputy Serrano says that the military sought a way to claim that the uprising affects the country's internal security so the National Security Law could be applied.

He added that already when he arrived in Riobamba, he could observe the division into bands. Some Indians displayed posters saying "Long live General Andrade! Down with the politicians! Down with the priests!" He says, "these Indians organized their demonstration and got the posters from the Galapagos Brigade." He became fearful that such contradictions would only grow more acute when General Andrade and Monsignor Corral talked for two hours and concluded that the only thing they could agree upon was that they did not agree!

Another matter of concern to the deputy is that "General Andrade is sending soldiers,

corporals, and sergeants to give classes." When the military official was asked whether they have had teacher's training he did not answer.

The rest of the actions seem to be positive provided they contribute to the national development and "there is no ulterior motive of destroying the peasant organization."

Serrano heard complaints from a number of communities concerning alleged military raids on homes in search of weapons and reports that shots were heard at night.

Torres says the soldiers "are in a community in an area where they have an outpost like one they might have on the border. The other day, they made us go back. Here no paramilitary bands are needed because everything is controlled by the brigade."

Chiriboga says landowners have received no support from the Army, "but we realize the work they are doing and support it."

The solutions proposed by those interviewed are structural, including changes in the Agrarian Reform Law, removal of the IERAC director, and continuation of the dialogue between the opposing sides.

SEEDS OF BANDS

Economist Cesar Verduga, minister of government, admits that our country is venturing into the dark and dangerous world of paramilitary bands, but he rejects the term "militarization" to describe military social work in rural areas.

He defines the Imbabura case as a problem of violence between Whites, Mestizos, and Indians caused by land disputes arising out of delays in standards of procedure established by the Agrarian Reform Law and IERAC, which over the years has become a cumbersome, bureaucratic, and sometimes even corrupt apparatus. Responsibility lies with the Legislative Branch with respect to the law and the Executive Branch for bureaucratic delays, he said.

This situation has so complicated land problems that private guards have appeared in Imbabura, in some cases legal and in others illegal. There are also "black berets" or "black belts" formed by Indian groups as shock guards. The minister does not take these paramilitary bands into consideration because their action is not underground, but he does see a need to draft a regulation—and he is doing so—to better control private guards.

In Chimborazo there are also private guards, but there is something else: "There might be the seed of a paramilitary band which, under the acronym Frenae, throws bombs and threats at representatives of the Church. If they engage in clandestine armed actions, kidnap peasants, and bear arms, one could talk of a paramilitary band." Aware that his opinion is contrary to that of the governor of Chimborazo and head of the Galapagos Brigade, he adds that finding these terrorist groups is rather difficult because they operate underground.

Another highly controversial matter is the so-called militarization "which the majority of all Chimborazo residents see as a program of civil action." He does not believe the armed forces have made raids on Indian territory citing the National Security Law, but rather, because of their interest in this type of work.

He claims to be unaware that in a Riobamba demonstration there was praise of General Andrade and rejection of priests and politicians. What he does know is that the Indians are split and that the evangelists are steadily gaining ground. "There is no reason why a process of penetration of a pluralist society by a religious sect should be seen as

part of a conflict leading to confrontations." If the Church says that the "evangelists and landowners are against it and rely on the armed forces, it is an accusation the Church should make formally."

In connection with reports of alleged raids on Indian homes looking for weapons and shots fired in the night, the minister asks: "Why did the ones who made such reports not attend the meeting with legislators in Riobamba?"

He also rejects comments about military attempts to break up the Indian organization: "This would mean that any government action in the areas of health and education breaks up the Indian organization, so that it would never be possible to take combined actions."

Nor does he accept doubts about the soldiers' inability to educate: "They participated in the literacy campaign. Furthermore, I am not aware that the Education Law excludes any human group from educating."

BLOOD IN THE LAKES

Early last year, an Indian invasion occurred on San Francisco del Cajas Ranch, owned by Manuel Sisalema and located on the border between Pichincha and Imbabura Provinces.

IERAC ordered the ouster of the invaders and during that action in November, Cayetana Farinango was killed. For the local Indian leadership, Farinango was the victim of brutality perpetrated by police acting in collusion with a "paramilitary band" hired by Sisalema. According to the president of the Zone I Chamber of Agriculture, Ignacio Perez Arteta, the Indian woman "died of natural causes. I have in my possession documents stating that she died of an aortal aneurysm in the area of the abdomen, in other words, of an internal hemorrhage." Deputy Enrique Ayala Mora takes the opposite view: "It is the height of cynicism when Chamber of Agriculture officials make statements such as the one that the death of Indian woman Cayetana Farinango was not the result of the eviction, but to natural causes, when in fact they picked up a person over 70 years old, dragged her from where she was, beat her, burned her hut, and dumped her in a ravine."

SECOND DEATH

At 1500 on 31 March, Julio Cabascango was attending a wedding at the home of Enrique Pijal, head of the Gualacata commune. He was pulled out of the celebration by one Cacuango. We have obtained the results of the initial police investigations from the governor of Imbabura: "They walked down about two blocks and the victim apparently had to go to the bathroom. Cacuango continued on his way to his house nearby, which is also close to the home of Colombian Servio Tulio Castillo Ortega, where three Blacks were staying. One of them allegedly killed the victim. Tulio was caught, beaten, and turned over to police by the Indians."

The police later detained seven citizens of color working as guards on La Clemencia ranch owned by the Social Justice cooperative. Their names are: Lider Jama Mendez, Joaquin Rodriguez Sol, Victorio Gonzalez Ortiz, Livingston Moreira Espinoza, Flavio Ibarbo Cevallos, Demetrio Quinonez Bonne, and Guiner Rodriguez Batallas. The latter is the contractor who took them to Imbabura to work.

At the Ibarra jail, VISTAZO talked with Tulio Castillo, accused of killing Cabascango, who was married to an Indian woman: "I came to Ecuador in '78. I have lived in Gualacata for two years. Before

that, I lived on the Social Justice cooperative. The Huaycopungo Indians blamed me for the murder and I don't know why." For his part, contractor Guiner Rodriguez talked about their activities on La Clemencia ranch: "We have not even been there a full three months! Before that, I worked on San Francisco del Cajas for two months. Our work was to make sure the Indians did not get on the ranch. They are unjustly accusing us of the murder of the Indian man."

The Black guards totaled nine and they are affiliated with no legally recognized company. They are all natives of the town of Viche, near Quinde, in Esmeraldas Province. Every 30 days, they would take turns so that two of them could go visit their relatives. On Sunday, the 31st, Flavio Ibarbo was off and returned Monday morning proclaiming he had had nothing to do with the murder. According to rumors circulating in Esmeraldas, the material author of the crime is reportedly Pablo Segura. Rodriguez says, "Pablo is one of our comrades. He and another companion, Severo Leonardo Navia, left on Monday for a vacation in Esmeraldas and I bet it was because of this problem that they took off. I don't know whether Pablo killed him; I can't say." Another Esmeraldas resident arrested, Demetrio Quinonez, thinks it is political: "You can clearly see the fault of the politicians who are taking advantage of the ignorant Indians. As God said, they are pointing at the dumbest one." This statement coincides with one made by the president of the Chamber of Agriculture to the effect that "there is a rumor that Cabascango's death was politically motivated. People even say it was a deputy's bodyguards who did the killing."

[Hoy, Apr. 28, 1991]

FELIX EXPLAINS POSITION

Work being done by the armed forces to develop the country was explained by Minister of Defense Jorge Felix, who said in a conversation with HOY that the armed forces are "a subsystem of this great system constituted by the national government."

Felix emphasized the trust which Ecuadorans have placed in the armed forces, as demonstrated by a recent poll published in the media. The minister also defended work done by the Galapagos Brigade in Chimborazo Province and denied it is meddling in Indian disputes that have broken out in the area.

The action being taken by the Galapagos Brigade in Chimborazo consists of "assistance and cooperation in different areas, like that done in the eastern regions."

The minister emphatically stated that nowhere in the country is there any attempt "to place a people under military jurisdiction or militarize any civilian." He did flatly reject any claim about militarization of the province.

"We respect the legal order of the country. In addition, we are the guarantors of that public order and, as such, have a duty to fulfill our obligations to the maximum extent and to the extent allowed by law."

The armed forces budget, which totals 12.76 percent of the government's budget, is not excessive when one realizes that 70 percent of the amount is spent on pay and the rest on development activities, Felix said.

The fight against drug trafficking has not meant any loss of sovereignty due to the assistance of the United States.

That aid is reduced to the presence of six antidrug trafficking experts and the supplying of two boats to patrol border rivers.

[Punto de Vista, Apr. 8, 1991]

INDIAN'S SLAYING COMMENTED

[Reported by Eduardo Tamayo: "Chronicle of a Reported Death"]

The murder of Julio Cabascango, secretary of human rights and founder of the Imbabura Peasant and Indian Federation (FICI), at the hands of paramilitary elements overtaxed the patience of Indians in the province, who since mid November have endured all manner of attacks and harassment from armed groups serving the landowners. [passage omitted]

On Tuesday, the coffin was moved from Caluqui to FICI headquarters in Otavalo. There, in the place he had always frequented, his friends paid him final homage. That homage became spectacular on Wednesday, when thousands of Indians participated in a funeral procession that left Otavalo at 0900 and reached the Gonzalez Suarez parish church, a distance of over 10 km, at 1300.

The procession was a show of force and unity and constituted an appeal for the dismantling of the armed groups that are causing so much anguish in El Cajas, La Vega, Tunibamba, and Chimborazo Province.

The march would have ended like any other if not for a provocation directly involving Dr. Rodrigo Borja's government. The Indians caught two members of the Criminal Investigation Service (Segundo Cardenas and Diego Cartagena) taking down license plate numbers of vehicles accompanying the march and promptly staged a people's trial. It should be noted that on 14 August last, two other agents were detained and tried by Indians in the same parish because they were drawing up a list of leaders, including the now murdered Julio Cabascango.

At Gonzalez Suarez Plaza, Luis Macas, president of Conaie [Confederation of Indian Nationalities of Ecuador], said, in speaking to the agents and paramilitary elements: "We have said that you can kill us one by one. You can murder us—we are on your list—but this whole people is not going to die, this people needs to change, this people needs new justice. They may kill us, but we Indians will continue to live. We have been here for 500 years and will be here even longer. How is it possible that with the same hands you bloodied by killing, you carry bread to your children? You must stop and reflect that here in this country there are thousands upon thousands of Indians, thousands upon thousands of poor people. We appealed to the Tribunal of Constitutional Guarantees. What have they done with our petitions, with the death of comrade Cayetana Farinango, with the death of our comrades in Bolivar Province, with the militarization, with the paramilitary bands? What has this National Congress, whose wretched deputies, accomplished? Nothing but swallow the people's money! Now they will receive the people's punishment. Now we Indians will not vote for any of them. This democracy invented by them, invented by the landowners, will not solve our problems."

Voices were heard in the crowd asking for the heads of the agent infiltrators. The shrewd attitude of the Indian leadership prevented the trial from evolving into an uncontrollable situation.

TRUTH ABOUT PARAMILITARY BANDS

The murder of the FICI leader pointed up the existence of paramilitary groups in Ecuador's rural areas.

For landowners united in the Chambers of Agriculture, what they have on the ranches are "simply" security guards similar to

those guarding factories, institutions, and banks in the cities. Similar opinions are voiced by Minister of Government Cesar Verduga, although he admits that some armed groups in rural areas are acting illegally, as a result of which he talks of regulating the operation of such private guards, whose presence is justified by the insufficiency of police elements in the country.

Certain aspects indicate that it is not a matter of simple security companies because they wear uniforms and carry weapons exclusively for the Armed Forces, which is prohibited by law. A report published in HOY on 27 December 1990 states that the security companies operating in the northern region of the country are called Paratuche, Vipca, and Oresop, headquartered in Guayaquil. "Nearly all the members of these groups were in the Army for some time and know how to use weapons and military tactics," the morning newspaper states.

Another question must be asked: If these groups are outside the law, as Minister Verduga himself admits, why did the government allow them to operate over the past 5 months during which all manner of attacks were committed on Indian communities? Why was nothing done in response to reports filed by the Indians, who recently presented Verduga with photos and documents on the activity of the paramilitary forces?

In contrast with what is done in business, the armed groups in rural areas have not stayed on ranches guarding property, but have instead gone out into the communities, harassing and even murdering peasants, as was the case in Gualacata.

The existence of other underground groups such as Frenae [Ecuadorian Nationalist Front], which sets off bombs and threatens the progressive clergy in Chimborazo, is no secret to anyone. On Tiquibuso Ranch in Bolivar, a band killed Indian Francisco Guaylla at the end of last year. What further proof is needed of their existence?

Indian organizations are not asking to have their operations regulated, but rather, to have them dismantled and, not only the material authors, but the intellectual authors of the murders punished as well. If this is done, Julio Cabasango's blood will not have been shed in vain.

[From the New York Times, Apr. 17, 1991]
A BRAZIL RAIN FOREST HUNTER-GATHERER
TAKES IN THE TOWN
(By Tim Golden)

Davi Kopenawa Yanomami had left his communal hut and traveled from his village deep in the Amazon rain forest to tell of the horrors that white men were visiting upon his people. Then he saw Times Square.

"Man has become crazy," Davi said, as he shuffled down Seventh Avenue in crinkly white running shoes, looking for what had been described to him as the heart of New York. For protection, he wore a necklace of macaw feathers and hollowed seeds beneath his blue work shirt. But his eyes still darted nervously to the blur of passing automobiles.

New Yorkers scurried by on the sidewalk, drafting his small, stocky frame to one side, then the other. "They are like the ant," he announced. "They start one way and turn around and go the other way. They look all the time at the ground and never see the sky. Why do they do that?"

In New York's annals of awe-struck visitors and cultural confrontations, Davi (who doesn't really have a last name, but borrows that of his tribe) begins a new chapter. Among the Yanomami of Brazil, part of the hemisphere's largest tribe of unacculturated

Indians, he is the first to visit the United States.

RELUCTANT TRAVELER

As a shaman-in-training, a village notable and the primary hunter-gatherer of his young family, Davi was not really anxious to quit his home near the Demini River. He had been trying to find money for an emergency health project, planning the first Yanomami school and hoping to find time for some spiritual journeys. Plus, he was worried about visiting a country so recently at war. Among the Yanomami, war is a messy business of axes and clubs and long, bamboo-tipped arrows; years ago, an American anthropologist labeled them "the fierce people," for their tendency to kill each other.

But Davi (pronounced dah-VEE) is one of few Yanomami who speak Portuguese, or any other foreign language, and there is much for them to tell. More than three years ago, gold prospectors began swarming into the forests that his people have occupied for millennia, polluting their rivers with mercury, scaring off their monkeys and tapir, and carrying in deadly diseases like malaria, tuberculosis and the common cold.

Davi is planning to explain all of this to the Secretaries General of the United Nations and the Organization of American States, to high officials of the World Bank and to anyone else who will listen. He was brought to the United States for two weeks by Indian-rights groups eager to dramatize the plight of the Yanomami.

Unlike most of his contemporaries, Davi, who has been saying for several years that he is about 35 years old, saw his first white man while still a boy. He has since visited São Paulo, and even London and Oslo, where he has made speeches, received awards and heard a lot about New York.

An American friend hoped to soften the shock of Manhattan by lending his Upper West Side apartment—and stocking the refrigerator with bananas and Chiquita Caribbean Splash fruit juice. The friend would have rigged up a hammock, too, had the beams of his pre-war building held the screws.

Anyway, Davi arrived angry. In Rio de Janeiro, Pan American airline stewards insisted that he check the bow and arrows he had carried along as a gift. At Kennedy Airport, people wearing the same uniforms gave him back only a form, to report lost luggage.

As might have happened with any first-generation son of the earth, a note of condensation crept into Davi's voice as he rode down Broadway on the 104 bus.

"Everything in the world here, everything in these countries is mixed up," he said in his rough Portuguese, glancing out at 72d Street. "Nothing is separated. All the races are mixed. They don't have blood of their own."

Even dogs.

"Another race of dogs in New York," Davi said, admiring a Pekinese whose hair, he figured, would substitute wonderfully for the feathers used to decorate the headdresses that the Yanomami call cocar. A poodle minced by, tied to a man by a long rope. "They have other hair, the dogs; other customs."

The customs of the people seemed no less strange.

"That man is coming from the laundromat," Davi's traveling companion, Claudia Andujar, explained, referring to a man with long plastic bags of clothing slung over his shoulder. The party was walking back along 106th Street after a look at the Hud-

son. "People here don't wash their clothes," she said.

"But the river is right there!" Davi protested.

He was kidding.

SPIRITUAL QUESTIONS

At the Cathedral Church of St. John the Divine, though, Davi was vexed by the marble sarcophagus holding the remains of a bishop. When the Yanomami die, their bodies are cremated and their ashes consumed in a grog of plantain mush. The names of the dead are never spoken again, making it hard to determine just how many have been killed by the miners and their diseases.

"If his body is in there," Davi asked, "where does his soul go?"

It is not that the Yanomami have no explanation for the ways of white men. A Yanomami myth holds that whites came into the world long ago, when a fight among men interrupted the ritual seclusion of an Indian girl during her first menses. The forest was plunged into darkness and a flood swept many Yanomami away. Remori, a supernatural being, skimmed up some of the foam and mumbled into his cupped hands. The bits of foam then became white people, who, to the Yanomami way of thinking, still use the same burbling noises to communicate.

WHERE KING KONG CLUNG

In the souvenir shop of the Empire State Building, Davi wondered about the monkey depicted on all of the coffee cups and key rings.

A friend explained that the items referred to an old movie about a giant ape that terrorized New York. The friend pointed to posters of King Kong hugging the skyscraper's top.

"Does the monkey still exist?" Davi wanted to know.

It is not really the Yanomami way to be impressed by new things. And upon leaving the building, Davi seemed nonchalant.

"I have been higher than that before," he confided in a taxi cab that squirted down Fifth Avenue. "The homes of the shabori," he said, using the Yanomami word for shaman, "are much higher."

In the Surucucús range of northernmost Brazil, where many Yanomami live (the roughly 20,000 members of the tribe are divided about equally by the Brazilian-Venezuelan border), the hills rise to more than 3,000 feet. But Davi was really talking about something else, said Ms. Andujar, who is trying to have the Brazilian Government declare Yanomami lands a protected national park.

"Nothing ever surprises him because he has already experienced everything in his spiritual trips," she said, meaning the journeys that Yanomami make with the help of yakoana, a hallucinogenic snuff that is blown into the nostrils through long tubes.

LESSON FROM HOLLYWOOD

By the next afternoon, at the Museum of the American Indian, Davi had become positively didactic. At one display case, he pointed to the small likeness of a shaggy quadruped.

"That," he said, "is the buffalo."

His companions stared in disbelief. Where could he have seen a buffalo?

"In São Paulo," he explained. "I saw that movie, 'The Dance of the Wolf.'"

In coming to the United States, the hope of raising money for sick Yanomami was foremost in Davi's mind. The Brazilian Government that took office last year promised to evict the estimated 45,000 prospectors on

Yanomami lands and even dynamited their airstrips. But some of the miners have already returned, and their diseases continue to kill Indians who have no immunity, even to common colds.

Since a Government-sponsored health campaign has staggered for lack of money, a London-based human rights group, Survival International, has begun a private collection. In appearances around the East Coast Davi is trying to help the group raise funds.

IN THE SOUTH BRONX

As he was driven through poorer parts of New York on Saturday afternoon, Davi began to question the salubrity of things here.

"When I see white men like that," he said of a ragged-looking man walking along Southern Boulevard in the South Bronx, "I feel very sad. He has no food, he has no place of his own."

Along the Cross-Bronx Expressway, he pointed to a dusky retaining wall. "The smoke that is on the wall, the oil that is there, that makes you sick," he said, citing a tenet of Yanomami medical philosophy. "If I had to live under that bridge, I would get ill and die."

Davi felt better when he looked down from his airplane at the green surroundings of Washington, Ms. Andujar said. Then the people in Pan American uniforms at National Airport told him that they had lost his luggage again.

[From the New York Times, June 1, 1991]

DOURADOS JOURNAL: FOR BRAZIL'S INDIANS, A FINAL WAY OUT

(By James Brooke)

DOURADOS, BRAZIL.—There is an underside to the prosperity in this area of Brazil's agricultural frontier, a landscape of grain silos, sleek white cattle and a sea of soybeans extending west to the horizon.

In despair over the collective loss of Brazil's west, this municipality's original inhabitants are quietly killing themselves. Last year, in a reservation of 7,200 Indians, there were 29 suicides, and 8 more were reported by mid-May of this year.

"Nineteen-ninety was the year it exploded," said Maria Aparecida da Costa Pereira, a psychologist sent here by the National Indian Foundation, a Government agency known to everyone here as Funai. "They are sending out an appeal. The suicides speak of a lack of prospects, of a lack of a future."

The Americas are littered with unsuccessful attempts at reconciling Indian and European cultures, but the Dourados reservation is an especially stark example as the hemisphere prepares for observations next year of the 500th anniversary of the arrival of Christopher Columbus.

RESERVE DATES TO 1920'S

In an attempt to speed the Kaiowa Indians' assimilation of European ways, the Dourados reserve was established here in the 1920's alongside one of the few white outposts in a wilderness territory called Mato Grosso, or Big Forest.

"When I came here, Dourados had six inhabitants," recalled Ireneo Inard, a wizened Kaiowa man of 91 years who sat on a stool, protected from the shade by a crumpled hat.

Today, Dourados is an agro-business center of 150,000 people. But over the years, the adjacent 8,819-acre reservation has become a dumping ground for ranchers who wanted to rid their lands of migratory bands of Kaiowa, a subgroup of the Guarani, an ethnic group

once found across southern Brazil and Paraguay.

Today, the Dourados reserve holds almost one Indian per acre—not enough land for traditional subsistence farming. To survive, Indian men work as migrant laborers, leaving the reservation for months to cut sugar cane for alcohol distilleries situated several hours by truck from here. Indian women walk to town to sell Indian trinkets, to beg or to engage in prostitution. Until it was closed recently, a town dump was on the edge of the reserve, providing limited material for scavengers.

"I once saw 30 to 40 Indians fighting over clothes and toys in the dump," Joel Vitorino da Silva, a former Indian protection agent, said as he drove a car down the red dirt roads of the reserve.

CHURCHES MOVE IN

Neighboring white farmers started to rent Indian land, and traders brought in alcohol from the adjacent town. The last traditional shaman died a decade ago, and evangelical churches aggressively moved into the reserve, preaching against the Indians' ancestral beliefs. An Adventist mission had been on the reserve since the 1940's, maintaining the Kaiowas only hospital. But five new churches have opened recently, limiting their social action to collecting monthly tithes.

"Historically, in situations of pressure, the Guarani withdraw," said Ms. Pereira, the psychologist. "Under pressure, the Guarani resort to migration, prayer or death."

With the big forest now a big farm, there is nowhere to go.

In Mato Grosso do Sul state, the Kaiowa and other Guarani subgroups have been concentrated in 11 reserves, totaling 52,000 acres. The Missionary Indigenous Council, a Roman Catholic group, seeks legalization of 10 more reserves, which would almost double recognized Indian land.

But previous attempts at protecting the Indians have been slapped down by hostile local judges or by violence from ranchers.

ENCOUNTER WITH THE POPE

In one appeal that caught the eyes of the world, a Kaiowa leader from Dourados, Marcal de Souza, addressed Pope John Paul II during the Pope's visit to Brazil in 1980.

"When Brazil was discovered, we were a great nation," Mr. de Souza said of Brazil's Indian population, which has dwindled from an estimated six million 500 years ago to 230,000 today. "Today, we inhabit the margins of this country with no way to live. Even our survival is in danger as we are being murdered on this land."

Turning to the stocky Indian leader, the Pope replied: "With all my heart, I hope that you, as the first inhabitants of this land, will obtain the right to live in peace and tranquility. May you not suffer the true nightmare of being removed for the benefit of others."

Three years later, Mr. de Souza was slain. Although evidence appeared to point to a local rancher, Libero Monteiro de Lima, the case has never gone to trial. Moving faster, however, a state judge recently upheld Mr. de Lima's claim to 5,700 acres of land now occupied by 200 Indians. Funai, the Indian protection service, is appealing the decision.

Feeling corralled on all fronts, the Kaiowa here started to turn to suicide.

"For the Guarani, death is not the end," said Olivio Mangolim, regional coordinator of the Missionary Council. "It is a way to get to a better situation without suffering."

REMEDIAL PLAN DRAWN UP

Alarmed by the rising suicide rate, especially high among adolescents, Funai drew up a remedial plan in late April.

To reduce the need for men to migrate for work, the Indian agency plans to build fish ponds and to supply seeds, tools and fertilizers to improve farm yields. To strengthen the role of traditional leaders and of traditional rituals, a prayer house is to be built and a shaman is to be brought in from Paraguay. •

S. 210, URANIUM ENRICHMENT

• Mr. WALLOP. Mr. President, almost one-half of the capital base of the United States electric power industry is invested in 100 uranium-fueled nuclear facilities that now supply 20 percent of the United States' electricity. In addition, our nuclear fleet of 150 uranium-fueled submarines and surface ships must have sufficient uranium to assure an uninterrupted fuel supply.

For more than 5 years the committee has labored with this critical matter only to have legislative proposals passed by the Senate on four occasions die in the House. The Congress is long overdue in coming to grips with the fact that the Federal Government's uranium enrichment enterprise is no longer able to effectively compete with its more aggressive counterparts around the world.

Since we began this effort, the character of international markets has changed dramatically. The Soviet Union is now actively dumping uranium and enriched uranium in order to increase their market share. Only last week, the Soviet Union's Techsnabexport announced that it had formed a joint venture with Concord/Nuexco—the Global Nuclear Services & Supply Inc.—to market the full range of nuclear fuel services of the U.S.S.R.'s Ministry of Atomic Power & Industry. Its principal office will be in Washington, DC, although Global Nuclear is being incorporated in Switzerland.

The Soviet Union is clearly bent on becoming a major force in the United States fuel market. Among their announced objectives is greater hard-currency income and an announced intent to capture in excess of 25 percent of the Western World's nuclear fuel market. How they intend to achieve the market share that is their stated objective is not fully understood. But my concern is enhanced by their recent creation of Global Nuclear Services.

The committee amendment thus provides for a study by the International Trade Commission of the uranium and uranium enrichment marketing practices of nonmarketing countries. The committee is not as much concerned for whether or not dumping is occurring, or whether or not economic injury is being incurred, as it is concerned for whether or not their prices reflect true production costs. In this

regard, I recognize that it is difficult to determine comparable production costs for such nonmarket economies to those for market economies.

But, even more importantly, I am concerned with what actions the administration proposed to discourage marketing practices such as those being promoted by the Soviet Union.

No matter what your vantage point, whether you view this matter from the perspective of the bureaucrat, the budget cruncher, the taxpayer, or DOE's customers, their actions must be viewed as a threat to DOE's enrichment enterprise and the Enrichment Corporation that this legislation would establish. Soviet prices appear to bear no relationship to real production costs. As a consequence, their marketing practices have already—the Soviet's marketing practices have driven uranium prices to record lows which have led to the closure of many mines and mills in the United States.

The full scope of the threat of the Soviet Union's marketing practices to DOE's enrichment enterprise is unknown, but informed sources estimate that their stockpiles range as high as 500 million pounds. Moreover their estimated annual production of uranium may be as high as 35 million pounds a year. By comparison, the United States' uranium production last year was about 8.7 million pounds, less than 25 percent of U.S. demand. With little effort the Soviets could dump uranium on the international marketplace in volumes greater than the entire United States production.

The Soviets have made no secret of their efforts to capture a substantial part of the world market in nuclear fuel. Experts believe they could easily export enough enriched uranium to take half of DOE's U.S. market and more natural uranium than all the U.S. production projected for this year.

U.S. utilities need about 40 million pounds of uranium a year to run the reactors that now supply almost 20 percent of our needs for electrical power. Already half of this uranium is imported from abroad. After 1995, with inventories depleted, uranium imports will increase sharply.

Some of these imports will come from countries like Canada, but more will come from other sources like Russia, China, and Africa. It is ironic that the utilities which spend millions to advertise their concerns about our dependence on foreign oil are willing to become so dependent on foreign sources for nuclear fuel.

Utilities talk about the need to buy the cheapest fuel, but they may be "penny wise and pound foolish" in taking this approach. The fuel costs for uranium and enrichment services are only 7 percent of the total cost of nuclear energy. To pay a few cents more for U.S. products seems a small price

to pay to reduce long-term security risks.

I fully support congressional efforts to restructure DOE's enrichment enterprise into a creature that thinks, looks, acts, and responds, like a business. Whether the Soviet Union is dumping uranium or not is not the question. The concern is the effect of their pricing practices on domestic uranium producers and the Federal enrichment enterprise which must meet the U.S. uranium enrichment requirements for defense purposes as well as its commercial customers.

In addition, the Enrichment Corporation must be able to respond to the Soviet Union's marketing practices once it is established. For this reason the committee bill grants DOE authority to buy uranium and enriched uranium from the Soviet Union on the same basis as DOE's customers. DOE would thus have the option, which it does not now have, of buying the Soviet enriched uranium being dumped.

If DOE were to elect to purchase Soviet enriched uranium it could reduce its production costs. Some of the cost savings could be passed on to DOE's utility customers—thus reducing domestic enriched uranium prices.

In order to protect the domestic mining industry from a possible side effect of such purchases, DOE is restricted in its use of natural uranium stocks provided to it by its utility customers. For example, if DOE were to purchase enriched uranium on the world market, any utility owned uranium stocks held by DOE could not be sold; however, DOE could use such stocks for overfeeding purposes and thus could further reduce its costs. Some of these cost savings could be passed on to DOE's customers.

It must be recognized that the success of the Soviet Union's marketing strategy depends, in part, on the apparent willingness of some United States utilities to buy Soviet natural or enriched uranium and enrichment services. There is no common practice in this regard. Some utilities will not buy Soviet uranium. Others restrict their purchases because of recognition that a viable domestic industry is in their interest.

But what is happening is being influenced by an uncertainty regarding approval of such purchases by State regulatory commissions. Spokesmen for utilities have expressed concern that should they purchase domestic uranium or enriched uranium at prices higher than they can obtain their needs internationally that their domestic purchases will be questioned by State regulatory bodies as prudent.

This is a valid concern which is addressed in the committee amendment which directs the Secretary of Energy to encourage State utility authorities to consider the importance of maintaining a viable domestic uranium in-

dustry when deciding whether to allow recovery of associated uranium costs through rates charged to customers.

Mr. President, it ought to go without saying that until we can once again assure the future of nuclear power as a viable option in our Nation's energy future, our continuing dependence on imported oil will remain a threat to our Nation's economic health and energy security.

S. 210 is structured to address this concern. I recommend it for your support.●

TRIBUTE TO BISHOP LOUIS HENRY FORD

● Mr. LUGAR. Mr. President, on July 1, 1991, it will be my honor to extend a tribute to Bishop Louis Henry Ford, one of America's most outstanding community leaders. I want to take a moment to apprise my colleagues of Louis' dedicated leadership to many communities across the United States.

Christian groups have been an important source of the restoration of community values and service to our fellow man. Louis Henry Ford has given a lifetime of service and leadership through his church toward community and personal development.

Called to ministry in 1926, Louis was ordained an elder in Chicago's Church of God in Christ by the late Illinois prelate Bishop William Toverts. In 1936, he founded the St. Paul Church of God in Christ and in 1945, he was named national director of public relations.

Founder of the C.H. Mason and W.M. Roberts Bible Institute for Bible Studies, Louis has been overseer or bishop in over 12 jurisdictions in the Midwest. Over the years, his leadership has found true expression in the series of national positions that he has held including State chairman of Illinois, chairman of the National Founders Day Program, and member of the board of bishops and of the executive committee of the Church of God in Christ.

Beyond his ecclesiastical leadership, Louis has been inspiring communities across the midwest. He was one of the first State bishops to establish a State treasury fund to assist local churches. Recently, he has been a consultant to Chicago's mayor, Richard M. Daley, on public school problems, urban opportunities, and race relations.

As a much sought after guest speaker, Louis has received many awards for his outstanding service. He was most recently honored by the mayor of Chicago who named October 25, 1990, as "Louis Henry Ford Day in Chicago." For his community development and dedication, he was presented keys to the city of Memphis, TN.

This is Bishop Ford's 55th year as founding pastor of the St. Paul Church of God in Christ in Chicago. In 1990, he was elected the international presiding bishop and chief apostle of the Church

of God in Christ. Prior to his election as presiding bishop, he was assistant presiding bishop since 1972. Louis has stepped forward in characteristic leadership as international presiding bishop by his spearheading of a series of innovations and plans to revitalize the ministries of the church. The plans include major efforts to address problems of senior citizens, the young and the disabled. He has also outlined plans to confront the national problems of the homeless, of education, and of drug abuse.

The accomplishments that I have mentioned in this short space are only a glimpse of what Louis' lifelong contribution and leadership have been. His service to mankind has been twofold: he has worked to save his fellow man, and he has endeavored to serve many communities. I think that this is why Louis is so deeply respected, so deeply loved. A true man of God, his insightful, creative leadership of the Church of God in Christ has substantially benefited his fellow human beings. His life of service is a shining beacon to us all. ●

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10 a.m. Thursday, June 6; that following the prayer the Journal of the proceedings be deemed approved to date; that the time for the two leaders be reduced to 7½ minutes each; that following the time reserved for the leaders there then be a period for morning business not to extend beyond

11:45 a.m. with Senators permitted to speak therein, with the time from 10:15 to 11:15 a.m. under the control of the Republican leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECORD TO REMAIN OPEN

Mr. FORD. Mr. President, I ask unanimous consent that the RECORD remain open today until 6:30 p.m. for the introduction of a bill by Senator MITCHELL relating to health care, and that the bill be held at the desk until close of business Thursday, June 6.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. FORD. Mr. President, I do not see any other colleague here who wishes to be recognized.

If there be no further business today, I ask unanimous consent that we stand in recess under the previous order.

There being no objection, the Senate, at 6:07 p.m., recessed until tomorrow, June 6, 1991, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 5, 1991:

DEPARTMENT OF STATE

JANE E. BECKER, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE VIENNA OFFICE OF THE UNITED NATIONS AND DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL ATOMIC ENERGY AGENCY, WITH THE RANK OF AMBASSADOR.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. THOMAS N. GRIFFIN, JR. XXX-XX-XXXX U.S. ARMY.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. RONALD H. GIFFITH XXX-XX-XX... U.S. ARMY. THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. JOSEPH S. LAPOSATA XXX-XX-XX... U.S. ARMY.

IN THE NAVY

THE FOLLOWING-NAMED REAR ADMIRALS (LOWER HALF) OF THE RESERVE OF THE U.S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF REAR ADMIRAL IN THE LINE AND STAFF CORPS, AS INDICATED, PURSUANT TO THE PROVISION OF TITLE 10, UNITED STATES CODE, SECTION 5912:

UNRESTRICTED LINE OFFICER

To be rear admiral

REAR ADM. (1H) JIMMIE WAYNE SEELEY XXX-XX-XXXX U.S. NAVAL RESERVE.
REAR ADM. (1H) ALEXANDER SCOTT LOGAN, XXX-XX-XX... U.S. NAVAL RESERVE.
REAR ADM. (1H) ROBERT SMITH III, XXX-XX-XXXX U.S. NAVAL RESERVE.

UNRESTRICTED LINE (TAR) OFFICER

To be rear Admiral

REAR ADM. (1H) MAURICE JOSEPH BRESNAHAN, JR., XXX-XX-XX... U.S. NAVAL RESERVE.

SPECIAL DUTY OFFICER (CRYPTOLOGY)

To be rear admiral

REAR ADM. THOMAS EDWARD COURNEYA XXX-XX-XXXX U.S. NAVAL RESERVE.

DENTAL CORPS OFFICER

To be rear admiral

REAR ADM. (1H) JOHN ROWLEY HUBBARD, XXX-XX-XXXX U.S. NAVAL RESERVE.

HOUSE OF REPRESENTATIVES—Wednesday, June 5, 1991

The House met at 10 a.m.
The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

On this new day of grace, we pray, O God, that You will give us hearts full of thanksgiving and praise for the opportunities for service that are before us. Teach us to use the abilities and talents You have given in ways that heal the hurts of the land and to minister to those who seek justice and mercy. May we be ambassadors of good will and ministers of understanding and thus do the work that we have been called to do. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. NAGLE. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. NAGLE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 282, nays 116, answered "present" 1, not voting 32, as follows:

[Roll No. 129]
YEAS—282

Ackerman	Borski	Conyers
Alexander	Brewster	Cooper
Anderson	Brooks	Costello
Andrews (ME)	Broomfield	Cox (CA)
Andrews (NJ)	Browder	Cox (IL)
Andrews (TX)	Bruce	Coyne
Annunzio	Bryant	Cramer
Anthony	Bustamante	Darden
Applegate	Byron	Davis
Archer	Campbell (CO)	de la Garza
Atkins	Cardin	DeFazio
AuCoin	Carper	DeLauro
Bacchus	Carr	Dellums
Barton	Chapman	Derrick
Bateman	Clement	Dicks
Beilenson	Clinger	Dingell
Bennett	Coleman (TX)	Donnelly
Berman	Collins (IL)	Dooley
Bevill	Collins (MI)	Dorgan (ND)
Bilbray	Combest	Downey
Bonior	Condit	Dreier

Durbin	Kostmayer
Dwyer	Lancaster
Dymally	Lantos
Early	LaRocco
Eckart	Laughlin
Edwards (TX)	Lehman (CA)
Emerson	Lent
Engel	Levin (MI)
English	Levine (CA)
Erdreich	Lewis (GA)
Espy	Lipinski
Evans	Livingston
Fascell	Lloyd
Fawell	Long
Fazio	Lowe (NY)
Feighan	Luken
Fish	Manton
Flake	Markey
Foglietta	Martinez
Ford (MI)	Matsui
Ford (TN)	Mavroules
Frank (MA)	Mazzoli
Frost	McCloskey
Gaydos	McCurdy
Gejdenson	McEwen
Gephardt	McMillen (MD)
Geren	McNulty
Gibbons	Mfume
Gillmor	Miller (CA)
Gilman	Mineta
Gonzalez	Mink
Gordon	Moakley
Gray	Montgomery
Green	Moody
Guarini	Moran
Gunderson	Morella
Hall (OH)	Morrison
Hall (TX)	Murtha
Hamilton	Myers
Hammerschmidt	Nagle
Harris	Natcher
Hatcher	Neal (MA)
Hayes (IL)	Nichols
Hayes (LA)	Nowak
Hefner	Oakar
Hertel	Oberstar
Hoagland	Obey
Hochbrueckner	Olin
Horn	Ortiz
Horton	Orton
Houghton	Owens (NY)
Hoyer	Owens (UT)
Hubbard	Pallone
Huckaby	Panetta
Hughes	Parker
Hutto	Patterson
Jefferson	Payne (NJ)
Jenkins	Payne (VA)
Johnson (CT)	Pease
Johnson (SD)	Pelosi
Johnston	Penny
Jones (GA)	Perkins
Jones (NC)	Peterson (MN)
Jontz	Petri
Kaptur	Pickett
Kasich	Pickle
Kennedy	Porter
Kennelly	Poshard
Kildee	Price
Kleczka	Pursell
Klug	Rahall
Kolter	Rangel
Kopetski	Ravenel

NAYS—116

Allard	Boehlert
Armey	Boehner
Baker	Bunning
Ballenger	Burton
Barnard	Callahan
Barrett	Camp
Bentley	Campbell (CA)
Bereuter	Chandler
Billirakis	Clay
Bliley	Coble

Ray	Reed
Richardson	Rinaldo
Ritter	Roe
Rosen	Roemer
Rostenkowski	Rose
Rowland	Roybal
Russo	Sabo
Sarpalio	Sangmeister
Savage	Sarpanius
Sawyer	Scheuer
Schiff	Schulze
Schumer	Serrano
Sharp	Shaw
Shuster	Skaggs
Skeen	Skelton
Slattery	Smith (FL)
Slaughter (NY)	Smith (IA)
Smith (NJ)	Smith (NY)
Snowe	Solarz
Spence	Sperr
Stallings	Stark
Stenholm	Stokes
Studds	Swett
Swift	Synar
Tallon	Tanner
Tauzin	Taylor (MS)
Thomas (GA)	Thornton
Torres	Torricelli
Towns	Traficant
Traxler	Unsoeld
Vander Jagt	Vento
Visclosky	Volkmer
Walsh	Washington
Waxman	Whitton
Wheat	Williams
Whitten	Wilson
Wise	Wolpe
Wyden	Wyllie
Yates	

Gallegly	Gallo
Gekas	Gilchrest
Goodling	Gingrich
Goss	Gradison
Grandy	Hancock
Hansen	Hastert
Hefley	Henry
Hergert	Hobson
Holloway	Hopkins
Hyde	Inhofe
Jacobs	James
Johnson (TX)	Kolbe
Kyl	Lagomarsino
Leach	Lewis (CA)
Lewis (FL)	

Lightfoot	Lowery (CA)
Machtley	Marlenee
Martin	McCandless
McCollum	McDade
McGrath	McMillan (NC)
Meyers	Michel
Miller (OH)	Miller (WA)
Molinaro	Moorhead
Murphy	Nussle
Oxley	Packard
Paxon	Quillen
Ramstad	Regula
Rhodes	Ridge
Roberts	Rogers
Rohrabacher	

Ros-Lehtinen	Roth
Roukema	Santorium
Saxton	Schaefer
Schroeder	Sensenbrenner
Shays	Sikorski
Slaughter (VA)	Smith (OR)
Smith (TX)	Solomon
Stearns	Stump
Thomas (CA)	Thomas (WY)
Upton	Vucanovich
Walker	Weber
Weldon	Wolf
Young (AK)	Young (FL)
Zimmer	

ANSWERED "PRESENT"—1

Taylor (NC)

NOT VOTING—32

Abercrombie	Hunter	Peterson (FL)
Aspin	Ireland	Riggs
Boucher	Kanjorski	Sanders
Boxer	LaFalce	Sisisky
Brown	Lehman (FL)	Staggers
Crane	McCrery	Valentine
Dickinson	McDermott	Waters
Dixon	McHugh	Weiss
Dornan (CA)	Mollohan	Yatron
Edwards (OK)	Mrazek	Zeliff
Glickman	Neal (NC)	

□ 1025

So the Journal was approved.
The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. PETERSON of Florida. Mr. Speaker, a previous commitment at the Pentagon precluded my presence in the Chamber for rollcall No. 129, approval of the Journal. Had I been present, I would have voted "aye."

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. McNULTY). Will the gentleman from Georgia [Mr. JONES] please come forward and lead the House in the Pledge of Allegiance?

Mr. JONES of Georgia led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair announces that he will take seven 1-minute statements from each side of the aisle.

JOHN OLVER MAKING HISTORY IN MASSACHUSETTS' FIRST CON- GRESSIONAL DISTRICT

(Mr. FAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAZIO. Mr. Speaker, in just a few days, a public servant from Massachusetts named John Olver will come to Washington and fill the seat left vacant by the death of our good friend and colleague, the late Silvio Conte.

When we lost Sil, Republicans and Democrats remembered a man whose public service was defined by his values and independence. And these principles clearly guided the voters of Massachusetts' First Congressional District.

In this election, voters had a clear choice. One candidate practiced the politics of racial division, took his instructions from the White House, defied America's belief in choice, and worshiped at the altar of the status quo. Perhaps, out of nostalgia for 1988, or to roadtest the Republican campaign strategy for 1992, Willie Horton was back on furlough, and "no new taxes" was back in the dialog, as if the Republican strategists have learned nothing new.

Not surprisingly, this candidate lost—even though Sil, and his Republican predecessors held the seat for nearly a century.

But the other candidate, the Democrat, the victor, steered a different course. He was a healer, he respected the values of choice and of honoring seniors and, most of all, he took his cues from the needs of his district rather than the political agenda of Washington.

Tuesday night, John Olver made history in a congressional district where the Republicans had been on a century long winning streak. Let us recognize our new colleague for the accomplishment of his victory, and for the promise of his service yet to come.

CONCERN ABOUT CUBA'S NUCLEAR REACTOR

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, it does not take long to travel 90 miles—in Washington, DC, houses that are 90 miles from the city are considered suburban. No wonder Floridians are alarmed about a nuclear reactor under construction 90 miles south—in Fidel Castro's Cuba.

Especially now that we know from recent defectors that much of the work is flawed and one site is located in an earthquake zone.

There's a laundry list of reasons why a nuclear reactor under Castro's control is anathema to the free world, not least of which is the enormous threat substandard construction, poor inspection, and inept management would pose to our safety and our environment. Castro has shown that he has little regard for human life, let alone the health and safety of U.S. citizens. A mishap at a Cuban nuclear facility could wreak havoc. The world has moved a long way to shed sunlight on Castro's abuse of power and manipulation of his own people. Now, with his threat to the region becoming even more strident because of his economic desperation, we owe it to ourselves and the world to know what's going on. Are the Soviets really going to send enough enriched uranium to Cuba for four nuclear weapons? Is the nuclear powerplant primarily to energize the Soviet naval base on Cuba? Mr. Speaker, we need answers.

□ 1030

CALLING FOR THE RESIGNATION OF ATTORNEY GENERAL THORNBURGH

(Mr. KOSTMAYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOSTMAYER. Mr. Speaker, it is simply outrageous. Today's headlines tell a sorry story of a sitting Attorney General of the United States who will not do the right thing, the judicious thing, the ethical thing, and resign as he prepared to seek a seat in the U.S. Senate.

One cannot be both the Nation's top law enforcement officer and a candidate for the Senate. The president of Common Cause had it exactly right when he said, "Attorney General Thornburgh should not be making any more decisions in this office." Every action, from civil rights to the S&L debacle, will be tainted by political considerations.

Mr. Speaker, all of America will be asking, how can Mr. Thornburgh be prosecuting the S&L crooks and ask them for campaign contributions at the same time?

It is time to step down, Mr. Thornburgh. Justice demands it. Come home now. Pennsylvania is waiting.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. McNULTY). Members are reminded that they should address their remarks to the Chair.

THE PRICE-WATERHOUSE DECISION IN CIVIL RIGHTS

(Mr. FAWELL asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. FAWELL. Mr. Speaker, the majority wants the Justice Brennan decision in Price-Waterhouse to be repealed because it was not liberal enough. When Judge Brennan ruled that if an employer can prove it would have made the same decision, that is, not to accept the lady as a partner in that particular case, regardless of the improper bias against the lady, a cause of action would not exist. He therefore sent the case back to the trial court and the trial court took additional evidence and then ruled in favor of the lady and she collected \$435,000 in back pay and was accepted as a partner in the Price-Waterhouse firm. This was all done, Mr. Speaker, under the present remedies section of title VII of the Civil Rights Act. And in lieu of that decision which the majority want to junk now, they bring up a new definition for "unlawful employment practice."

Under the new definition, unlawful employment practice "is established whenever race, religion, sex, or national origin is a motivating factor for any employment practice, even though other factors also contribute to the employment practice." No discriminatory intent is required.

Just think of it, Mr. Speaker. If Freud is right that mankind is motivated primarily by sex, then we have an awful lot of problems here, because all you have to prove, for instance, in order to prove the employer was guilty of committing an unlawful employment practice, is to show that sex is a motivating factor, de minimus in proportions, for any employment practice. Then you have proven a violation of title VII and the employer has no defense. Now, that is unbelievable, and it is ridiculous. In addition, a complainant would be entitled to unlimited compensatory damages for mental distress, as well as punitive damages, for any such unlawful employment practice. So, you see, unlimited damages also apply for employment practices which do not involve any discriminatory intent. Few people realize these provisions are in the bill.

THE CHICAGO BULLS-L.A. LAKERS WAGER

(Mr. RUSSO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUSSO. Mr. Speaker, this year's NBA final is one of the greatest match ups in basketball history. All eyes will be on the Windy City tonight for game 2 between the L.A. Lakers and my own Chicago Bulls.

This series is a tale of two cities: The Lakers represent the Perrier-sipping set from La La Land, while the Bulls represent the blue-collar, hard-working men and women from the Nation's heartland. We know that the Lakers are aching and aging, so we let them win the first game just to make it interesting. But now we are serious.

If nothing else, this NBA final will be thrilling and spectacular because of just two letters: M.J., and I do not mean Magic Johnson; I mean Michael Jordan, the most exciting player in basketball history. He, Scottie Pippen, and the rest of the Bulls are going to give the L.A. Lakers a headache worse than the one they normally get when they go outside and try to breathe that L.A. air.

I am so confident that the Bulls are going to blow the doors off the Lakers that I have made a wager.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. RUSSO. I will yield to my good friend, the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding, and I say, "Right on."

Mr. RUSSO. Mr. Speaker, I have made a wager with my friend, the gentleman from California [Mr. DREIER], from La La Land, that if the Bulls win, he can give me seedless grapes and seedless watermelons, and since the Third District is famous for Tootsie Rolls and Tootsie Pops and Oreo cookies, and God forbid that the Bulls should lose, he will get some Tootsie Rolls and Tootsie Pops.

THE WAGER ON THE BULLS-LAKERS CHAMPIONSHIP SERIES

(Mr. DREIER of California asked and was given permission to address the House for 1 minute.)

Mr. DREIER of California. Mr. Speaker, I think that a response from me is in order here.

After taking a much deserved 1-year sabbatical, the Los Angeles Lakers are knocking on the door of yet another NBA championship. This is the Lakers' ninth trip to the finals in 12 years. Having captured the title in 5 of those 9 years, with such an incredibly impressive record, it is surprising to me that some Members of this body are still anxious to relinquish the goods and services of their respective States.

The very athletic gentleman from Illinois [Mr. RUSSO], whose better judgment appears to have been clouded in the wake of the Chicago Bulls' euphoric four-game sweep of the Pistons, has accepted this friendly wager on the outcome of the Los Angeles Lakers-Chicago Bulls series. When Los Angeles wins, I look forward to receiving those Nabisco cookies and Tootsie Rolls. If by chance we do not quite pull this one off, I will proudly present him with Sun World Red Flame seedless

grapes and seedless watermelons, a demonstration that our State is clearly innovative and looking toward the future, unlike some other parts of the country.

Mr. Speaker, very clearly, this will be like taking candy from a baby.

THE NIXON TRANSCRIPTS ON THE IRS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, since we are wagering on the Lakers and the Bulls, how many of the Members would wager that the White House uses the IRS for political purposes? If you have any doubt, read the new Nixon published transcripts. I want to quote the former President:

Get those Democrats. Make them squeal. Pull their tax files, and to make it look good, pull some Republicans' too, but don't check those out.

Mr. Speaker, I think we do have some great problems. We have a problem in America when the average taxpayer has to hire a Philadelphia attorney to figure out his tax burden, but what is even worse is when American taxpayers start to fear their own Government. No American should fear their Government. Congress should do something about the IRS.

Mr. Speaker, I think the Bulls will win tonight.

H.R. 1—A LAWYERS' BONANZA

(Mr. BALLENGER asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, any businessman worth his salt prepares for the worst case scenario, and this new bill, H.R. 1, is it. If he is confronted with jury trials, unlimited liability, and an impossible task of proving his innocence of discrimination, there is only one defense, and he will take that sure defense, namely, hiring by the numbers, matching local population percentages.

If that does not equal forced quotas, I have a bridge I would like to sell you.

I realize the economy is in weak condition, but do we need to spend all of our time and effort in creating a lawyers' bonanza? Attacking the President, who had a good civil rights bill defeated yesterday, will not prove that the Democrats are pro-civil rights but only that they are trying to protect their own trial lawyers.

A CONSTITUENT'S EXPRESSION OF SUPPORT FOR SPACE STATION FREEDOM

(Mr. BACCHUS asked and was given permission to address the House for 1

minute, and to revise and extend his remarks.)

Mr. BACCHUS. Mr. Speaker, I received this morning in my office a letter from Ms. Louise Kleba of Cape Canaveral, FL, that I would like to read in part into the RECORD:

DEAR CONGRESSMAN: The decision by the Appropriations Committee to cancel the Space Station Freedom was and is the most blatantly damaging statement and action that could have come from any form of representation.

We have just had a revitalization of patriotism through our decisive actions in the Middle East. Are we now to sit back and rock on the memory and countless retelling of that event and hope that the rest of the world will continue to consider us with awe long after history has moved to the next chapter?

Why don't we take the opportunity to begin that next chapter?

America * * * Americans have always risen to meet a challenge. If the progression into space is cancelled when we have just had a taste for it, I am wondering what challenges we could possibly offer our children to motivate them to reach for a little bit more. If we destroy the dreams, don't we also destroy ambition? Space is still something just a little out of their reach. A space station opens the doors.

Do not close the door. Do not condemn my children to reading about America's "ancient" history. Please, do not support the recommendation to cancel the Space Station Freedom.

Mr. Speaker, Ms. Kleba is absolutely right, and I intend to do everything I can to save Space Station Freedom and save our dreams for America.

□ 1040

GEORGE AND BARBARA BUSH: FAIR AND KIND PEOPLE IN A CYNICAL CITY

(Mr. KYL asked and was given permission to address the House of 1 minute and to revise and extend his remarks.)

Mr. KYL. Mr. Speaker, it says something about the merits of the so-called Civil Rights Act that the primary argument of its supporters yesterday was that President George Bush is a racial hypocrite, that he only wants a political issue.

George and Barbara Bush are two of the kindest, fairest people in this cynical city. Accusing George Bush of playing racial politics with an issue as serious as civil rights is the lowest, most vicious, most political thing I have seen as a Member of this body. It can only reflect frustration by those who find themselves on the losing side of the issue.

Supporters of H.R. 1 said George Bush does not want a civil rights bill, even after the President offered his own legislation. Honesty demands acknowledgment that his is a serious bill. So the rhetoric is as untrue as it is unfair.

Mr. Speaker, after the serious responsive debate we had on the Persian Gulf war, I expected better of the debate yesterday. But it was sad to watch one after another come to the floor and forsake rational debate in favor of inflammatory rhetoric and cheap shots at President George Bush.

This is too important a subject for Members to lose their cool, to become hysterical, and that is the only way I can describe yesterday's attacks on one of the most decent Presidents ever to serve this country.

Today, let us elevate both the content and the tone of the debate. Let us stop questioning motives and debate the merits.

AMERICANS REMAINING ON DUTY IN PERSIAN GULF SHOULD BE REMEMBERED

(Mr. JOHNSON of South Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of South Dakota. Mr. Speaker, as we look toward the upcoming victory parades in Washington, New York, and other cities, it is extremely important that we not forget the thousands of men and women who remain on duty in the Persian Gulf.

From my own State, two units are still in the Middle East.

The 740th Transportation Company of the South Dakota National Guard is made up of approximately 170 men and women from Aberdeen, Milbank, Sisseton, Brookings, other parts of northeastern South Dakota, and from areas in the northern Black Hills.

Almost 80 men and women from the 109th Engineering Group of the South Dakota National Guard also remain in the gulf region. Their homes are in Rapid City, as well as other communities, farms, and ranches in the western part of our State.

For them—and for their family members, friends, and loved ones who await their return—these days of celebration are a bittersweet time of frustration, anxiety, and intense longing.

To the men and women who remain in the Persian Gulf—especially the members of our two units from South Dakota—I bring this message on behalf of everyone in your home State and your Nation: "We have not forgotten you. We are hoping and praying for your safe return soon. We are more proud of you than words can express."

H.R. 1: A LITIGATION NIGHTMARE

(Mr. RITTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RITTER. Mr. Speaker, President Bush has taken on some real mud thrown by the Democrats over civil rights. The President is simply trying

to do the right thing. He is trying to do the right thing for all Americans, not a Balkanized or fragmented America. The President wants to do the right thing for all American workers.

Mr. Speaker, by not allowing employment decisions to be based on merit, the Democrat's H.R. 1 is anticompetitive. It is anticompetitive for U.S. business, U.S. workers, and U.S. jobs. It amounts to a jobs bill for offshore employees.

Mr. Speaker, yes, this is a real export promotion bill, the export of American jobs. We cannot continue to put more and more pressure on American employers. They need to be nurtured, not assumed guilty until proven innocent.

Mr. Speaker, H.R. 1, as with so much of our legislation and regulation, the ever-increasing payroll taxes, reduced investment incentives, stifling regulation, and litigation, litigation, litigation, are killing American business. It makes us uncompetitive. It sends our jobs abroad. Jobs are lost when litigation's Sword of Damocles threatens the very existence of American business.

Mr. Speaker, H.R. 1 is a litigation nightmare, and it is unfair.

VOTE FOR SPACE STATION FREEDOM

(Mr. STALLINGS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STALLINGS. Mr. Speaker, we will soon decide whether we terminate the space station Freedom. This decision is about more than canceling a large program in the face of a tight budget. It is about terminating more than 200 years of American leadership at the frontier of exploration. The decision to cancel the space station would signal that the United States no longer chooses to lead, but prefers to follow.

In the early 1970's Congress made some difficult decisions concerning America's future in space. We decided that we couldn't sustain Apollo-era funding levels, yet we continued our claim to leadership by pressing ahead with the space shuttle.

In 1984 we reaffirmed our leadership position in approving a Space Station Program that would provide America's first permanent outpost at the border of the space frontier. Since that decision we have encountered difficult fiscal times. However, we have dealt with these obstacles while maintaining a space program second to none. We are now being tested again.

The question before us is whether we remain the preeminent Nation in space, or abandon that status to others with more stamina and vision.

Deciding to terminate the space station would be easy, since it would free up billions of dollars for other programs. But we were not elected to this body to make the easy choices. We

were elected to make the tough choices, such as ones aimed at maintaining leadership for our Nation.

John F. Kennedy told us that we do not lead because it is easy or cheap, but because we know that it is difficult. Voting for the space station may seem difficult, but it will help assure continued leadership. With that in mind, our choice should be clear. Let us vote for continued leadership at the frontier of exploration; let us vote for the space station.

DEMOCRATS RESORTING TO POLITICS OF HYSTERIA

(Mr. BOEHNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOEHNER. Mr. Speaker, George Bush is a decent human being, who is working hard as our President. He is providing unmatched leadership on both the domestic and the international fronts. But yesterday in this Chamber he was assailed as a race baiter, practicing politics of hate; a demagogue, reviving Willie Horton; and, just this morning, we have heard the chairman of the Democratic Campaign Committee use all these same phrases again.

George Bush is a good man, a good man who wants to sign a civil rights bill, a civil rights bill that does not create preferences, but one that provides equal opportunity for all.

Mr. Speaker, the fact is the Democrat Party is frustrated that they cannot move their political agenda, and are resorting to politics of hysteria.

CIVIL RIGHTS AND WOMEN'S EQUITY IN EMPLOYMENT ACT OF 1991

The SPEAKER pro tempore (Mr. MCNULTY). Pursuant to House Resolution 162 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1.

□ 1046

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1) to amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes, with Mr. MFUME in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, June 4, 1991, the amendment offered by the gentleman from Illinois [Mr. MICHEL] had been disposed of.

It is now in order to consider Amendment No. 3 printed in House Report 102-83.

AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. BROOKS: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights and Women's Equity in Employment Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in a series of recent decisions addressing employment discrimination claims under Federal law, the Supreme Court cut back dramatically on the scope and effectiveness of civil rights protections; and

(2) existing protections and remedies under Federal law are not adequate to deter unlawful discrimination or to compensate victims of such discrimination.

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

(1) respond to the Supreme Court's recent decisions by restoring the civil rights protections that were dramatically limited by those decisions; and

(2) strengthen existing protections and remedies available under Federal civil rights laws to provide more effective deterrence and adequate compensation for victims of discrimination.

TITLE I

SEC. 101. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end thereof the following:

"(1) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'group of employment practices' means a combination of employment practices that produces one or more decisions with respect to employment, employment referral, or admission to a labor organization, apprenticeship or other training or retraining program.

"(o)(1) The term 'required by business necessity' means the practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance.

"(2) Paragraph (1) is meant to codify the meaning of, and the type and sufficiency of evidence required to prove, 'business necessity' as used in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and to overrule the treatment of business necessity as a defense in *Wards Cove Packing Co. Inc., v. Atonio*, 490 U.S. 642 (1989).

"(p) The term 'requirements for effective job performance' may include, in addition to effective performance of the actual work activities, factors which bear on such performance, such as attendance, punctuality, and not engaging in misconduct or insubordination.

"(q) The term 'respondent' means an employer, employment agency, labor organiza-

tion, joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof)."

SEC. 102. RESTORING THE BURDEN OF PROOF IN DISPARATE IMPACT CASES.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end thereof the following:

"(k) PROOF OF UNLAWFUL EMPLOYMENT PRACTICES IN DISPARATE IMPACT CASES.—(1)(A) An unlawful employment practice based on disparate impact is established under this title if a complaining party demonstrates that a disparate impact on the basis of race, color, religion, sex, or national origin results from an employment practice or group of employment practices, and the respondent fails to demonstrate that such practice or group of practices is required by business necessity, except that an employment practice or group of practices demonstrated to be required by business necessity shall be unlawful if the complaining party demonstrates that another available practice or group of practices with less disparate impact (which difference is more than merely negligible) would serve the respondent as well.

"(B) If a complaining party demonstrates that a disparate impact results from a group of employment practices, such party shall be required after discovery to demonstrate which specific practice or practices within the group results in disparate impact unless the court finds that the complaining party after diligent effort cannot identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact.

"(C) If the respondent demonstrates that a specific employment practice within a group of employment practices does not contribute in a meaningful way to the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

"(2) A demonstration that an employment practice is required by business necessity may be used as a defense only against a claim under this subsection.

"(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses an illegal drug as defined in Schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

"(4) The mere existence of a statistical imbalance in an employer's workforce on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation.

"(5) For purposes of this subsection, a respondent may rely upon relative qualifications or skills as determined by relative performance or degree of success on a selection factor, criterion, or procedure: *Provided*, That if such reliance results in a disparate impact based on race, color, religion, sex, or

national origin, such reliance must be demonstrated by the respondent to be required by business necessity."

SEC. 103. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2), as amended by section 102, is amended by adding at the end thereof the following:

"(1) DISCRIMINATORY PRACTICE NEED NOT BE SOLE MOTIVATING FACTOR.—Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for such employment practice, even though other factors also contributed to such practice."

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) is amended by inserting before the period in the last sentence the following: "or, in a case where a violation is established under section 703(1), if the respondent demonstrates that it would have taken the same action in the absence of any discrimination. In any case in which a violation is established under section 703(1), damages may be awarded only for injury that is attributable to the unlawful employment practice."

SEC. 104. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2), as amended by sections 102 and 103, is amended by adding at the end thereof the following:

"(m) FINALITY OF LITIGATED OR CONSENT JUDGMENTS OR ORDERS.—(1) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order resolving a claim of employment discrimination under the United States Constitution or Federal civil rights laws may not be challenged in a claim under the United States Constitution or Federal civil rights laws—

"(A) by a person who, prior to the entry of such judgment or order, had—

"(i) actual notice from any source of the proposed judgment or order sufficient to apprise such person that such judgment or order might affect the interests of such person and that an opportunity was available to present objections to such judgment or order; and

"(ii) a reasonable opportunity to present objections to such judgment or order;

"(B) by a person with respect to whom the requirements of subparagraph (A) are not satisfied, if the court determines that the interests of such person were adequately represented by another person who challenged such judgment or order prior to or after the entry of such judgment or order; or

"(C) if the court that entered the judgment or order determines that reasonable efforts were made to provide notice to interested persons.

A determination under subparagraph (C) shall be made prior to the entry of the judgment or order, except that if the judgment or order was entered prior to the date of the enactment of this subsection, the determination may be made at any reasonable time.

"(2) Nothing in this subsection shall be construed to—

"(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the original proceeding;

"(B) apply to the rights of parties to the action in which the litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

"(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

"(D) authorize or permit the denial to any person of the due process of law required by the United States Constitution.

"(3) Any action, not precluded under this subsection, that challenges an employment practice that implements and is within the scope of a litigated or consent judgment or order of the type referred to in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code."

SEC. 105. STATUTE OF LIMITATIONS; APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.

(a) **STATUTE OF LIMITATIONS.**—Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended—

(1) by striking out "one hundred and eighty days" and inserting in lieu thereof "540 days";

(2) by inserting after "occurred" the first time it appears "or has been applied to affect adversely the person aggrieved, whichever is later,";

(3) by striking out ", except that in" and inserting in lieu thereof ". In"; and

(4) by striking out "such charge shall be filed" and all that follows through "whichever is earlier, and".

(b) **APPLICATION TO CHALLENGES TO SENIORITY SYSTEMS.**—Section 703(h) of such Act (42 U.S.C. 2000e-2) is amended by inserting after the first sentence the following: "Where a seniority system or seniority practice is part of a collective bargaining agreement and such system or practice was included in such agreement with the intent to discriminate on the basis of race, color, religion, sex, or national origin, the application of such system or practice during the period that such collective bargaining agreement is in effect shall be an unlawful employment practice."

SEC. 106. PROVIDING FOR DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

(a) **DAMAGES GENERALLY.**—Section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) is amended by inserting before the last sentence the following: "With respect to an unlawful employment practice (other than an unlawful employment practice established in accordance with section 703(k)) or in the case of an unlawful employment practice under the Americans with Disabilities Act of 1990 (other than an unlawful employment practice established in accordance with paragraph (3)(A) or paragraph (6) of section 102(b) of that Act as it relates to standards and criteria that tend to screen out individuals with disabilities)—

"(A) compensatory damages may be awarded; and

"(B) if the respondent (other than a government, government agency, or a political

subdivision) engaged in the unlawful employment practice with malice, or with reckless or callous indifference to the federally protected rights of others, punitive damages may be awarded against such respondent;

in addition to the relief authorized by the preceding sentences of this subsection, except that compensatory damages shall not include backpay or any interest thereon. Compensatory and punitive damages and jury trials shall be available only for claims of intentional discrimination. If compensatory or punitive damages are sought with respect to a claim of intentional discrimination arising under this title, any party may demand a trial by jury."

(b) **LIMITATION ON PUNITIVE DAMAGES.**—Section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) is amended—

(1) by inserting "(1)" after "(g)"; and

(2) by adding at the end the following:

"(2) The amount of punitive damages that may be awarded under paragraph (1)(B) to an individual against a respondent shall not exceed—

"(A) \$150,000; or

"(B) an amount equal to the sum of compensatory damages awarded under paragraph (1)(A) and equitable monetary relief awarded under paragraph (1); whichever is greater."

SEC. 107. CLARIFYING ATTORNEY'S FEE PROVISION.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended—

(1) by inserting "(1)" after "(k)";

(2) by inserting "(including expert fees and other litigation expenses) and" after "attorney's fee";

(3) by striking out "as part of the"; and

(4) by adding at the end thereof the following:

"(2) No waiver of all or substantially all of an attorney's fee shall be compelled as a condition of a settlement of a claim under this title, except that nothing in this section shall be construed to limit the right to negotiate a settlement in which an attorney's fee is voluntarily waived in whole or in part.

"(3) In any action or proceeding in which any judgment or order granting relief under this title is challenged, the court, in its discretion and in order to promote fairness, may allow the prevailing party in the original action (other than the Commission or the United States) to recover from either an unsuccessful party challenging such relief or a party against whom relief was granted in the original action or from more than one such party under an equitable allocation determined by the court, a reasonable attorney's fee (including expert fees and other litigation expenses) and costs reasonably incurred in defending (as a party, intervenor or otherwise) such judgment or order. In determining whether to allow recovery of fees from the party challenging the initial judgment or order, the court should consider not only whether such challenge was unsuccessful, but also whether the award of fees against the challenging party promotes fairness, taking into consideration such factors as the reasonableness of the challenging party's legal and factual position and whether other special circumstances make an award unjust."

SEC. 108. PROVIDING FOR INTEREST, AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection (c), by striking out "thirty days" and inserting in lieu thereof "ninety days"; and

(2) in subsection (d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving non-public parties, except that prejudgment interest may not be awarded on compensatory damages".

SEC. 109. CONSTRUCTION.

Title XI of the Civil Rights Act of 1964 (42 U.S.C. 2000h et seq.) is amended by adding at the end thereof the following:

"SEC. 1107. RULES OF CONSTRUCTION FOR CIVIL RIGHTS LAWS.

"(a) **EFFECTUATION OF PURPOSE.**—All Federal laws protecting the civil rights of persons shall be interpreted consistent with the intent of such laws, and shall be broadly construed to effectuate the purpose of such laws to provide equal opportunity and provide effective remedies.

"(b) **NONLIMITATION.**—Except as expressly provided, no Federal law protecting the civil rights of persons shall be construed to repeal or amend by implication any other Federal law protecting such civil rights.

"(c) **INTERPRETATION.**—In interpreting Federal civil rights laws, including laws protecting against discrimination on the basis of race, color, national origin, sex, religion, age, and disability, courts and administrative agencies shall not rely on the amendments made by the Civil Rights and Women's Equity in Employment Act of 1991 as a basis for limiting the theories of liability, rights, and remedies available under civil rights laws not expressly amended by such Act."

SEC. 110. RESTORING PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS.

Section 1977 of the Revised Statutes of the United States (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end thereof the following:

"(b) For purposes of this section, the right to 'make and enforce contracts' shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.

"(c) The rights protected by this section are protected against impairment by non-governmental discrimination as well as against impairment under color of State law."

SEC. 111. VOLUNTARY AND COURT-ORDERED AFFIRMATIVE ACTION APPROVED; QUOTAS DEEMED UNLAWFUL EMPLOYMENT PRACTICE.

(a) **RULES OF CONSTRUCTION.**—Nothing in the amendments made by this Act shall be construed—

(1) to limit an employer in establishing its job requirements if such requirements are lawful under title VII of the Civil Rights Act of 1964, as amended; or

(2) to require, encourage, or permit an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex, or national origin, and the use of such quotas shall be deemed to be an unlawful employment practice under such title: *Provided*, That the amendments made by this Act shall be construed to approve the lawfulness of voluntary or court-ordered affirmative action that is—

(A) consistent with the decisions of the Supreme Court of the United States in employment discrimination cases; or

(B) in the absence of such decisions, otherwise in accordance with employment discrimination law; as in effect on the date of the enactment of this Act.

(b) DEFINITION.—For purposes of subsection (a), the term "quota" means a fixed number or percentage of persons of a particular race, color, religion, sex, or national origin which must be attained, or which cannot be exceeded, regardless of whether such persons meet necessary qualifications to perform the job.

SEC. 112. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

SEC. 113. APPLICATION OF AMENDMENTS AND TRANSITION RULES.

(a) APPLICATION OF AMENDMENTS.—The amendments made by—

(1) section 102 shall apply to all proceedings pending on or commenced after June 5, 1989;

(2) section 103 shall apply to all proceedings pending on or commenced after May 1, 1989;

(3) section 104 shall apply to all proceedings pending on or commenced after June 12, 1989;

(4) sections 105(a)(1), 105(a)(3) and 105(a)(4), 105(b), 106, 107, 108, and 109 shall apply to all proceedings pending on or commenced after the date of enactment of this Act;

(5) section 105(a)(2) shall apply to all proceedings pending on or commenced after June 12, 1989; and

(6) section 110 shall apply to all proceedings pending on or commenced after June 15, 1989.

(b) TRANSITION RULES.—

(1) IN GENERAL.—Any orders entered by a court between the effective dates described in subsection (a) and the date of enactment of this Act that are inconsistent with the amendments made by section 102, 103, 105(a)(2), or 110 shall be vacated if, not later than 1 year after such date of enactment, a request for such relief is made.

(2) SECTION 104.—Any orders entered between June 12, 1989 and the date of enactment of this Act, that permit a challenge to an employment practice that implements a litigated or consent judgment or order and that is inconsistent with the amendment made by section 104, shall be vacated if, not later than 6 months after the date of enactment of this Act, a request for such relief is made. For the 1-year period beginning on the date of enactment of this Act, an individual whose challenge to an employment practice that implements a litigated or consent judgment or order is denied under the amendment made by section 104, or whose order or relief obtained under such challenge is vacated under such section, shall have the same right of intervention in the case in which the challenged litigated or consent judgment or order was entered as that individual had on June 12, 1989.

(3) FINAL JUDGMENTS.—Pursuant to paragraphs (1) and (2), any final judgment entered prior to the date of the enactment of this Act as to which the rights of any of the parties thereto have become fixed and vested, where the time for seeking further judicial review of such judgment has otherwise expired pursuant to title 28 of the United States Code, the Federal Rules of Civil Pro-

cedure, and the Federal Rules of Appellate Procedure, shall be vacated in whole or in part if justice requires, pursuant to rule 60(b)(6) of the Federal Rules of Civil Procedure or other appropriate authority, and consistent with the constitutional requirements of due process of law.

(c) PERIOD OF LIMITATIONS.—The period of limitations for the filing of a claim or charge shall be tolled from the applicable effective date described in subsection (a) until the date of enactment of this Act, on a showing that the claim or charge was not filed because of a rule or decision altered by the amendments made by sections 102, 103, 105(a)(2), or 110.

SEC. 114. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) COMMITMENT TO RULE XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:

"No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment;

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap."

(2) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this Act, the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under the Americans with Disabilities Act of 1990 shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) PROPOSED REMEDIES AND PROCEDURES.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed

remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(7) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraphs (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraphs (1), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(1) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988), as incorporated into the Rules of the House of Representatives of the One Hundred Second Congress as Rule LI, or any other provision that continues in effect the provisions of such resolution.

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Of-

office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16).

SEC. 115. DISCRIMINATORY USE OF TESTS.

The first sentence of section 703(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(h)) is amended—

(1) by striking "to give and to" and inserting " , labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to give, use, or",

(2) by striking "test provided that" and inserting "test provided that (1)"; and

(3) by striking the period at the end and inserting the following:

"and (2) such test validly and fairly predicts without regard to the race, color, religion, sex, or national origin of such test takers, the ability of such test takers to perform the job with respect to which such test is used. If such test does not meet the criteria specified in paragraphs (1) and (2) of the preceding sentence, an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) may develop, give, use, or act upon the results of a test which satisfies such criteria or may use other non-discriminatory selection criteria, in a manner consistent with this title, which measure qualifications to perform the job."

SEC. 116. PROHIBITION OF DISCRIMINATORY USE OF TEST SCORES.

Section 704 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-3) is amended by adding at the end the following:

"(c) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) in connection with the selection or referral of applicants or candidates for employment or promotion to adjust test scores of, or use different cut-off scores for, a written employment test on the basis of the race, color, religion, sex, or national origin of individual test takers."

SEC. 117. ADEA STATUTE OF LIMITATIONS; NOTICE OF RIGHT TO SUE.

(a) STATUTE OF LIMITATIONS.—Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended—

(1) in paragraph (1)—

(A) by striking out "180 days" and inserting in lieu thereof "540 days"; and

(B) by inserting "or has been applied to affect adversely the person aggrieved, whichever is later" after "occurred"; and

(2) in paragraph (2), by striking out "within 300 days" and all that follows through "whichever is earlier" and inserting in lieu thereof "a copy of such charge shall be filed by the Commission with the State agency".

(b) NOTICE OF RIGHT TO SUE.—Section 7(e) of such Act (29 U.S.C. 626(e)) is amended—

(1) by striking out paragraph (2);

(2) by striking out the paragraph designation in paragraph (1);

(3) by striking out "Sections 6 and" and inserting "Section"; and

(4) by adding at the end thereof the following: "If a charge filed with the Commission is dismissed by the Commission, the Commission shall so notify the person aggrieved and within 90 days after the giving of such

notice a civil action may be brought against the respondent named in the charge by a person defined in section 11."

SEC. 118. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts amended by this Act.

SEC. 119. PROTECTION OF EXTRATERRITORIAL EMPLOYMENT.

(a) DEFINITION OF EMPLOYEE.—Section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) is amended by adding at the end the following: "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

(b) EXEMPTION.—Section 702 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1) is amended—

(1) by inserting "(a)" after "SEC. 702.", and

(2) by adding at the end the following:

"(b) It shall not be unlawful under section 703 or 704 for an employer (or a corporation controlled by an employer) labor organization, employment agency, or joint management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

"(c)(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 703 or 704 engaged in by such corporation shall be presumed to be engaged in by such employer.

"(2) Sections 703 and 704 shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

"(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

"(A) the interrelation of operations;

"(B) the common management;

"(C) the centralized control of labor relations; and

"(D) the common ownership or financial control;

of the employer and the corporation."

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to conduct occurring before the date of the enactment of this Act.

SEC. 120. CLARIFYING OTHER ATTORNEY'S FEE PROVISION.

The last sentence of section 722 of the Revised Statutes (42 U.S.C. 1988) is amended—

(1) by inserting "(including expert fees and other litigation expenses) and" after "attorney's fee"; and

(2) by striking out "as part of the".

TITLE II

SEC. 201. GLASS CEILING COMMISSION.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress finds that—

(A) despite a dramatically growing presence in the workplace, women and minorities remain underrepresented in executive, management and senior decisionmaking positions in business;

(B) artificial barriers exist to the advancement of women and minorities in employment;

(C) enforcement of Federal equal employment opportunity laws by Federal agencies has not effectively addressed such underrepresentation or eliminated such artificial barriers;

(D) the "Glass Ceiling Initiative" recently undertaken by the Department of Labor has been instrumental in raising public awareness of—

(i) the underrepresentation of women and minorities at the executive, management and senior decisionmaking levels in the United States work force; and

(ii) the desirability of eliminating artificial barriers to the advancement of women and minorities to such levels;

(E) the establishment of a commission to examine issues raised by the Glass Ceiling Initiative would help—

(i) focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to executive, management and senior decisionmaking positions in business; and

(ii) promote work force diversity; and

(F) a comprehensive study that includes analysis of the manner in which executive, management and senior decisionmaking positions are filled, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement, and the compensation programs and reward structures utilized in the corporate sector would assist in the establishment of practices and policies promoting opportunities for, and eliminating artificial barriers to, the advancement of women and minorities to executive, management and senior decisionmaking positions.

(2) PURPOSE.—The purpose of this section is to establish a Glass Ceiling Commission to study—

(A) the manner in which business fills executive, management and senior decisionmaking positions;

(B) the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement into such positions; and

(C) the compensation programs and reward structures currently utilized in the workplace.

(b) ESTABLISHMENT.—There is established a Glass Ceiling Commission (referred to in this section as the "Commission"), to conduct a study and prepare recommendations concerning—

(1) eliminating artificial barriers to the advancement of women and minorities in employment; and

(2) increasing the opportunities and developmental experiences of women and minorities to foster advancement of women and minorities to executive, management and senior decisionmaking positions in business.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 19 members—

(A) 3 individuals appointed by the President;

(B) 4 individuals appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate;

(C) 2 individuals appointed by the majority leader of the House of Representatives;

(D) 1 individual appointed by the minority leader of the House of Representatives;

(E) 2 individuals appointed by the majority leader of the Senate;

(F) 1 individual appointed by the minority leader of the Senate;

(G) 2 Members of the House of Representatives appointed jointly by the majority leader and the minority leader of the House of Representatives;

(H) 2 Members of the Senate appointed jointly by the majority leader and the minority leader of the Senate;

(I) the Secretary of Labor; and

(J) the Chairman of the Equal Employment Opportunity Commission.

(2) CONSIDERATIONS.—In making appointments under subparagraphs (A) and (B) of paragraph (1), the appointing authority shall consider the background of the individuals, including whether the individuals—

(A) are members of organizations representing women and minorities, and other related interest groups;

(B) hold executive, management or senior decisionmaking positions in corporations or other business entities; and

(C) possess academic expertise or other recognized ability regarding employment and discrimination issues.

(d) CO-CHAIRPERSONS.—The Secretary of Labor, and one individual appointed under subsection (c)(1)(B) who is designated jointly by the appointing authority, shall serve as the Co-chairpersons of the Commission.

(e) TERM OF OFFICE.—Members and Co-chairpersons shall be appointed for the life of the Commission.

(f) VACANCIES.—Any vacancy occurring in the membership of the Commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(g) MEETINGS.—

(1) MEETINGS PRIOR TO COMPLETION OF REPORT.—The Commission shall meet not fewer than five times in connection with and pending the completion of the report described in subsection (j)(2). The Commission shall hold additional meetings if the Co-chairpersons or a majority of the members of the Commission request the additional meetings in writing.

(2) MEETINGS AFTER COMPLETION OF REPORT.—The Commission shall meet once each year after the completion of the report described in subsection (j)(2). The Commission shall hold additional meetings if the Co-chairpersons or a majority of the members of the Commission request the additional meetings in writing.

(h) QUORUM.—A majority of the Commission shall constitute a quorum for the transaction of business.

(i) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Each member of the Commission who is not an employee of the Federal Government shall receive compensation at the daily equivalent of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the performance of duties for the Commission, including attendance at meetings and conferences of the Commission and travel.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, as authorized by sections 5702 and 5703 of title 5, United States Code.

(3) EMPLOYMENT STATUS.—A member of the Commission, who is not otherwise an employee of the Federal Government, shall not be deemed to be an employee of the Federal Government except for the purposes of—

(A) the tort claims provisions of chapter 171 of title 28, United States Code, and

(B) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

(j) STUDIES OF ADVANCEMENT OF WOMEN AND MINORITIES TO EXECUTIVE, MANAGEMENT AND SENIOR DECISIONMAKING POSITIONS IN BUSINESS.—

(1) STUDY.—The Commission shall conduct a study of opportunities for, and artificial barriers to, the advancement of women and minorities to executive, management and senior decisionmaking positions in business. In conducting the study, the Commission shall—

(A) examine the preparedness of women and minorities to advance to executive, management and senior decisionmaking positions in business;

(B) examine the opportunities for women and minorities to advance to executive, management and senior decisionmaking positions in business;

(C) conduct basic research into the practices, policies, and manner in which executive, management and senior decisionmaking positions in business are filled;

(D) conduct comparative research of businesses and industries in which women and minorities are promoted to executive, management and senior decisionmaking positions, and businesses and industries in which women and minorities are not promoted to executive, management and senior decisionmaking positions;

(E) evaluate the efficacy of enforcement (including, but not limited to, such enforcement techniques as litigation, complaint investigations, compliance reviews, conciliation, administrative regulations, policy guidance, technical assistance, training, and public education) of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment;

(F) compile a synthesis of available research on programs and practices that have successfully led to the advancement of women and minorities to executive, management and senior decisionmaking positions in business, including training programs, rotational assignments, developmental programs, reward programs, employee benefit structures, and family leave policies; and

(G) examine any other issues and information relating to the advancement of women and minorities to executive, management and senior decisionmaking positions in business.

(2) REPORT.—Not later than 15 months after the date of the enactment of this Act, the Commission shall prepare and submit to the President and the appropriate committees of Congress a written report containing—

(A) the findings and conclusions of the Commission resulting from the study conducted under paragraph (1); and

(B) recommendations based on the findings and conclusions described in subparagraph (A) relating to the promotion of opportunities for, and elimination of artificial barriers to, the advancement of women and minorities to executive, management and senior decisionmaking positions in business, including recommendations for—

(i) policies and practices to fill vacancies at the executive, management and senior decisionmaking levels;

(ii) developmental practices and procedures to ensure that women and minorities have access to opportunities to gain the exposure, skills, and expertise necessary to assume executive, management and senior decisionmaking positions;

(iii) compensation programs and reward structures utilized to reward and retain key employees; and

(iv) strategies for enforcement of Federal equal employment opportunity laws by Federal agencies as a means of eliminating artificial barriers to the advancement of women and minorities in employment.

(3) ADDITIONAL STUDY.—The Commission may conduct such additional study of the advancement of women and minorities to executive, management and senior decisionmaking positions in business as a majority of the members of the Commission determines to be necessary.

(k) POWERS OF THE COMMISSION.—The Commission is authorized to—

(1) hold such hearings and sit and act at such times;

(2) take such testimony;

(3) have such printing and binding done;

(4) enter into such contracts and other arrangements in any fiscal year only to such extent or in such amounts as are provided in appropriations Acts;

(5) make such expenditures; and

(6) take such other actions;

as the Commission may determine to be necessary to carry out the duties of the Commission.

(l) OATHS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(m) OBTAINING INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency such information as the Commission may require to carry out its duties.

(n) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Co-chairpersons of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

(o) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of property in order to carry out the duties of the Commission.

(p) USE OF MAIL.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(q) CONFIDENTIALITY OF INFORMATION.—

(1) INDIVIDUAL BUSINESS INFORMATION.—Except as provided in paragraph (2), and notwithstanding section 552 of title 5, United States Code, in carrying out the duties of the Commission, including the duties described in subsection (j), the Commission shall maintain the confidentiality of all information that concerns—

(A) the employment practices and procedures of individual businesses; or

(B) individual employees of the businesses.

(2) CONSENT.—The content of any information described in paragraph (1) may be disclosed with the prior written consent of the business or employee, as the case may be, with respect to which the information is maintained.

(3) AGGREGATE INFORMATION.—In carrying out the duties of the Commission, the Commission may disclose—

(A) information about the aggregate employment practices or procedures of a class or group of businesses; and

(B) information about the aggregate characteristics of employees of the businesses, and related aggregate information about the employees.

(r) STAFF AND CONSULTANTS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Commission may appoint and determine the

compensation of such staff as the Commission determines to be necessary to carry out the duties of the Commission.

(B) LIMITATIONS.—The rate of compensation for each staff member shall not exceed the daily equivalent of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day the staff member is engaged in the performance of duties for the Commission. The Commission may otherwise appoint and determine the compensation of staff without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(s) EXPERTS AND CONSULTANTS.—The Co-chairpersons of the Commission may obtain such temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(t) DETAIL OF FEDERAL EMPLOYEES.—On the request of the Co-chairpersons of the Commission, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the Commission to assist the Commission in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(u) TECHNICAL ASSISTANCE.—On the request of the Co-chairpersons of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section. Such sums shall remain available until expended, without fiscal year limitation.

(w) TERMINATION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the Commission shall terminate 4 years after the date of the enactment of this Act.

SEC. 202. PAY EQUITY TECHNICAL ASSISTANCE.

(a) STATEMENT OF PURPOSE.—Recognizing that the identification and elimination of discriminatory wage-setting practices and discriminatory wage disparities is in the public interest, the purpose of this section is to help eliminate such practices and disparities by—

(1) providing for the development and utilization of techniques that will promote the establishment of wage rates based on the work performed and other appropriate factors, rather than the sex, race, national origin, or ethnicity of the employee; and

(2) providing for the public dissemination of information relating to the techniques described in paragraph (1), thereby encouraging and stimulating public and private employers, through the use of such techniques, to correct wage-setting practices and eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors.

(b) PROGRAM SPECIFICATIONS.—In order to carry out the purpose of this section, the Secretary of Labor shall develop and carry out a continuing program relating to pay equity. Such program shall include—

(1) the dissemination of information on efforts being made in the private and public sectors to reduce or eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors;

(2) the undertaking and promotion of research into the development of techniques to reduce or eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors; and

(3) the provision of appropriate technical assistance to any public or private entity requesting such assistance to correct wage-setting practices or to eliminate wage disparities, to the extent that they are based on the sex, race, national origin, or ethnicity of the employee, rather than the work performed and other appropriate factors.

(c) DEFINITION.—For the purpose of this section, the term "other appropriate factors" includes factors such as—

(1) the skill, effort, responsibilities, and qualification requirements for the work involved, taken in their totality;

(2) geographic location and working conditions; and

(3) seniority, merit, productivity, education, and work experience.

SEC. 203. SUBMISSION OF EEOC SUMMARY AND ANALYSIS OF EQUAL EMPLOYMENT OPPORTUNITY DATA.

Section 705(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(e)) is amended by inserting after the first sentence the following: "The Commission shall include in each such report a summary and analysis of data submitted by employers concerning employment opportunities by sex, race, national origin, or ethnicity occurring among and within industries and occupational groups."

SEC. 204. EDUCATION AND OUTREACH.

Section 705(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following:

"(2)(A) In exercising its powers under this title, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

"(i) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

"(ii) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination; concerning rights and obligations under this title or such law, as the case may be.

"(B) As one means of satisfying the requirements specified in subparagraph (A), the Commission may make grants to State or local governmental entities, or public or nonprofit private organizations."

SEC. 205. ANNUAL REPORT BY OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS.

Section 718 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-17) is amended—

(1) by inserting "Programs" after "Compliance"; and

(2) by adding at the end the following:

"At the close of each fiscal year, the Office of Federal Contract Compliance Programs shall submit to the Congress and to the President a report that includes—

"(1) a summary and analysis of affirmative action reports submitted to such Office by employers who enter into Government contracts; and

"(2) an analysis of employment opportunities and wage differentials by sex, race, national origin, or ethnicity occurring among and within industries, occupations, job groups, and job titles."

The CHAIRMAN. Under the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 30 minutes, and a Member opposed will be recognized for 30 minutes.

Does the gentleman from Illinois [Mr. HYDE] stand in opposition?

Mr. HYDE. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, civil rights is important in the American experience because it is this society's most visible reaffirmation of our continuing commitment to the bill of rights. The debate over the nature and extent of that commitment is a valid and necessary one if we are to pursue the twin pillars guaranteed by our Constitution—that of individual opportunity and individual liberty. Neither can be permitted to suffer at the other's expense.

But let us be clear about one point: We are now debating civil rights in 1991 not because of political expediency. We are debating civil rights because civil rights in the employment area have been set back 25 years by a string of disastrous Supreme Court decisions.

We have now reached a point in the debate when I think most Members will be able to fully appreciate the work embodied in the bipartisan substitute. Two months ago, I presided over a markup of the House Judiciary Committee of H.R. 1, a bill I introduced on the first day of the 102d Congress. At that time, the bill passed without amendment. Chairman FORD, presiding in the House Education and Labor Committee, presided over a similar markup that produced a similar result. Quite simply, the bill as reported addressed in a forthright manner the issues raised by these five recent decisions by the Supreme Court.

Unfortunately, subsequent events overtook the careful and good efforts of everyone involved in the two committees who moved H.R. 1 forward. Those events included the intense and good faith negotiations between members of the business community and the civil rights community, the disruption of those discussions by the White House as they began to come to fruition, and a stream of unceasing rhetoric from the White House about the mystical existence of quotas in a bill that had absolutely nothing to do with preferences.

However, just as subsequent events overtook the original H.R. 1, I believe they have finally overtaken the President's cynical ploy of saying the word

"quota" without respect to the substance of the legislation as well. By attacking the issues head on, by listening to the input of a wide range of legislators as well as the business community, the bipartisan substitute has come to be recognized as both a good bill and a fair bill. During yesterday's debate, the change was leveled that it is a lawyers' bill. Yes, that is correct. It has to be a lawyers' bill since the sole purpose of the legislation is to remedy five highly complex and technical decisions handed down by the Supreme Court. Unlike 1964 and 1965, this is not the occasion for broad-stroke legislation or bold and novel ideas. Yet, despite the complexity of the subject matter, the simplicity of the legislative goal remains clear—that of restoring what had been the law and what had been the operating procedures for the past 25 years before the Supreme Court decided to change the rules in midcourse.

In the swirl of rhetoric surrounding this debate, I believe it is essential to go straight to the core provisions of the Brooks-Fish substitute. Those key areas involve the questions of damages, the legal standard of business necessity, the burden of proof, question of adjusting test scores, and quotas. On the question of the burden of proof, a fallacy has been perpetrated in some of the debate witnessed yesterday. That fallacy maintains that the bipartisan substitute would somehow shift the burden of proof to the employer, while the President's bill would not. That is simply not true; both bills recognize the fallacy of the Supreme Court's change in this area, and there should be no further confusion on this point.

With respect to damages, you are also well aware that in the substitute there is a cap on punitive damages in cases of intentional discrimination of \$150,000, or the amount of compensatory damages, whichever is greater. This is the identical provision that the Members voted on last Congress and which passed this body in overwhelming fashion. Let us remember that on the issue of damages, damages only apply to cases of intentional discrimination and not to cases of unintentional discrimination that may have a discriminatory impact. In those cases, the bill provides that victims of unintentional discrimination will receive only equitable relief, such as back pay and reinstatement.

In defending against a discrimination case, businesses may show that employment practices that have resulted in unintentional discrimination were taken because they bore a significant and manifest relationship to the business practice in question. With that showing of business necessity, a case of unintentional discrimination will not lie.

Important to note is that the standard utilized—that of "significant and

manifest"—is taken directly from the language of the 1971 Supreme Court decision *Griggs versus Duke Power Co.* Time and time again, the White House and the Attorney General have gone on record as saying that the key to city rights legislation was the restoration of *Griggs* as the operative standard. This has been done.

Subsequent to the markup of H.R. 1, the so-called issue of race norming of test scores was raised to fever pitch. Though not related in any fashion to the substance of the five Supreme Court decisions under review, it was felt that a responsible civil rights act in 1991 had to deal with that issue as well. For that reason, the Brooks-Fish substitute outlaws race norming and provides that if you cannot utilize a test that validly and fairly predicts the ability of the test taker to perform the job, then you, as an employer, may use other methods to assist you in the employee selection process.

Finally, there is the quota issue. The Members are all well aware that even before the President saw the revised bill, he was quoted through his Press Secretary as saying that it was still a quota bill. The unassailable fact is that, quite to the contrary, my substitute will for the first time state in law that quotas are an unlawful employment practice and that any person will have a cause of action if they are harmed by a quota. The sharp contrast between the shrillness of the President's charges and the silence of his bill to address the very issue which he has inflamed, is curious, to say the least. Nevertheless, the issue is a false one and should be dismissed from substantive debate.

In crafting this balanced substitute, we have had the vital input of a number of Members who made extraordinary efforts to dig into the difficult substantive issues. They read cases; they posed questions; and they were always ready to listen. This substitute bears their imprint and they can deserve and receive our sincere thanks. In addition, the understandings reached by the business community and civil rights groups are preserved in the substitute. Their willingness to work together under intense outside pressure shows that such alliances are possible when the stakes are so high and when good will is present.

Finally, the willingness of both parties to rise above the level of partisan politics and pursue the higher ground of principle decisionmaking have helped restore the type of bipartisan consensus that has always characterized the civil rights effort in this body for 40 years. I want to extend particular thanks to the ranking minority member of the committee, Mr. FISH, for his assistance, counsel, and complete dedication to achieving a fair and balanced piece of legislation. By ignoring the naysayers and those who would

inflame passions over reason, he and others have moved the debate forward in our effort worthy of the civil rights legislative tradition.

This may be a tough vote for some of you—it will require you to take a personal stand, to decide whether you will support the principles that made this Nation great. The bill is a good one and a fair one, and it certainly deserves your support.

□ 1050

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, in the few minutes left it is impossible to spell out in detail why this bill is quota-friendly, but Justice Sandra Day O'Connor anticipated H.R. 1 back in 1988, when in the case of *Watson versus Fort Worth*, she said, and I quote, "If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted."

The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met.

Now, H.R. 1 does not outlaw quotas. Its definition of quotas only outlaws them if you hire unqualified people. Nobody does that. As long as the threat of jury trials with unlimited damages is in this bill, it is a quota bill.

□ 1100

Now, civil rights under this bill becomes something you measure by computer. It becomes a game of statistics. It assigns your civil rights by your membership in a group, not as an individual citizen.

As to race norming on employment tests, H.R. 1 only appears to outlaw this fraudulent practice. What they actually outlaw is valid and honest testing. So what they give with the one hand they take away with the other.

I want to talk about divisiveness, the divisiveness of hiring by racial and ethnic preferences which is the heart and soul of H.R. 1. There is afoot in this world a great centrifugal force, the Serbians fighting Croatians, the Catholics fighting Protestants in Northern Ireland, Ethiopians fighting Eritreans, Armenians versus Moldavians, Georgians, Uzbekistanis, Kazakhstanis, and even in Canada, we have a separatist movement in Quebec. It seems that the world is coming apart at the seams. We need a centripetal force to bring us together. We have that unifying force in our constitutional promise of equal protection of the law, and that constitutional promise resonates like a tuning fork with the Civil Rights Act of 1964 which forbids discrimination based on race, ethnicity, religion, and gender, and because it fine-tunes our

Constitution, it has the support of most Americans.

We, as a nation, solved our tribal problems by insisting that it was individuals who have rights and rejecting the notion of group rights. I once heard Ronald Reagan remark that you could move to Germany and become a German citizen but you would never be a German; you could move to France and become a French citizen, but you will never be a Frenchman; but no matter who you are and where you come from, you come to America and become a citizen, you are an American. We are a multiethnic and a multiracial nation, and we are the envy of the world, because it's the individual that counts, not race, not gender, not group.

We need to emphasize our shared national identity.

This legislation pits group against group, race against race, ethnic against ethnic. It is a backward leap from 1964 and the Civil Rights Act.

You cannot fight discrimination with discrimination. It is like treating a man who is bleeding to death with leeches.

The civil rights crusade which is one of the shining moments in the history of self-government has been hijacked by certain groups bent on group entitlement. Let us vote no on H.R. 1 and, thus, reaffirm our Constitution and the Civil Rights Act of 1964.

Mr. Chairman, of course, I oppose the Brooks-Fish substitute. It contains supposed antiquota language that does not ban quotas and, in fact, encourages them. The language they have chosen—whether unintentional or intentional—simply does not work. In addition, this substitute contains no real limitation—no real cap—on damages. Damages, of course, are the primary problem in this bill for America's employers.

Also, once again, they have chosen not to use the language from the holding in the Griggs case. So, a new business necessity test in disparate impact cases will confuse employees and prompt extensive litigation.

Again, I must stress that the language they have put in their substitute ostensibly to resolve the questions I have raised regarding the problem of race norming will leave the opposite effect. Their language means that employers will have to undertake lengthy, expensive validation studies and may not be able to use existing aptitude tests at all.

In my estimation, this substitute proposes to do far more than merely restore title VII of the Civil Rights Act of 1964 to its legal posture prior to a series of Supreme Court decisions that occurred in May and June 1989. Instead, for the first time, this legislation will allow the recovery of compensatory and punitive damages in employment discrimination cases under title VII. It will encourage costly and unnecessary litigation, delays in settling disputes, jury trials and large damage awards. Furthermore, because disparate treatment cases are often built on statistics, quotas will be the easiest and surest way for an employer to protect against these new and potentially expensive remedies in H.R. 1.

The Brooks-Fish substitute contains the same cap on damages as was adopted on the House Floor last year. Of course, it is a phony cap—in reality, it is not a cap at all. First of all, compensatory damages would be left unlimited and unchanged. Second, the real measurement of possible punitive damages becomes whatever a plaintiff is awarded in compensatory damages. Under the language, a plaintiff can receive up to \$150,000 in punitive damages or an amount of punitive damages equal to compensatory damages, whichever is greater. So, if a plaintiff recovers \$1.5 million in pain and suffering, they also could receive up to \$1.5 million in punitive damages as well. It is not a cap that gives much aid and comfort to employers.

Another much discussed, but little understood, aspect of this debate focuses on the employer's burden of proof in disparate impact; that is, unintentional discrimination cases. Here again, the proposed substitute does not restore the same evidentiary standards that were used in disparate impact cases prior to the Supreme Court's *Wards Cove* decision. It contains a totally new definition of "business necessity." It still permits a plaintiff to lump all of an employer's employment practices together, merely allege they have a discriminatory impact and attack an employer's bottom line work force numbers. Under this substitute if, after discovery, a plaintiff is still unable to identify the specific employment practice causing disparity, the judge still has the discretion to waive that requirement. In the face of these blanket allegations, an employer would then have to prove that each and every one of its hiring practices either had no statistical effect or was required by business necessity.

Further, effective job performance becomes the standard for hiring or promotion decisions. Employers will be discouraged from considering a prospective employee's long range potential for promotion and be forced to hire persons who may only meet the minimum requirements of the job at hand. It will be an unfair employment practice to hire for excellence, not merely for adequacy.

Once again, the civil rights groups and their supporters have chosen not to deal with the problematic language in this legislation that will inevitably lead to quotas. Instead, they have come up with another new version of the term "required by business necessity." Now, they want employers to prove that there is a significant, as well as manifest, relationship between employment practice and the job in question. What does significant mean? The language they have selected has never been used in any court in any case interpreting the disparate impact theory. This language has been the focus of no hearings, no testimony and there is virtually no legislative history as to what it could mean. What it really means is total uncertainty for an employer.

What an employer has to prove to justify the business necessity of a specific employment practice ought to be governed by the landmark holding in the 20-year-old Griggs decision and the subsequent cases applying the Griggs standard. In stark contrast to the Brooks-Fish substitute, the administration's bill would codify the exact holding of Griggs in its definition of business necessity—"manifest relationship to

the employment in question." This very language, by the way, has been cited in every subsequent Supreme Court case discussing the disparate impact theory since 1971.

Unquestionably, quotas will be the natural result of the new, untested and financially threatening language in both the reported version of H.R. 1 and the new alternative. Employers will simply choose to hire by the numbers to protect themselves against lengthy, complicated, and expensive law suits.

As both President Bush and the Attorney General have stated, the language contained in new section 111 that purportedly outlaws quotas is a hoax and farce. It simply takes away what it pretends to give.

Proponents of the Brooks-Fish substitute argue that this language outlaws quotas. But by its very terms, it's only a quota if:

First, an employer hires a fixed number or a fixed percentage based upon their race, color, religion, sex, or national origin;

Second, an employer actually reaches; that is, attains the specific number or percentage; and

Third, an employer hires persons, regardless as to whether they are qualified.

Ironically, this provision actually could encourage quotas because employers could hire solely based upon race, ethnicity or sex, but still easily evade the new Federal prohibition against quotas. Goals and preferences that actually amount to quotas would still be allowed. It encourages employers to hire marginally qualified persons, rather than search for excellence. Most importantly, this substitute does nothing to alter the provisions contained elsewhere in H.R. 1 that actually cause the quota problem; that is, the language on disparate impact cases and damages.

Last, but not least, I want to comment on the language in the Brooks-Fish substitute that again claims one thing but does another. The substitute's proponents say they are outlawing the practice known as "within group norming," or as it is sometimes called "race norming." This practice, which I have criticized publicly, is totally inconsistent with the principles and intent of title VII. "Within group norming" is a method of adjusting or altering the results of employment aptitude tests. Under this so-called score adjustment strategy, an individual's actual score is converted into a percentile reflecting that person's score compared only to others in his or her own racial or ethnic group. A group-based percentile score is then substituted for an individual's real score. Actual scores become meaningless and the job relatedness value of these tests is subsumed in favor of achieving a certain racial or ethnic mix. Typically, persons who score higher on the underlying test appear to have scored lower once their within group percentages are substituted for their actual score.

While this employment practice has only recently received media attention, the practice itself is not new. In fact, it dates back more than a decade, where it has been continuously used by State employment services across the Nation with the active encouragement of the U.S. Labor Department. As of April 15, 1991, the norming scoring method was being used in 34 States as well as by numerous private employers.

But the substitute chooses to deal with this problem by creating a new and potentially worse problem. It appears that the civil rights advocates now want to prevent employers from using any aptitude tests at all. I have objected to a scoring method tied to race or ethnicity. Now, rather than deal effectively with that discriminatory practice, the social engineers want to outlaw tests.

Here, we are not just talking about potential quotas. This practice is aimed at achieving a particular racial/ethnic makeup in a work force—it is an employment practice specifically aimed at the establishment of a quota hiring system. Now, I thought title VII meant that employment decisions should be made without regard to race, color, religion, sex, or national origin. Further, this legislation—which amends title VII—is also supposed to be about equal employment opportunity and not statistical fixes.

The Brooks-Fish substitute contains two sections—section 115 and 116—ostensibly dealing with the issue of discriminatory test scoring. But, section 115 permits employment tests only if such tests validly and fairly predict an individual's ability to perform a specific job, without regard to race, color, religion, sex, or national origin. Importantly, the provision contains no definition of "valid" and "fair." "Fairness," in particular, is a highly subjective term. In the context of aptitude testing, fairness can mean many different things to many different people.

"Validly" connotes applying the formal validation techniques of the industrial psychologist. It implies that anything less than a full blown sophisticated study cannot be used in defense of charges. This is a clear path to quotas. "Fairly" is not a technical term. Many people are promoting their own definitions of "fairness" these days and claiming scientific support for such definitions, when in fact there is no such support. The term "fairly" can only lead to endless litigation. The word "predicts" implies a type of validation that involves a statistical study. The common typing test and experience requirements, based on the content of the job would be in jeopardy.

Because of the vagueness and lack of definition this language will prompt years of litigation, with the courts ultimately deciding what these terms mean. In the intervening period, employers will have to run expensive statistical and validation studies, even if their test has no adverse impact on minorities or women. Further, the language states that a test can only be used to measure aptitude for a specific job. Tests could only be used to measure qualifications of the job at hand. This provision may well prevent the use of tests to gauge a employee's general aptitude or long range potential for promotions.

At best, section 115 will discourage the use of employment related aptitude tests by employers as well as by public and private employment agencies. At worst, aptitude testing could be jeopardized. Under current law, an employer or employment agency can use an aptitude test, if its general job relatedness can be demonstrated. This section will place a much greater burden on employers, in an attempt to either outlaw all employment aptitude testing or severely restrict its use. Tests are "employment practices" that should be judged

under the same standard as all other employment practices—the business necessity test. Once a plaintiff claims adverse impact through a showing of statistical disparity, an employer should be able to justify the business necessity of a test by showing that it is job related and that no less discriminatory alternative is available which measures the tester in the same manner.

Section 116 says it outlaws race norming, but while the language is patterned after my amendment, there are some major changes that could alter the legal result. Of course, the restrictive language in the preceding section 115 strongly devalues and undermines the utility of the language in section 116. Further, section 116 says it only applies to written employment tests. What about aptitude tests that measure manual dexterity? What about tests taken on computers or scored on computers? What about routine typing tests?

In addition, the prohibition only applies to "individual test takers." Does this language mean that scores may continue to be adjusted for groups of test takers? It may be an attempt to raise a question that could later be litigated, as to whether or not this language only prohibits score adjustments for individuals and not score adjustments for particular racial or ethnic groups.

Unfortunately, the amendment that I offered in the House Judiciary Committee and which was contained in the Michel substitute, is the only language that would clearly end this discriminatory practice without any other adverse side effects. It is very unfortunate that this House, because of a restrictive rule, never had an opportunity to vote on my amendment separately.

Mr. Chairman, for all of these reasons and more, the Brooks-Fish substitute deserves to be rejected by this House. If adopted, I will continue to work to make sure that this counterproductive proposal does not become law.

Mr. Chairman, I reserve the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New York [Mr. FISH] for the purpose of a colloquy.

Mr. FISH. Mr. Chairman, I am going to introduce into the RECORD of the debate a statement concerning the antiquota provisions of the Brooks-Fish substitute. You are familiar with my statement, and I would like to ask you whether you find such statement consistent with your views of these provisions.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. FISH. I am happy to yield to the gentleman from Texas.

Mr. BROOKS. Yes, I find the remarks reflective of the understandings and intent behind the antiquota provisions, as already enunciated in my colloquy with the majority leader, Mr. GEPHARDT, during general debate. Together with the colloquy with Mr. GEPHARDT, this statement should constitute the authoritative legislative history on the antiquota provisions.

Mr. FISH. Mr. Chairman, on behalf of the chairman, the gentleman from

Texas [Mr. BROOKS], and myself, I would like to address the antiquota provisions of the Brooks-Fish substitute found in section III of the bill, and I am incorporating the document which I discussed with Chairman BROOKS into my remarks at this point in the RECORD.

JOINT STATEMENT OF THE SPONSORS OF THE BROOKS-FISH SUBSTITUTE REGARDING ANTI-QUOTA PROVISIONS

On behalf of Chairman Brooks and myself, I would like to address the anti-quota provisions of the Brooks-Fish substitute, which are found in section 111 of the bill. While it was always clear in our view that H.R. 1 would not lead to quotas, since it would simply restore the *Griggs* rule which was in effect for 18 years without causing quotas, our provisions in section 111 provide even further guarantees and make this an anti-quota bill.

Specifically, with respect to quotas, section 111 states that nothing in the bill may be construed to "require, encourage, or permit an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex, or national origin," and that the use of such quotas "shall be deemed to be an unlawful employment practice" under title VII. Therefore, section 111 explicitly bans the use of hiring or promotion quotas.

In addition, in stating that the use of such quotas is deemed to be an unlawful employment practice, that means that the full range of title VII remedies would be explicitly made available to anyone victimized by an illegal quota, including injunctive relief, back pay, and, in the case of intentional use of an illegal quota, damages as well. Voting for the Brooks-Fish substitute is clearly voting against the use of quotas.

We would like to address the definition of quota in section 111(b). That section defines a quota as a "fixed number or percentage of persons of a particular race, color, religion, sex, or national origin which must be attained, or which cannot be exceeded, regardless of whether such persons meet necessary qualifications for the job." This section purposely incorporates language used by Justice Sandra Day O'Connor in *Local 28 of Sheet Metal Workers v EEOC*, 106 S.Ct. 3019, 3060 (1986), wherein she refers to a quota as a "fixed number or percentage which must be attained or which cannot be exceeded, and would do so regardless of the number of potential applicants who meet necessary qualifications."

Some have erroneously claimed that because the definition contains the phrase "regardless of whether such persons meet necessary qualifications for the job," the legislation would automatically permit use of fixed numbers or percentages of qualified persons. That is not correct.

The phrase "regardless of qualifications" does not have that meaning. Instead, that phrase simply explains that, in accordance with Justice O'Connor's definition, a quota refers to the use of fixed numbers or percentages *whether or not* job applicants are qualified. It means hiring or promoting by the numbers whether or not it would involve qualified or unqualified persons. Under our substitute, incorporating as we do Justice O'Connor's definition, the use of fixed numbers or percentages whether or not job applicants are qualified is a quota and is made illegal.

In our view, this definition clarifies what is wrong with quotas and why they are discriminatory. First, quotas focus an employer's attention exclusively on an individual's

race, color, religion, sex, or national origin, rather than on an individual's skills, abilities, potential, and other factors relevant to job performance. Second, quotas can operate as a self-limiting ceiling on affirmative action efforts. Third, quotas may act to exclude qualified individuals unfairly.

In addition, the assertion that the legislation would permit blanket use of fixed numbers or percentages with respect to qualified persons is wrong for another reason. Section 111 approves of voluntary or court-ordered affirmative action, if it is consistent with the decisions of the Supreme Court or otherwise in accord with employment discrimination law as of the date of enactment of the legislation. Under Supreme Court decisions and title VII law, use of numbers or percentages even of fully qualified persons is permitted only under particular, specific circumstances. This legislation does not expand the use of numbers or percentages beyond what was permissible under the previous affirmative action decisions of the Supreme Court and related employment discrimination law as of the date of enactment of this legislation.

Some questions have been raised about the fact that the "proviso" clause in section 111 is worded differently than in section 13 of H.R. 1. The Brooks-Fish substitute now stated that it should be construed to "approve" affirmative action where consistent with Supreme Court decisions or other law, while H.R. 1, as reported, previously stated that nothing in the bill was to affect the validity of such affirmative action. However, no difference in meaning is intended. The intent of the provision remains the same: to leave things where they were before passage of the Brooks-Fish substitute with respect to the validity of affirmative action.

With respect to the proviso, it is not necessary for Congress to examine all the Supreme Court's decisions on affirmative action specifically before stating that the Act should be construed to approve the lawfulness of affirmative action that is consistent with these decisions. The antiquota language is being inserted to address a number of concerns about demonstrating that Congress does not approve any form of discrimination. At the same time, in taking this step, Congress is making clear that in stating that quotas are prohibited, it is most certainly not affecting lawful affirmative action. That is the reason for the wording of this proviso. The bill simply says that the Supreme Court's decisions on affirmative action will be as valid on the day after we pass this bill, including this bill's ban on quotas, as they were the day before.

Finally, opponents of the bill have asserted that it would cause problems for employers, because the disparate impact provisions would lead them to adopt quotas while the antiquota provisions would make them liable if they adopt them. That assertion is flatly wrong. All employers need to do is what most of them did while Griggs was the law between 1971 and 1989—adopt fair and non-discriminatory job practices. This bill now makes clear that all workers are protected from illegal job bias. Any member of Congress who is against discrimination and against quotas should vote for this bill.

Mr. HYDE. Mr. Chairman. I yield such time as he may consume to the gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Chairman, I rise in opposition to H.R. 1.

Mr. Chairman, it is with regret and a good deal of frustration that I must rise here today

in opposition to the Democratic leadership's compromise civil rights bill. I should not have to. This body should be considering a reasonable bill to address discrimination in the workplace. Instead, we are discussing a bill that will ensure full employment for lawyers.

Make no mistake about it, there is a real need to address job discrimination. Everyone in this Chamber wants to establish effective legislation to protect minorities and women from bias. But this bill does not do that.

What this bill does, Mr. Chairman, is force employers to protect themselves from devastating lawsuits by establishing quotas. What other choice will businesses have? Advocates of this bill claim that language strictly prohibits quotas. I see. Now firms will be sued into the ground if they do not come up with quotas and they will be prosecuted if they do.

Either way, the small businessman loses and the lawyers win. And job discrimination is still not addressed.

This bill does not deal with the problems that minorities face in the workplace. And because of that I fear that we will be revisiting this issue in the very near future. Let us not create a situation where employers have to guess how Congress might restructure civil rights law in 5 years.

But there is another significant reason why I cannot vote for this bill. And the most frustrating thing is that it should have been worked out long before this bill came to the floor.

Because this bill does not include an equitable and fair remedy for a small firm that employs many Alaskans, I cannot support this bill.

The company I am speaking of is the Wards Cove Packing Co. which has been to court on eight separate occasions, and on each of those appearances, the courts have found Wards Cove innocent. Eight times. It has spent 20 years and \$2 million clearing its name. Wards Cove was even found innocent under the very Griggs standards that the Civil Rights Act seeks to restore.

But now if this bill passes, Wards Cove will have to retry this entire case again. You see, the plaintiffs have filed an eighth appeal to the case solely hoping to keep the issue alive. If this bill passes, it would require that the Wards Cove case start over again using altogether new standards.

Wholesale relitigation of this case would be totally unfair to a company that has consistently been found innocent in court. It would put this firm out of business.

And the most frustrating aspect of this problem is that I should not have to be speaking here in opposition to this bill. Instead, I should be promoting my amendment to this bill that would take care of this problem. But my amendment was not included in the rule. And that's just plain wrong.

It is wrong because my amendment was very simple and very specific. It is wrong because it would allow a final decision in this case but would prevent wholesale relitigation. It is wrong because my amendment enjoyed wide bipartisan support. And it is wrong because without a remedy for Wards Cove I cannot vote for this bill.

This is not a plea to exempt Wards Cove from any civil rights law. Far from it. Wards

Cove has been found innocent eight times. It would provide for a final resolution to this drawnout case instead of suddenly forcing a complete overhaul of the case.

If nothing else, let me make one thing perfectly clear. This compromise does not remedy the Wards Cove problem. The plaintiff has filed yet another appeal, and with the case still technically alive it would have to be retried under the new civil rights guidelines.

I originally pushed to have this problem resolved in committee. But it was not. I then pushed to have it corrected in the leadership compromise. But it was not. Finally, I asked that a very straightforward amendment be included in the rule. But it was not.

Even the civil rights groups I speak with don't have a problem with a specific exemption for Wards Cove. But why is it that the Democratic leadership cannot accept this idea? I have yet to hear a good reason.

And now after all this I am asked to vote for this bill. But I can not. This is a quota bill and it shifts the burden of proof, and I cannot support this bill because it could well put a small firm under.

To supporters of this bill I say you really dropped the ball. I guess it merely proves that the only rights this bill will protect are those that encourage endless litigation.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. GOODLING], the ranking member of the Committee on Education and Labor.

Mr. GOODLING. Mr. Chairman, I spoke at some length earlier about the Brooks-Fish substitute and why I believe it fails to respond to either the quota charge or to the charge that it creates a litigation bonanza that is not designed to provide real relief to the victims of workplace discrimination.

At the risk of repeating myself, I want to reiterate why I sincerely believe the Brooks-Fish substitute is not good civil rights legislation.

The opposition to H.R. 1 and its various manifestations, including Brooks-Fish, focuses on two issues, quotas and damages. This is not to say that there are not a lot of other provisions in the substitute, attorneys' fees, Martin versus Wilks and retroactivity, to name a few that are quite troubling, and then there are also many new issues not even in H.R. 1 as it was originally introduced.

Mr. Chairman, for the past year and a half, we have argued the quota implications of H.R. 4000 and H.R. 1 are caused by the bills' substantive provisions, namely, the rules of proof in disparate-impact cases which are stacked against employers, and the availability of punitive and compensatory damages in intentional discrimination class actions based on statistical proof which will drive employers to covertly hire and promote by the numbers to avoid costly litigation.

Thus, the only way to respond to the quota call is to make real changes to the substantive provisions to ease the pressure on employers to avoid litiga-

tion. The Brooks-Fish substitute fails to do this.

The Brooks-Fish substitute contains yet another novel definition of business necessity that, again, is not the definition used in Griggs. The lack of familiarity with this definition will require courts to grapple with how it applies to employment practices that are being challenged and will leave employers little comfort as they organize their workplace.

Although the Brooks-Fish substitute takes positive steps on the issue of specific identification of practices, plaintiffs will still be able to group employment practices in disparate-impact cases in a variety of circumstances. All of these elements combine to build pressures on employers to balance their workplace numbers. Including language prohibiting quotas does little to make sure that they do not covertly resort to quotas.

Further, the narrow definition of quotas in the Brooks-Fish substitute, combined with the codification of Supreme Court decisions approving affirmative action, have turned the quota ban on its head. The Washington Post summed it up best when it said that the Brooks-Fish definition of quotas is a straw man. I am not fooled by the straw man, and you should not be either.

As I said earlier today, if it looks like a fish in a brook and swims like a fish in a brook, you cannot put a sign on it and call it a duck and expect anyone to believe it.

I alluded to it before, but let me be precise in saying that a cap that limits punitive damages to the amount of compensatory damages or \$150,000, whichever is greater, is not a cap at all. The Brooks-Fish substitute still allows for jury trials compensatory damages that are totally unlimited, and punitive damages.

I would ask my colleagues to think seriously about what they are doing and vote against this legislation.

SUMMARY OF ANALYSIS OF CHANGES TO H.R. 1

1. **Disparate Impact:** Some improvements were made in the provisions governing this complex area, but the fundamental problems continue. The section still creates an entirely new form of disparate impact analysis which unfairly stacks the deck against employers in litigation, creating intense pressures on employers to correct statistical imbalances through workplace preferences. Further, none of these changes have any relevancy to the problems of quotas arising from the intentional discrimination provisions.

2. **Mixed Motive Cases/Price-Waterhouse:** The slight change from "contributing" to "motivating" does little and, in fact, simply goes back to H.R. 4000 as introduced. An employer remains liable for punitive and compensatory damages even where it demonstrates that it would have made the same decision regardless of the improper bias. The bill the President vetoed would have limited liability to lost attorneys' fees.

3. **Statute of Limitations:** Change from 2 years to 18 months is marginal improvement.

Increase is still threefold over current limitations of 6 months.

4. **"Cap" on Punitive Damages:** No cap at all as cap is \$150,000 or an amount equal to compensatory damages plus lost backpay, whichever is greater. Thus "cap" constantly floats.

5. **Clarifying Attorneys' Fees:** Originally provided that waiver of attorneys' fees could not be compelled as part of settlements. Now provides that attorneys' fees may be voluntarily waived. This change does little, as "voluntariness" is simply part and parcel of whether waiver of fees is compelled. The issue remains the same.

6. **Anti-Quota Language:** The new language prohibits quotas only in very narrow circumstances and, further, adopts by reference Supreme Court case law as existing at time of enactment concerning affirmative action, including use of workplace preferences. It does not address the underlying concern that employers will covertly use quotas to avoid litigation under H.R. 1 and, ironically, effectively permits a wide range of preferential treatment. The entire area of the proper role of affirmative action—in all its different forms—under Title VII has now, for the first time, been opened for debate.

7. **Transition Rules/Retroactivity:** New law will apply to all cases still under review in the courts. Closed cases can be reopened if justice requires. Provision simply goes back to H.R. 4000 as vetoed by the President.

8. **Tests/Race-Norming:** Entirely new language places extreme restrictions on the use of employment testing. Restrictions on race-norming thus becomes irrelevant as few tests will be given.

9. **Extraterritorial Employment:** Entirely new provision extends Title VII to U.S. citizens employed by U.S. businesses overseas. Reverses *Aramco* case.

10. **Expert Witness Fees:** New provision reverses the recent West Virginia University Hospital case to permit awards of expert witness fees and other litigation expenses under 42 USC 1988, a general attorneys' fees award statute applicable to several civil rights laws.

ANALYSIS OF CHANGES TO H.R. 1

Section 101, 102. Disparate Impact.

Business necessity: New definition (the latest among many) of "business necessity" still does not codify Griggs (which used the definition of "manifest relationship to the employment in question") and still overly restricts—through a sole focus on "effective job performance"—the range of factors an employer may use in deciding which employees to hire or retain. For example, there is no allowance for nonperformance factors such as a reduced need for the employees' services which could require lay off. Similarly, use of the word "effective" implies that employers may not distinguish between potential employees who will perform only up to the minimal level of job performance and those who will exceed minimal standards. Further, testing experts have repeatedly raised objections to the use of the word "significant" as part of the definition. Finally, this new definition has no applicability whatever to practices not involving non-selection criteria, such as employee benefit policies and working conditions, even though these are clearly covered by the bill according to the legislative history.

Grouping of practices: Some improvements have been made here, but plaintiffs will still be allowed to group practices in many kinds of situations, contrary to the weight of case law even before the *Wards Cove* decision.

Alternative practice: No significant change has been made here. The employer remains per se liable if the plaintiff can identify a practice with a lesser impact, regardless of whether the employer knew or could have known about the practice. An added provision that the difference in impact must be "more than merely negligible" does nothing.

Demonstrable evidence: The substitute eliminates the requirement of demonstrable evidence but appears to bring it back in through other new, otherwise unexplainable, limitations concerning the "type and sufficiency" of evidence needed to prove business necessity added at section 101(o)(2).

A new section (paragraph (5), p. 5) has been added which states that an employer may rely on "relative qualifications" of employees so long as that reliance is "required by business necessity." The provision is circular and does nothing because the reliance must still be justified by business necessity. Hence, the key issue is still the definition.

Summary: The disparate impact sections continue to create an entirely new form of impact analysis, stacking the deck against employers and creating intense pressures to eliminate statistical imbalances through racial and sexual preferences. Further, it bears repeating that none of the few changes made here even attempt to address the quota problems arising from the use of statistical imbalances in class action, intentional discrimination cases under H.R. 1's new punitive and compensatory damage provisions.

Section 103. Mixed Motive Cases/Price-Waterhouse.

The substitute changes "contributing" to "motivating"; hence, an improper bias must now be a motivating factor. This change merely goes back to last Congress's H.R. 4000 as introduced. Further, an employer is still liable for punitive and compensatory damages even if it demonstrates that it would have made the same decision regardless of the bias. Notably, the bill the President vetoed would have limited damages to lost attorneys' fees where an employer made this showing.

Section 105. Statute of Limitations.

The substitute for H.R. 1 would extend the statute of limitations for filing a claim of employment discrimination under Title VII from the existing period of 180 days to 540 days. While the 18-month limitations period is somewhat of an improvement over the 2-year period contained in the reported bill, the fact remains that it is still a threefold increase over current law. There is scant evidence in the legislative record that any increase in the statute of limitations is necessary, and such a dramatic extension is entirely inconsistent with Title VII's goal of prompt resolution of workplace discrimination complaints.

Section 106. "Cap" on Punitive Damages.

"Cap" is solely limited to punitive damages and would be \$150,000 or an amount equal to compensatory damages plus lost backpay, whichever was greater. Hence the "cap" floats, depending on the amount awarded for compensatory damages (including pain and suffering) and backpay. Thus, if \$200,000 is awarded in compensatory damages and \$75,000 is lost backpay, the "cap" on punitives is now \$275,000. This is no cap at all.

Section 107. Clarifying Attorneys' Fee Provision.

As reported, H.R. 1 provides that a court may not enter an order settling a Title VII claim unless the parties or their counsel attest that a waiver of attorneys' fees was not compelled as a condition of settlement. The

substitute proposes to add language providing that the aforementioned provision does nothing to limit the right of parties to negotiate a settlement in which attorneys' fees are voluntarily waived. The circularity of the reasoning motivating this additional language is apparent as, even without the new language, the whole issue with respect to whether a waiver of attorneys' fees was compelled is whether or not the waiver was voluntary. Thus, the addition of the new language does nothing to alter the provision's substance. The language in the substitute merely makes explicit what was implicit in the original formulation of the provision. This attorneys' fee provision continues to add yet another layer of judicial inquiry and litigation thwarting Title VII's goal of encouraging settlement of employment discrimination disputes.

Section 111. Anti-Quota Language.

The new language does not address the underlying reasons H.R. 1 will lead to quotas and, in fact, effectively legitimizes a wide range of preferential race- and sex-based treatment.

The substitute contains language providing that "nothing in the amendments made by this Act shall be construed to require, encourage, or permit an employer to adopt hiring or promotion quotas. . . ." This language is similar to a provision included in H.R. 1 as reported, with the exception that the substitute adds the word "permit." The substitute also then defines the word "quota" in a very narrow manner and provides that the use of a quota is an unlawful employment practice under Title VII. The anti-quota language in the substitute does not respond to the concern that passage of the bill will lead to unspoken reliance by employers on workplace numbers in hiring and promotion as a means to avoid litigation.

The quota concern generated by H.R. 1 has always been that employers will covertly use race or sex preferences in hiring and promotion to correct statistical imbalances in their workforce in order to avoid costly lawsuits. Opponents of H.R. 1 have never maintained that the bill would legitimize quota hiring or promotion, nor have opponents maintained that quota hiring would currently be permissible. Indeed, a strong case can be made under current Supreme Court precedent that strict use of a hiring or promotion quota is already illegal. The problem with H.R. 1, both as reported and with the substitute language, is that it leaves employers between a rock and a hard place. If their workplace numbers don't look right, employers may be on the hook for disparate impact or intentional discrimination. If employers try to correct workplace numbers through the use of racial or sexual preferences, they're on the hook for reverse discrimination. The anti-quota language does not change the fact that H.R. 1, even in its latest form, creates tremendous pressure on employers to avoid litigation both because 1) the rules of proof are stacked against them in disparate impact cases and 2) their liability for punitive and compensatory damages in class action intentional discrimination cases based on statistical imbalances can be astronomical. In the minds of many employers, the surest way to avoid litigation will be to massage the numbers just enough that attention is not drawn to the makeup of their workforce.

Further, while providing that the use of a "quota" is an unlawful employment practice, the substitute for H.R. 1 very narrowly defines the scope of practices that fall within that prohibition through narrowly defining the term "quota." The restrictive nature of the prohibition effectively permits a wide range of racial and sexual preferences—the necessary implication being that any practice not prohibited is permitted—turning the so-called prohibition on its head.

The substitute defines an illegal quota as "a fixed number or percentage of persons of a particular race, color, religion, sex, or national origin which must be attained, or which cannot be exceeded, regardless of whether such persons meet necessary qualifications to perform the job." (Section 111(b)). The employment practices of few employers would fall within this ban, as few would be willing to hire or promote individuals lacking necessary qualifications. Typically, hiring or promoting by the numbers occurs when a race or sex preference results in the selection of a less qualified individual over a more qualified individual. It does not appear that this type of quota hiring or promotion would be prohibited by the quota ban and, in fact, would, therefore, be permitted. As was previously mentioned, quotas in the narrowly defined form contained in the substitute are arguably already illegal, and the definition does not reach the types of hiring and promotion practices that employers will likely resort to as a means to avoid litigation.

The substitute also attempts to codify Supreme Court law with respect to when the use of racial or sexual preferences are permissible under Title VII. This is quite a complex area of the law, and the numerous Supreme Court decisions on this point are far from consistent. It is doubtful whether H.R. 1 is the proper vehicle to codify this complicated body of law en masse when there has been very little, if any, substantive discussion of the utility, the relative merits and appropriateness of the various manifestations of affirmative action policies, including racial and sexual preferences. The substitute attempts to take the easy way out by prohibiting the narrowest form of quotas, that are probably already illegal, and refusing to directly address the realities of the workplace and the manner in which hiring and promoting by the numbers affects the employment opportunities of all workers.

The ironic effect of the new "no quota" language is to sweepingly endorse racial and sexual preferences in many situations. As such, it extends the scope of H.R. 1 into entirely new areas never explored directly or indirectly at hearings or in debate.

Section 113. Retroactivity/Transition Rules.

The new provision will apply the law to all cases still under review in the courts. Thus, fact situations will be rejudged under entirely new legal standards not existing at the time those situations arose. Cases which have been in litigation for years will be thrown back to initial proceedings. Further, entirely closed and finished cases could be reopened "if justice requires." While proponents of H.R. 1 will argue that this standard is simply adopted from existing rules on civil procedure, legislative history on a similar provision in the bill the President vetoed basically instructed the courts to take a more expansive view of this provision than

current law would justify. If proponents only wish to reflect existing law, there is no need for this provision. Further, obviously, much litigation will revolve around whether "justice" requires that a case be reopened.

Section 114. Congressional Coverage.

The Senate and "Instrumentalities of Congress" are now covered, but still no private cause of action is permitted. The same double standard remains.

Sections 115, 116. Use of Tests/Race-Norming.

Section 115, entirely new, amends title VII to place very strict limitations on the use of tests. For example, the sole focus on job performance with respect to each job would eliminate the now common use of tests to predict performance in a range of jobs. The concept that a test must "validly and fairly" predict job performance, while sounding inoffensive, also raises a host of issues for litigation. If a test is "valid," what does the additional qualifier of "fair" mean? (These are special rules over and above those concerning disparate impact analysis.) Section 116 then places restrictions on race-norming, but the prohibition on race-norming has now become almost irrelevant as section 115 has effectively severely restricted the use of employment testing. No test; no race-norming.

Section 119. Protection of Extraterritorial Employment.

The substitute contains a new provision which responds to a recent Supreme Court decision (Aramco) that title VII does not apply extraterritorially to regulate the employment practices of U.S. businesses overseas. The provision would extend title VII coverage to United States citizens who are employed abroad by American firms, but would provide an exemption if compliance with title VII would cause the firm to violate a law of the foreign nations in which it is operating. The provision in the substitute is consistent with the position of the administration before the Supreme Court, but once again, a far-reaching change in employment discrimination law is being undertaken with no pretense of substantive consideration in the legislative process. The extension of title VII coverage contained in the substitute would affect an estimated 2,000 U.S. companies which operate 21,000 overseas units in 121 countries. The provision would also extend title VII coverage to foreign corporations which are "controlled" by American employers. The substitute establishes a set of factors for determining corporate control, another issue that will be subject to much litigation. For your information, the Age Discrimination in Employment Act ("ADEA") was amended in 1984 to provide for extraterritorial application. The amendment was widely supported in the House.

Needless to say, hearings on an issue of this importance—extension of an American law to other countries and all the potential problems that may entail—would have been useful.

Section 120. Attorneys' Fees Provision.

This entirely new provision would reverse another recent decision by the Supreme Court (West Virginia University Hospitals) which found that expert witness fees and other litigation expenses were not recoverable under 42 U.S.C. 1988, a general attorneys' fees provision applicable to several civil rights laws.

Without hearings, it is difficult to say what the effect of this provision is.

CIVIL RIGHTS ACT COMPARISON

Section	H.R. 1, as reported	Brooks/Fish substitute	Michel substitute (administration proposal)	Comments (comments on Brooks/Fish substitute (BFS) in CAPS)
Wards Cove (Disparate Impact)	(1) Defines "business necessity" (two-pronged): Selection practices: bear a significant relationship to successful performance of the job. Non-selection practices: have a significant relationship to a significant business objective of the employer. Specifies that language is meant to overturn Wards Cove and codify Griggs for the meaning of "business necessity".	Defines "business necessity": Bear a significant and manifest relationship to the requirements for effective job performance. Specifies that language is meant to overturn Wards Cove and codify Griggs for both the meaning of "business necessity" and the type and sufficiency of evidence required to prove "business necessity". Defines "requirements for effective job performance" to include factors such as attendance, punctuality and not engaging in misconduct or insubordination.	Defines "business necessity": Having a manifest relationship to the employment in question or legitimate employment goals are significantly served by, even if they do not require, the challenged practice. No provision Also shifts burden of proof to employer when disparate impact is established. Does not allow grouping of practices	BFS DEFINITION STILL FAILS TO CODIFY GRIGGS, WHICH WAS BROADER. SOLE FOCUS ON "EFFECTIVE JOB PERFORMANCE" EXCLUDES RELIANCE ON OTHER, LEGITIMATE ECONOMIC FACTORS. ALSO CAN'T USE FACTORS TO MEASURE ABILITY TO EXCEL. TESTING EXPERTS HAVE STRONGLY OBJECTED TO WORD "SIGNIFICANT." NO APPLICABILITY TO NONSELECTION PRACTICES. Administration bill developed from Griggs, Beazer, Watson, and Wards Cove. BFS NEW "TYPE AND SUFFICIENCY" LANGUAGE UNCLEAR BUT MAY NOT BE DIRECTED AT ACCOMPLISHING SAME PURPOSE OF DROPPED REQUIREMENT FOR "DEMONSTRABLE" EVIDENCE, I.E., FORMAL VALIDATION. (SEE BELOW AT #5.) SLIGHTLY AMELIORATES PROBLEM OF EXCLUSIVE FOCUS ON JOB PERFORMANCE BUT DOES NOT GO FAR ENOUGH.
	(2) Shifts burden of proof to employer to justify practice when disparate impact is established.	Same as H.R. 1 as reported		H.R. 1, the new substitute and the Administration bill all reverse Wards Cove on this issue.
	(3) Allow grouping of practices without requiring plaintiff to identify specific practices within the group which caused the impact. Limited exception when court finds plaintiff could identify practices which contributed to impact. Defendant required to justify practices which "contribute" to impact.	Retains grouping of practices rule, but has modified exception somewhat to require plaintiff after discovery to identify practice. Defendant still required to justify practices which "contribute".		Administration bill would preserve long-standing case law. "Grouping" contrary to existing law, even prior to Wards Cove. BFS EXCEPTION IS MINIMAL IMPROVEMENT, TO THE EXTENT IT IS DECIPHERABLE. Further, many practices not covered by recordkeeping requirements. "Contribution" also lower threshold than causation. H.R. 1 and BFS remain very unclear.
	(4) Per se violation of Title VII when an alternative employment practice exists which does not have a disparate impact.	Per se violation of Title VII when an alternative employment practice is available and has more than a negligibly less disparate impact.	Violation when alternative employment practice is comparable in cost and effectiveness to that causing disparate impact and the employer still refuses to adopt it.	H.R. 1 creates new rule on this issue. BFS SHUFFLES PROVISION INTO NEW SECTION BUT LEAVES ESSENTIALLY UNCHANGED; NEW PROVISION STATING DIFFERENCE IN IMPACT MUST BE MORE THAN "MERELY NEGLIGIBLE" DOES NOTHING.
	(5) Requires "demonstrable" evidence	No provision	No provision	BFS DROPS THIS SPECIFIC LANGUAGE BUT MAY RETAIN AFFECT THROUGH THE NEW LANGUAGE DISCUSSED ABOVE.
	(6) Existence of statistical imbalance alone does not prove disparate impact.	Same as H.R. 1 as reported	No provision	Provision is irrelevant, merely codifies existing rule that workforce comparisons must be between relevant labor pools.
	(7) Drug-use rules are unlawful only when adopted for intentionally discriminatory purposes.	Same as H.R. 1 as reported	No provision	Exclusion from impact analysis is necessary under H.R. 1 and the BFS because of the onerous nature of H.R. 1's new requirements.
	No provision	An employer may rely on "relative qualifications or skills" in selection procedures; however, if such reliance results in disparate impact, the reliance must be required by "business necessity".	No provision	"RELIANCE" STILL MUST BE PROVEN BY "BUSINESS NECESSITY" SO PROVISION IS CIRCULAR AND DOES NOTHING. FACT THAT CLARIFICATION IS EVEN NEEDED ON THIS INDICATES THE MANY PROBLEMS WITH H.R. 1.
Price Waterhouse	Overturns Supreme Court decision by Justice Brennan. Establishes a course of action when discriminatory motive was a contributing factor in decision; if employer proves that the same decision would have been made anyway, it is still liable for punitive and compensatory damages.	Same as H.R. 1 as reported, except: Changes "contributing" to "motivating" factor ...	No provision (but see new damage provisions, below).	BFS SIMPLY GOES BACK TO H.R. 4000 AS INTRODUCED IN 101ST CONGRESS; NO IMPROVEMENT. EMPLOYER REMAINS LIABLE FOR PUNITIVE AND COMPENSATORY DAMAGES EVEN IF IT IS PROVEN THAT THE SAME DECISION WOULD HAVE BEEN MADE REGARDLESS. VETOED BILL WOULD HAVE LIMITED LIABILITY TO ATTORNEYS' FEES. Administration bill would leave case law intact, i.e., no course of action in "mixed motive" cases if the employers can prove he/she would have made the same decision regardless of improper bias. DOJ study shows few employers win these cases.
Martin versus Wilkes	Imposes broad limitation on ability to challenge consent decrees.	Same as H.R. 1 as reported	Codifies Supreme Court decision allowing challenges to consent decrees according to Federal Rules of Civil Procedure (must join a party to the original suit to prevent challenge by that party).	These cases typically involve reverse discrimination issues. Wilkes simply held that victims of such discrimination should be allowed to challenge such decrees to determine if they were properly issued, unless they were parties to the original case. Vetoed bill more limited than H.R. 1 and BFS.
Lorance	Overturns Supreme Court decision	Same as H.R. 1 as reported	Same	H.R. 1 and BFS go further than overturning case, but few issues remain.
Statute of Limitations	Extended from 180 days to 2 years and begins to run when the violation occurred or when it is applied to the plaintiff, whichever is later.	Extended from 180 days to 18 months and begins to run when the system adversely affects the plaintiff.	No provision	Extension will, as with other provisions, create delays in resolving disputes. BFS REDUCTION FROM 2 YEARS TO 18 MONTHS. MINOR CHANGE.
Patterson	Overturns Supreme Court decision. Restores expansive reading of Section 1981 to prohibit discrimination in all aspects of a contract, i.e., covers all aspects of employment.	Same as H.R. 1 as reported	Same provision	No issues, except that proponents of H.R. 1 claim Administrations reversal of Patterson is inconsistent with refusal to amend Title VII to include punitive and compensatory damages. Reversal, however, goes to scope, not type of damages.
Aramco (Overseas coverage)	No provision	Overturns recent Supreme Court decision to extend coverage of Title VII to citizens of the United States who are employed in a foreign country by US businesses, unless compliance would cause the company to violate the foreign nation's laws.	No provision	TOTALLY NEW ISSUE; NEVER SUBJECT TO HEARINGS.
Damages	Allows unlimited punitive and compensatory damages for intentional discrimination (punitive where there is malice or reckless or callous indifference to "Federally protected rights of others"). Jury trials	"Caps" punitive damages for intentional discrimination at \$150,000 or an amount equal to compensatory damages plus backpay, whichever is greater.	Retains existing Title VII remedies with the addition of a new remedy for harassment. Employee must use employer's procedures first ... Allows immediate injunctive relief ... Allows \$150,000 remedy, trial before a judge, but if courts find that the 7th Amendment requires juries to hear the issue of liability, the judge will still determine the damages.	Administration's proposal targeted at harassment, where no monetary remedy usually exists under current law. H.R. 1 and BFS would result in protracted litigation, lawyers' bonanza and quotas because of concern for astronomical liability in intentional discrimination class action cases, which, like impact cases, are based on workforce statistical imbalances. BFS "CAP" NO CAP AT ALL. AS IT WILL CONSTANTLY FLOAT DEPENDING ON AMOUNT AWARDED FOR COMPENSATORY DAMAGES AND BACKPAY.

CIVIL RIGHTS ACT COMPARISON—Continued

Section	H.R. 1, as reported	Brooks/Fish substitute	Michel substitute (administration proposal)	Comments (comments on Brooks/Fish substitute (BFS) in CAPS)
Attorney and expert witness fees.	No provision	Reverses new Supreme Court case on Section 1988 regarding expert witness fees and other litigation expenses (West Virginia).	No provision	H.R. 1, in one fell swoop, reverses 4 Supreme Court decisions to effectively expand grounds for recovery of fees. BFS ADDS ANOTHER ONE, WHICH HAS NEVER BEEN SUBJECT TO HEARINGS. NEW WAIVER LANGUAGE DOES LITTLE BECAUSE "VOLUNTARINESS" IS SIMPLY PART OF QUESTION OF WHETHER WAIVER IS "COMPELLED." ATTORNEY ONLY PARTY PROTECTED BY ALL THIS.
	Prohibits "compelled" waiver of attorneys' fees as part of settlement, reversing Jeff D.	Prohibits "compelled" waiver of attorneys' fees as a condition of settlement but allows voluntary waiver as part of a negotiated settlement.	No provision	
	Allows recovery of expert witness fees and other litigation expenses, reversing Crawford Fittings.	Same as H.R. 1 as reported	Allows recovery of expert witness fees under Title VII of up to \$300 per day.	
	Allows prevailing party in a consent challenge to collect attorneys' fees from original losing party, new challenger or both, reversing Zipes.	Same as H.R. 1 as reported	No provision	
	Allows recovery of attorneys' fees for time spent after rejection of settlement offer, even though amount ultimately won is less than such offer, reversing Marek.	Same as H.R. 1 as reported	No provision	
Cases against Federal Government.	Extends the Statute of limitations in cases against the Fed'l Gov't from 30 days to 90 days.	Same as H.R. 1 as reported	Same	No issues.
Anti-quota language	States that nothing in this Act shall be construed to encourage or require an employer to adopt quotas, provided that current court-ordered remedies and affirmative action are not affected.	States that nothing in this Act shall be construed to encourage, require, or permit an employer to adopt "quotas." Defines "quota" as a fixed number or percentage to be attained or not exceeded, regardless of ability to meet the qualifications for a job. Also provides that "affirmative action" is lawful if (1) "consistent" with current decisions by Supreme Court, or (2) in the absence of such a decision, otherwise in accordance with discrimination law.	No provision	Pure fig leaf, provision does nothing. BFS ADDITIONS DO NOT ADDRESS CONCERN THAT H.R. 1 WILL CAUSE EMPLOYERS TO COVERTLY ENGAGE IN QUOTA HIRING AND IS, IN FACT, WORSE THAN H.R. 1. THE LIMITED DEFINITION OF "QUOTA" IMPLICITLY APPROVES ALL OTHER TYPES OF PREFERENTIAL TREATMENT. FINALLY, A BLANKET, VAGUE ADOPTION OF ALL SUPREME COURT DECISIONS (SUBJECT TO MANY INTERPRETATIONS) WITHOUT HEARINGS, IS HARDLY APPROPRIATE.
Employment testing	No provision	Prohibits the use of employment tests unless such test "validly and fairly" predicts ability to perform the job "in a manner consistent with" these amendments.	No provision	ENTIRELY NEW PROVISION SEVERELY RESTRICTS THE USE OF EMPLOYMENT TESTING.
Race-Norming	No provision	Prohibits an employer from adjusting test scores on written employment tests based on race, sex, color, religion, national origin.	Prohibits race-norming.	BFS PROHIBITION ALMOST IRRELEVANT, AS PRECEDING PROVISION ON TESTING SEVERELY RESTRICTS USE OF TEST. NO TESTS, NO RACE-NORMING.
Coverage of Congress	Applies these amendments to Congress	Details application of the amendments to the Senate, the House, and the instrumentalities of Congress.	Applies these amendments to Congress (broader language, also encompasses offices such as GAO, OIA, etc.).	BFS RETAINS DOUBLE STANDARD FOR CONGRESS, WITH NO PRIVATE CAUSE OF ACTION.
Alternative dispute resolution.	No private cause of action Encourages use of alternative dispute resolution	No private cause of action Same as H.R. 1 as reported	Provides for private cause of action. Encourages use of alternative dispute resolution, including binding arbitration, where knowing and voluntary.	
Amendment to ADEA	Amends Age Discrimination in Employment Act to allow 2-year statute of limitations and other changes to reflect those made to Title VII. Adds "right to sue" notice	Same as H.R. 1 as reported	No provision.	
Rules of construction	New statutory construction rules amend all federal civil rights laws, of which Title VII is but one. Courts must interpret all broadly and not apply any in such a manner that one would limit another, despite overlaps.	Same as H.R. 1 as reported	No provision.	Selectively reverses long-standing rules governing interpretation of statutes, particularly where overlapping. Chaos will result as courts struggle with these new rules.
Glass Ceiling Commission	DOL study of artificial barriers to advancement of women and minorities into top management.	Same as H.R. 1 as reported	No provision	Very similar to DOL administrative initiative and Republican bill (H.R. 1149, Molinari). H.R. 1 and BFS, however, notably omit disclaimer of quotas found in H.R. 1149.
Comparable worth/pay equity.	"Pay Equity Technical Assistance" provision instructs DOL to study wage-setting practices to determine whether improper bias plays a role or whether wages set on basis of "work performed and other appropriate factors." Such factors defined, do not include market place demands.	Same as H.R. 1 as reported	No provision	Implies worth of jobs can be objectively evaluated by outside "experts" without regard to laws of supply and demand to determine what factors set wages. Lays ground work for comparable worth claims.
Reports based on sex, race, ethnicity.	Requires EEOC and OFCCP annually to report to Congress on employment opportunities and wages, broken down by race, sex, national origin, and ethnicity, within industries and occupational groups.	Same as H.R. 1 as reported	No provision	Why is all this required? Race- and sex-specific information arguably belies any claims that H.R. 1 and BFS are race and sex neutral.
Severability	Should any part of the Act be invalid, the rest is not affected.	Same as H.R. 1 as reported	Same as H.R. 1 as reported	
Effective dates	Applies amendments retroactively to the dates of the original cases overturned by the legislation.	Applies new law to cases still under review; closed cases may be reopened if "justice" requires.	Purely prospective	BFS IMPROVEMENT IN AN INITIALLY OUTRAGEOUS POSITION. STILL UNFAIR TO APPLY NEW RULE TO PENDING CASES BASED ON PAST ACTIONS AND LEGAL PRINCIPLES. FURTHER, MUCH LITIGATION WILL TURN ON WHEN "JUSTICE" REQUIRES THAT A CASE BE REOPENED (SAME PROVISION AS VETOED BILL; LEGISLATIVE HISTORY TOOK EXPENSIVE VIEW OF WHEN REOPENING APPROPRIATE).

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. SARPALIUS].

Mr. SARPALIUS. Mr. Chairman, we were all elected to come into this room to try to do what is right and to try to do what is best for this country. We should all have a dream of what we think the ideal country would be like.

One of those dreams would be to be strong and brave, and we have just shown that in the Middle East. But one of these dreams must be equality, that no matter the color of your skin, whether you are male or female, your national origin or religious belief, we would all be equal. That is the American dream.

I voted against the last civil rights bill because of my fear that Government would be coming into businesses and telling them who to hire, but I am convinced that this bill reaches toward that American dream. The language is very clear; right here, it is black and white. It says, "Quotas shall be deemed to be an unlawful employment practice."

So I am going to vote for this bill.

I hope and pray that when my son reaches my age that he will find a country where people are, indeed, treated equal regardless of their religious belief, color of their skin, or whether they be male or female.

Mr. HYDE. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. DOOLITTLE].

Mr. DOOLITTLE. Mr. Chairman, I rise in opposition to H.R. 1.

Mr. Chairman, I speak today in opposition to H.R. 1, a bill which would not bring about the colorblind society we desire but would actually exacerbate racial divisions in America, while doing nothing to help qualified minority workers.

The Supreme Court decisions which H.R. 1 seeks to overturn were arrived at properly through careful consideration of constitutional and legal questions. H.R. 1, on the other hand, is politically motivated.

Under Title VII of the Civil Rights Act of 1964, damages are limited to backpay, reinstatement and other injunctive relief. H.R. 1 would allow unlimited compensatory damages and punitive damages up to a limit of \$150,000. Because H.R. 1 also makes it significantly easier to win a judgment against an employer, it would cause a dramatic increase in the volume of litigation in our already suffocating courts. The threat of such litigation will drive employers to use quotas.

In a letter to Congressman BILL GOODLING, Attorney Zachary Fasman explained why H.R. 1 would lead to quotas:

The proponents of this legislation consistently have argued that the expanded remedies in question will apply only to cases of intentional discrimination. In fact, *** the bill would allow compensatory and punitive damages in *** class actions premised upon the disparate treatment theory of discrimination.

The premise under which statistical evidence is used in disparate treatment class actions is very similar to that used in disparate impact cases. Plaintiffs will tend to abandon the disparate impact theory entirely in class cases, in order to take advantage of the significantly expanded remedies made available in such cases by H.R. 1.

This possibility would impose enormous pressure upon employers to hire and promote in a race and sex conscious manner (emphasis added). Unlike disparate impact cases, where an employer can prove that a challenged practice is justified as a business necessity, there is no justification defense in a disparate treatment class action. The availability of compensatory and punitive damages, and jury trials, in such cases would lead a risk-averse employer to ensure that its employment practices cannot be challenged on a disparate treatment theory. *In other words, the risk-averse employer would have strong reasons to avoid any statistical claims that its work force was in some way unbalanced (emphasis added).*

De facto quotas would be the risk-averse employer's answer to the ever-present threat of a disastrous lawsuit. The ban on quotas in H.R. 1 is thus a form of Orwellian doublespeak. The hypocrisy of H.R. 1's ban on quotas is revealed by the fact that while the bill establishes no penalties if the quota

ban is violated, substantial money damages can be imposed for being found guilty of discrimination.

But while quotas would be the end result, the fundamental problem with H.R. 1 is its disregard for the rule of law. The rule of law insists that every law conform to fundamental principles including certainty, prospectivity, and generality.

First, laws must be known and certain. H.R. 1 creates uncertainty and confusion. Employers face a state of perpetual jeopardy, subject to costly ill-defined lawsuits that are nearly impossible to defend against unless they hire by the numbers, i.e. by quotas. Then, with a cruel twist of irony, H.R. 1 makes hiring by the numbers illegal.

Second, laws must be prospective—they apply only to future actions. Retroactivity violates the spirit if not the letter of the "no ex post facto" law clause of the Constitution, and this is a serious blow to fundamental notions of fairness. How can an employer act today if today's legal action will be declared illegal tomorrow, and yesterday's acts will be judged by today's rules. Such unstable, arbitrary laws smack of Hitler's Germany and China's Cultural Revolution.

Third, laws must be general. We cannot make artificial distinctions benefiting or injuring a specific race or group of people. H.R. 1 tramples equality before the law in order to create some mystical, utopian equality of statistical results. But law cannot be measured by results. Law must treat all parties equally and let the cards fall where they may.

Mr. Speaker, if we accept the violations of rule of law embodied in H.R. 1, we will be acting as a government of political passion and demagoguery—not as a government of law. And a government of passion is no government at all; it becomes a blunt weapon swung by those who hold power. We cannot allow the law to become such a weapon without ultimately destroying its legitimacy.

Mr. Speaker, I urge a "No" vote on H.R. 1.

□ 1110

Mr. HYDE. Mr. Chairman, I yield 1 minute to the gentleman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, under the guise of civil rights, the Brooks substitute includes several provisions that supposedly will put women on an equal footing with their male counterparts. I am, of course, referring to the comparable worth language in the new attempt at quote "civil rights" legislation, as embodied in the substitute. Comparable worth was not included in last year's bill passed by the House or in the conference report agreed on by Congress.

It seems to me that because all previous attempts to enact comparable worth legislation have been rebuffed, this language is an unwelcome addition to an already horrendous bill. In fact, because of the lack of support, no hearings were even held on these new provisions by the committee of jurisdiction.

Furthermore, the courts have rejected the concept of comparable worth time and time again.

The controversial language being proposed specifically in section 202 injects a nontraditional element into established civil rights law. Never has civil rights law addressed the issue of comparable worth. The Brooks substitute calls for a new program under the Department of Labor to establish pay equity across all sectors of industry. Economists argue that attempts to impose wage controls throughout American business through comparable worth would be costly and undermine efficient allocation of resources.

This extraneous provision is just another example of the proponents trying to make the new quota bill more palatable to women. With or without this section, the quota bill, better known as the Brooks substitute, is bad legislation.

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I was cut off earlier. I wanted to commend my esteemed colleague, the gentleman from Texas [Mr. SARPALIUS] for his statement. I wanted to say that the gentleman has been most effective in this process of developing a workable substitute, a response in current terms that he and others have raised to the reported bill.

Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. FORD], the distinguished chairman of the Committee on Education and Labor, who has made a major contribution to the resolution of this issue.

Mr. FORD of Michigan. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in strong support of the bipartisan substitute to our bill, recognizing that compromises were needed to reach concerns that had been expressed to us. I believe that the gentleman from New York [Mr. FISH] and the gentleman from Texas [Mr. BROOKS] have put together an amendment that accomplishes that purpose.

BUSINESS NECESSITY

The Civil Rights Act of 1991 reaffirms an employer's right to establish its requirements for a job and rely upon applicants' relative qualifications or skills.

America's success in the global economic competition of the 1990's surely will depend upon the extent to which we reduce barriers and provide equal employment opportunity.

As many know, the U.S. Department of Labor's Workforce 2000 has estimated that in the next 10 years up to 85 percent of net new entrants in the workplace will be women and minorities.

There are two specific sections of the Civil Rights Act of 1991 among others which I believe enable employers to strike the appropriate balance between selecting persons who are likely to be the most productive employees and providing equality of opportunity.

Section 111(a)(1) provides that nothing in the bill shall be construed "to limit an employer in establishing its job requirements," and section 102 amends title VII to provide that an employer "may rely upon relative qualifications or skills as determined by relative performance or degree of success on a selection, fact or criteria, or procedure. * * *" Read together, these sections reaffirm the employer's right: First, to establish the educational or experience prerequisites necessary to successfully perform a job; and second, to judge one qualified applicant's skill level against another qualified applicant's skill level. That is how it should be.

During the past decade numerous employers have increased the educational and experience prerequisites for a job in order to upgrade their work forces and meet competitive challenges. Requiring employers to justify discriminatory employment practices as "significantly and manifestly related to the requirements of effective job performance" under the Civil Rights Act of 1991 will not prevent employers from adopting policies to upgrade their work forces. For example, courts applying the Griggs "business necessity" standard have consistently upheld college education requirements for police officers. Postsecondary education requirements have been upheld in other public employee contexts, including correction officers, public health workers, social service supervisors, airline flight officers, and university professors.

The use of the National Teachers Examinations for State certification of teachers also has been upheld under the Griggs standard of "business necessity."

Thus, because the Civil Rights Act of 1991 expressly provides that the standard of business necessity in the bill is intended to codify Griggs, the act essentially reaffirms these earlier decisions and presents no obstacle for employers who wish to upgrade their work forces through reasonable educational or competency testing rules.

EMPLOYER POLICIES TO UPGRADE THE WORK FORCE: THE EFFECT OF THE CIVIL RIGHTS ACT OF 1991

The Civil Rights Act of 1991 would restore the business necessity standards adopted by a unanimous Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and overturn the Court's later weakening of disparate impact law in *Wards Cove v. Atonio*, 490 U.S. 649 (1989). The Griggs standard worked well for nearly twenty years. Under Griggs, employers who chose to use selection practices with a significant disparate impact on women or minorities had to defend the practices by showing business necessity. Courts applying Griggs upheld those requirements which actually measured job qualifications, regardless of their disparate impact. Some opponents of the Civil Rights Act have suggested that the Act would interfere with employer efforts to "upgrade" the workforce, such as college education requirements for police officers and minimum competency testing of teachers. These claims are simply false. The business necessity definition adopted by the Civil Rights Act is no more burdensome for employers than the standard established by the Supreme Court in Griggs, and reasonable educational and related requirements have been approved by the courts under Griggs.

For example, courts applying the Griggs business necessity standard have consistently upheld college education requirements for police officers.¹ In *Davis v. Dallas*, 777 F.2d 205 (5th Cir. 1985), cert. denied, 476 U.S. 1116 (1986), the fifth circuit found that the city's requirement that police officers have completed 45 semester hours of college credit with at least a C average was justified by business necessity under Griggs. Based on the job's risks and responsibilities, and the difficulty in identifying and quantifying the skills necessary to be a police officer, the court held that the city did not need to present empirical evidence to establish business necessity. *Id.* at 217. Instead, the court relied on a President's Commission report recommending that police departments raise their educational standards, *id.* at 218, in addition to other national reports and expert testimony, *id.* at 219, and found the college education requirement justified.

Two district courts have also upheld college education requirements for similar positions under Griggs. In *Jackson v. Curators of the Univ. of Missouri*, 456 F. Supp. 879 (E.D. Mo. 1978), the court found that the requirement that campus patrolmen have two years of college education was a business necessity, given that the job sometimes involved hazardous duties performed without supervision or assistance. The court based its finding on the testimony of the Police Chief. Similarly, in *Morrow v. Dillard*, 412 F. Supp. 494 (S.D. Miss. 1976), modified on other grounds, 580 F.2d 1284 (5th Cir. 1978), the court upheld the requirement that state narcotics agents have completed two years of college, or the equivalent in experience. The court appeared to base its reasoning on the nature of the job responsibilities. See *id.* at 506 ("Due to the delicate and highly specialized nature of the Bureau's responsibilities, this Court does not hesitate to uphold the education and training requirement for agents, as it has for highway patrolmen.")

Post-secondary education requirements have been validated in other public employee contexts as well. See *Rice v. St. Louis*, 607 F.2d 791 (8th Cir. 1979) (upholding college degree requirement for public health workers because job requires "maturity, 'unshockability,' persistence, and tact); *Thompson v. Mississippi State Personnel Bd.*, 674 F. Supp. 198 (N.D. Miss. 1987) (approving college education requirement for state social services supervisors because of the professional nature of the job and the public interest involved); *Scott v. University of Del.*, 455 F. Supp. 1102 (D. Del. 1978) (confirming the validity of doctorate degree requirement for University professors), modified on other grounds, 601 F.2d 76 (3rd Cir.), cert. denied, 444 U.S. 931 (1979).

The type of evidence required by courts to show business necessity for educational requirements under Griggs varies depending on the type of job applied for. Where the job requires a high degree of skill and the consequences for hiring unqualified workers are

great, courts have uniformly applied a more lenient standard.² The level of proof that courts have required to justify educational requirements for such jobs has typically been relatively lax. See *Aquilera v. Cook County Police and Corrections Merit Bd.*, 760 F.2d 844 (7th Cir.), cert. denied, 474 U.S. 907 (1985) (finding high school diploma requirement a business necessity for corrections officers based on past court experience with police officers and nature of corrections positions, despite the absence of any sworn evidence of job-relatedness); *Thompson v. Mississippi State Personnel Bd.*, 674 F. Supp. 198 (holding empirical evidence not required to validate post-secondary educational requirements for professional jobs where the position implicates the public interest). With such lenient evidentiary standards, there is no reason to believe that employers would be deterred from adopting relevant educational requirements for professional positions or jobs important to the public interest under Griggs or the Civil Rights Act.

The use of the National Teacher Examinations (NTE) for state certification of teachers has similarly been upheld under the business necessity test established by Griggs. See *U.S. v. South Carolina*, 445 F. Supp. 1094 (D.S.C. 1977), *aff'd mem.*, 434 U.S. 1026 (1978). South Carolina required local school boards to hire only certified teachers, and the NTE was found to have a significant disparate impact based on race. The court nevertheless found that the state's use of the NTE survived the business necessity test under Griggs because the test scores "reflect individual achievement with respect to specific subject matter content, which is directly relevant to (although not sufficient in itself to assure) competence to teach." *Id.* at 1116.

Cases decided under Griggs and before *Wards Cove* provide the best available evidence of how the Civil Rights Act of 1991 would operate in the courts. As the above pre-*Wards Cove* cases indicate, the Act will present no obstacles for employers who wish to upgrade their workforces through reasonable educational or minimum competency testing rules.

Mr. Chairman, I now yield to the gentleman from Michigan [Mr. HENRY] who has requested a colloquy.

Mr. HENRY. Mr. Chairman, for purposes of clarification with the gentleman from Michigan and with regard to section 107, subsection (3) of the committee report of the Committee on Education and Labor says in explaining the provisions of the bill that the committee intends for the original defendant-employer to ordinarily bear the costs of the original plaintiff's fees in defending against subsequent challenges and interventions. I would like to clarify with the chairman of the committee that subsection (3) of section 107 does not in fact imply or grant any presumption as to whether the original defendant, the intervener, or the original plaintiff should bear these costs.

Mr. FORD of Michigan. Mr. Chairman, if the gentleman will yield, the intention of section 107, subsection (3) is to authorize a court to grant fees, but does not create any presumption

¹Courts have also uniformly upheld high school diploma requirements for police officers. See *Castro v. Beecher*, 459 F.2d 725 (1st Cir. 1972); *United States v. Buffalo*, 457 F. Supp. 612 (W.D.N.Y. 1978), modified on other grounds, 633 F.2d 643 (2d Cir. 1980); *League of United Latin Am. Citizens v. Santa Ana*, 410 F. Supp. 873 (C.D. Cal. 1976); *Arnold v. Ballard*, 390 F. Supp. 723 (N.D. Ohio 1975), *aff'd*, 12 BNA FEP Cas. 1613 (6th Cir. 1976). In upholding the job-relatedness of such requirements under Griggs, courts have relied heavily on Presidential studies recommending a high level of education for police officers. See, e.g., *Castro*, 459 F.2d at 735; *League of United Latin Am. Citizens*, 410 F. Supp. at 901; *U.S. v. City of Buffalo*, 457 F. Supp. at 629.

²See, e.g., *Spurlock v. United Airlines, Inc.*, 475 F.2d 216 (10th Cir. 1972) (upholding college degree requirement for airline flight officers).

either as to the granting of the fees or as to which of the parties, the intervenor or the original defendant, should pay if they are granted.

Mr. HENRY. Mr. Chairman, to the gentleman from Texas [Mr. BROOKS], similarly the bill reported by the Judiciary Committee includes identical language. However, the committee report, in discussing this provision, says that the language of the bill does not overturn the Zipes decision with regard to the possibility of assessing the prevailing plaintiff's fees against the intervenor. I would like to clarify with the chairman of the Judiciary Committee that this statement is not accurate, that the language of the bill is intended to overturn the Supreme Court's decision in Zipes with regard to both the intervenor and the original defendant, as described above.

Mr. BROOKS. Mr. Chairman, if the gentleman will yield, that is correct.

Subsection (3) of section 197 is intended to overturn the Zipes decision with regard to the award of fees against an intervening party, and the committee report, insofar as it is inconsistent with the intention, is incorrect.

Mr. HENRY. Mr. Chairman, I have discussed a more likely colloquy with further information.

Mr. HYDE. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Chairman, I appreciate the gentleman yielding this time to me.

Mr. Chairman, at this point I yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Chairman, I rise today in support of the Brooks-Fish substitute for H.R. 1, the Civil Rights Act of 1991, and I commend the distinguished chairman, the gentleman from Texas [Mr. BROOKS], and the distinguished ranking minority member, the gentleman from New York [Mr. FISH] for their efforts in formulating antibias legislation that addresses the serious concerns of both opponents and proponents of this bill.

Mr. Chairman, last year I rose in support of a similar measure, which unfortunately was vetoed by the President, and was not successfully overridden by the Congress.

The controversial issue on this proposal last year was quotas, and again today the opponents of this bill accuse this legislation of forcing quotas on our Nation's employers. Mr. Chairman, the Brooks-Fish substitute has been carefully crafted to make clear that quotas are not permitted and are illegal. The quota excuse is just that, an excuse for Members of Congress to avoid passing a comprehensive, effective law to curb discrimination.

Unfortunately racism, color, sex, religion, and national origin are among the prejudices that exist to some ex-

tent in our society today. Most of us would gladly lend our names to any law that would effectively erase the unfair, ignorant attitudes or prejudiced people in our Nation; but this body cannot legislate morality.

There is, however, a responsibility that lies within our purview, this body can legislate a remedy to the recent reverses to the Civil Rights Act that have been handed down by the Supreme Court.

While we cannot legislate morality, we can provide effective judicial recourse to victims of unlawful discrimination.

Mr. Chairman, we all seek to enhance a prejudice-free America, but until such a time as every citizen in our Nation looks upon women, persons of color, or of any religion as an equal, we must continue to advocate the passage of laws that curtail the destructive, destabilizing byproducts of bigotry.

By enacting this legislation, we will be providing the people of our Nation a great justice. Accordingly, I urge my colleagues to support the Brooks-Fish substitute.

Mr. FISH. Mr. Chairman, I thank my colleague, the gentleman from New York [Mr. GILMAN].

I yield to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the Brooks-Fish substitute. Since passage of the historic Civil Rights Act of 1964, our Nation has been making steady progress toward the eradication of discrimination. However, certain recent Supreme Court decisions have dramatically tilted the balance in civil rights lawsuits against the victims of discrimination. Those Court decisions have narrowed the application of important civil rights laws, making it more difficult for victims of discrimination to seek fair judicial remedies.

The Brooks-Fish substitute offers us the best chance we have of enacting a civil rights bill on which a majority can agree. The substitute restores and strengthens our civil rights laws. It is balanced and addresses many concerns of the business community. Hiring by quotas would be explicitly outlawed. The legislation would restore the 1971 Griggs Supreme Court decision which protects working Americans against unfair hiring practices. It would affect only those employers who engage in intentional discrimination, not those who base their hiring decisions on performance-related qualifications.

However, while the substitute is the best we can achieve here today, I am disturbed that, in this legislation, the ability of women to seek redress for sexual discrimination, in title VII claims, is limited by a cap on punitive damages. I feel strongly that every victim of intentional discrimination should be treated fairly and equitably.

There ought to be equal treatment for all those seeking redress for discriminatory practices—whether the victim is a man, a woman, an ethnic or religious minority, or a disabled individual.

Mr. Chairman, the battle for equal rights is not yet won, especially for women. Despite great strides, Americans must still continue to fight every day against gender and race-based bias. We are still striving to realize the dream of achieving a society where an individual knows that he or she will be judged on character or abilities rather than by skin color, gender, or religious belief. We, in Congress, have a responsibility to provide individuals with the legal tools that will assure them an equal opportunity to successfully compete in our society and to achieve the American dream for themselves and their children. The Brooks-Fish substitute is a significant step in that direction and I urge my colleagues to support it.

Mr. FISH. Mr. Chairman, I thank my friend and colleague, the gentlewoman from Maryland, very much.

Mr. Chairman, I yield to the gentleman from New York [Mr. HOUGHTON].

Mr. HOUGHTON. Mr. Chairman, I am somewhat reluctant to speak on the issue of civil rights. It is highly charged—lots of emotion, and few minds will be changed—at least at this late date.

However, since I did vote against the first civil rights bill last year, and now support the Brooks-Fish amendment, I ask your indulgence in permitting me to spell out one or two issues which I think need to be clarified.

First, I am not a lawyer, but when a piece of congressional legislation says that nothing in it shall require, encourage, or permit hiring or promotion quotas, I must believe that.

When the bill further says that quotas are an illegal employment practice, I must believe that. And when a group of my business friends say that quotas as spelled out are not a big issue, I believe them. You can assign any interpretation you want, make the words mean something else, but business men and women must deal in facts. They can't work with scores of interpretations, and these are the facts. That's point No. 1.

Point No. 2 concerns the so-called damage issue. I feel this has become something of a red herring. It is interesting to see the people who brushed aside all the horror stories on the future of Mexican trade as mere fantasies now creating fantasies of their own—the what if syndrome—conjuring up deep plots by women and the disabled to attack the very life blood of American business, draining our corporations dry through prolonged law suits.

Now let me share with you the facts. The facts are that without caps, mind

you, for the last 10 plus years, since 1980 there have been reported only 70 minority suits involving payment of damages. This means that 1/200,000th percent of our population have been involved. There were three payments over \$200,000; the average being \$40,000. That's a total of less than \$3 million.

If you add this number of racial minorities to the total of 60 million working women and 40 million disabled people, this amounts to a five-fold increase. So 5 times \$3 million equals \$15 million plus the \$3 million that is already out there—it all adds up to \$18 million—or less than \$2 million a year. To put this all into perspective, in the ongoing asbestos suit, an issue of about the same dimension, the costs to corporations so far have been over \$350 million.

So the facts, Mr. Chairman, at least tell me that the stories of gloom and doom are far exaggerated. The facts say also that the Brooks-Fish amendment is not a quota bill; history tells us that it will produce a limited exposure to damages; employers will have the right to set requirements for a job when they relate to that job, and the amendment most importantly reaches out to women and the disabled, two groups who up to this time have been unprotected against discrimination.

This bill is not evil. It is positive, it clarifies. You cannot go back to a world that no longer exists. Today we live with safety, financial, environmental, trade requirements—all issues we didn't have to live with when I entered business. This should stand proudly beside them as we look over the hill into the 21st century.

□ 1120

Mr. BROOKS. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. FORD], the chairman of the Committee on Education and Labor.

Mr. FORD of Michigan. I thank the gentleman for yielding.

Mr. Chairman, I take this time to yield to the gentleman from California [Mr. MINETA] for a colloquy which he has requested.

Mr. MINETA. I thank the gentleman [from Texas] for yielding. Mr. Chairman, I would appreciate it if the Committee on Education and Labor would explain the pay equity provisions in the Brooks-Fish substitute, provisions which were originally reported from the committee.

Mr. FORD of Michigan. The issue of pay equity has a long history of congressional debate and support. Legislation dealing with the issue passed with overwhelming support in the 98th, 99th, and 100th Congresses. The language in section 202 simply establishes a source of information for business voluntarily seeking it: A clearinghouse where individuals, companies, and State and local governments could obtain information

on public and private sector initiatives to identify and eliminate wage discrimination based on race, sex, or national origins.

I want to emphasize there is nothing in the legislation that would establish a bureaucracy to determine wages for the private sector.

The Pay Equity Technical Assistance Act was cosponsored by 103 Members of the 101st Congress and 39 Members have cosponsored the legislation thus far in the 102d Congress. And, contrary to what the gentlewoman from Nevada had to say, our committee did in fact hear from witnesses on this specific provision when it was being considered by the Committee on Education and Labor, and none of the witnesses who testified against the form of the bill when we changed its name to the civil rights and women's equity in the workplace bill had one word. Even when I asked them specifically to speak on this, no one wanted to criticize this aspect of the bill.

The few words we have heard here are the first complaint we have heard from anyone, from any source.

Mr. MINETA. Mr. Chairman, I thank the chairman of the committee.

Mr. FAWELL. Mr. Chairman, will the gentleman yield? Will the gentleman yield?

Mr. FORD of Michigan. I do not control the time.

The CHAIRMAN. The time is controlled by the gentleman from Texas [Mr. BROOKS].

Does the gentleman from Texas yield further?

Mr. BROOKS. No, Mr. Chairman.

The CHAIRMAN. The gentleman does not yield. The Chair recognizes again the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield myself 15 seconds, following which I would like to yield 1 minute to the gentleman from California, but preceding that may I yield such time as he may consume to the gentleman from Kentucky [Mr. BUNNING].

Mr. BUNNING. I thank the gentleman for yielding time, and I rise in opposition to the Brooks-Fish substitute.

Mr. Chairman, I rise in opposition to the civil rights, or as it should be called, the Civil Wrongs Act of 1991.

This was a bad bill last year when the President vetoed it; it was a worse bill when it started out this year. And it has been made even worse with all the juggling and the juggling that has been going on in the last few weeks as the democrat leadership has been trying to come up with a gimmick that will make this bill palatable to a few more people in this body.

Despite all the tinkering, it is still a quota bill. Despite all the tinkering, it is bad legislation. Despite all the tinkering it should be rejected.

America was built on the principle that skill, ability, intelligence, and drive would determine the value of a person in the marketplace. This

bill says just the opposite—that the color of your skin or that your sex is more important than your ability when it comes to getting and keeping a job.

That is wrong. That is immoral. And that is unamerican. And that is why I am voting against it.

If this bill were enacted, business—particularly small businesses—would be virtually forced to resort to quotas for hiring and promotion just to protect themselves from a devastating torrent of costly lawsuits. They won't have much choice in the matter. It will be a choice between survival and being sued silly at every turn.

The American people don't want that. The American people find the thought of quotas repugnant. And when that message started to sink in with the Democrats who are pushing this bill for their own political reasons, they decided they had to do something to strengthen their position. They decided to use deception.

The result is that this bill today is a double-edged sword. It prohibits the use of quotas and then goes on to force businesses to use quotas. If this bill is enacted, business will be damned if they do, and double damned if they don't use quotas.

It should be defeated, and its sponsors should be ashamed of themselves.

It is fairly clear by now that there has been no groundswell of support for this bill anywhere in the United States. It is becoming clear that there is not going to be any.

If your district is like mine, you know what I mean. There just is no support for this measure. Over the past 2 years, I have only received some 30 letters or calls in support of it. That's not a sign of overwhelming interest in the issue.

According to my questionnaire, the people in my district overwhelmingly oppose quota legislation by an 8-to-1 margin. There is just no support for this bill.

It deserves rejection. It deserves a veto. And the veto deserves to be sustained.

Mr. HYDE. Mr. Chairman, I just want to say to my friends Mr. HOUGHTON and Mr. SARPALIUS, it is wonderful to quote the part of the bill that says quotas are outlawed, but turn a few pages over and read what they mean by quotas. He who defines the issue has it half-won.

Mr. DANNEMEYER. I thank the gentleman for yielding.

Mr. Chairman, Pat Buchanan has a unique way of expressing himself on the current scene, the political scene here in Congress.

He said this morning in the Washington Times:

In the '40s, '50s and early '60s, the term civil rights brought to mind the picture of a small black girl being led through a crowd of abusive whites to a public school. Of black youths sitting at a lunch counter having ketchup dumped on their heads as they tried to buy a sandwich. Of Jackie Robinson being given a chance to prove his ability. Of Rosa Parks refusing to give up her seat on a bus. The movement had about it magnanimity, dignity, nobility.

Today, civil rights has come to mean something different.

It has come to mean an "affirmative action" program at Georgetown Law School, where blacks are admitted with average test

scores far below the lowest score of any white students.

It has come to mean white cops being denied a lifelong dream of becoming a sergeant or detective, because some court has ordered the next 10 open slots be set aside for blacks and Hispanics.

It has come to mean busing white children across town to meet some judge's notion of an acceptable racial balance.

It has come to mean young men born in El Salvador or Mexico getting preferential treatment at the state college over Polish and Italian kids whose fathers fought in Vietnam.

It has come to mean brazen boodling by politicians who suddenly turn up owning radio and TV stations worth millions—for an investment of a few thousand bucks.

A quarter century ago, we were able to see the faces of the victims of discrimination; now we see the faces of the victims of reverse discrimination.

In essence, the philosophical undergirding of this provision has been lost. I ask for a "no" on this quota bill.

Mr. BROOKS. Mr. Chairman, I yield 1½ minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Chairman, I rise in support of the bipartisan Brooks-Fish civil rights bill. I hope that all Americans and all small businesses in this country understand that the 1964 Civil Rights Act does not apply to businesses with 15 or fewer employees.

Nothing in this legislation would change that.

This legislation does not extend or expand monetary damages available in race discrimination cases. It merely provides existing remedies available in race cases to discrimination cases based on sex, religion, and disability.

On the quota issue—and let me make it clear that I am opposed to quotas and I believe that nearly everyone in this body is opposed to quotas. The language in this bill, I think needs to be specifically quoted.

It provides that:

Nothing in the amendments made by this act shall be construed to require, encourage or permit an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex or national origin. And the use of such quotas shall be deemed to be an unlawful employment practice.

Now, my colleagues, I do not understand how in the world the President of the United States can read this language and continue to call this a quota bill.

Mr. Chairman, when we finish here today, I hope we will pass this legislation and reaffirm our commitment to the basic principle that we are one Nation under God with equal justice and opportunity for all our citizens.

Mr. HYDE. Mr. Chairman, I yield 15 seconds to the gentleman from Kansas [Mr. SLATTERY] if he would yield to me. Mr. Chairman, would the gentleman yield to me?

Mr. SLATTERY. I yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentleman for yielding.

Mr. Chairman, I just want to know if the gentleman has read the definition of a quota in H.R. 1 and if he does not think that—

Mr. SLATTERY. I would be happy to respond to the gentleman. I will assure the gentleman I have read the definition of quota, and as far as I am concerned the definition of quota contained in the legislation is precisely what anybody reading the English language would assume it meant.

Mr. HYDE. I would only say to the gentleman the Washington Post and the New York Times, no friends of ours, disagree with the gentleman.

Mr. SLATTERY. Well, I do not know whether that is true or not, I will take the gentleman's word. But I don't care what the New York Times or the Washington Post thinks it is.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. WELDON].

Mr. WELDON. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise today as one who voted for the LaFalce-Michel substitute, the civil rights bill in the last session, but voted for final passage of a civil rights bill in the last session with the fervent hope that we could put petty politics aside and reach a compromise with the administration that all of us could get behind. We did not do that, and we have not come up with an acceptable compromise.

I think the Philadelphia Inquirer summed it up best when on Monday of this week, in an editorial, they stated:

This is no longer a debate over a piece of legislation. It has become a contest for political advantage.

Further evidence of that was last night with the vote on the Towns-Schroeder substitute, which passed this House on a voice vote. It was not our side that called for a vote, it was the majority side that called for a vote because they knew it would lose and they wanted it to lose.

Mr. Chairman, let us put the politics aside, let us stop playing games. I will vote "no" on the Democratic substitute, I will vote "no" on final passage. I urge my colleagues to do the same.

Let us finally get a civil rights bill with which we can all agree.

Mr. Chairman, I rise today in reluctant opposition to the Civil Rights Act of 1991. I recognize that America today is not the America to which we all aspire. Despite our best efforts, equality for all Americans continues to elude our grasp. Several recent Supreme Court decisions have exacerbated this already strained situation. Unfortunately, racial harmony in America seems more out of reach than it did 25 years ago.

Much of this racism, unfortunately, is out of our hands. Congress cannot legislate an end to bigotry, much as we might hope. But there are steps which we can take to address some of the legal barriers facing minorities in our

Nation. For that reason, I strongly support President Bush's proposal and would like to see it enacted into law. The President should be commended for his commitment to civil rights and his tireless efforts on behalf of all Americans.

As drafted today, Mr. Chairman, H.R. 1 has a number of problems. It will place unacceptable burdens on employers. It will place an unreasonable standard for businesses to prove that practices are motivated by a business necessity and the proscriptions against quotas are hollow. Passage of this legislation will be a bonanza for ambulance-chasing lawyers and a disaster for main street businesses.

Ed Koch, former mayor of New York City and former member of this body, a strong advocate for civil rights, recently shared his reasons for opposing H.R. 1. "You might ask, how can it be that I, your former colleague who voted for every civil rights bill when in Congress and as a young lawyer in 1964 went to Mississippi to defend black and white civil rights workers who were registering voters, could take such a position? The answer is simple. H.R. 1 is not a civil rights bill. It is a bill which will encourage quotas based on race, ethnicity, religion, and gender." And quotas hardly move this Nation in the right direction. Koch observed that "the easy thing to do is to give groups preference, but this means that innocent white people are going to suffer. I do not accept that."

Mr. Chairman, although I am voting against H.R. 1, I desperately want Congress to pass a fair civil rights bill. We all know, however, that this debate has less to do with fairness and equality as it does with partisan gamesmanship. As the Philadelphia Inquirer noted in an editorial yesterday morning, "This is no longer a debate over a piece of legislation. It has become a contest for political advantage." The Democrats erased any doubts about that issue last night. After declaring that the Towns-Schroeder substitute had won by voice vote, amendment sponsors called for a recorded vote. Surely, Mr. Speaker, they knew they were going to lose. One can only assume that liberal Democrats did not want to pass Towns-Schroeder, but wanted to use it as a political statement. It is not the Members of this Chamber, or the national parties which suffer from this game. Let us put aside our political affiliations and work together to assist those whose voices have become muted by the Supreme Court.

I will watch the conference committee negotiations carefully. If appropriate changes are made to reflect the concerns of the administration and the business community, then I will be among the bill's loudest supporters. But if the President finds the package presented to him unacceptable and vetoes the bill, then I will vote to sustain his decision.

Mr. Chairman, all of us want a fair civil rights bill. I regret having to vote against H.R. 1, because I sincerely want a compromise which meets the concerns of all involved. But I am not blind to the problems which it would create and urge the conferees to carefully address these issues.

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. LAUGHLIN].

Mr. LAUGHLIN. I thank the gentleman for yielding.

Mr. Chairman, many people criticize this bill as a quota bill and base their criticism on the business necessity provisions of the bill. The bill does expressly reverse the "business necessity" provisions of the Wards Cove case; however, as I understand it, the bill does not undo the nearly 20 years of cases interpreting the issue of business necessity.

Mr. Chairman, is this correct?

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. LAUGHLIN. I yield to the chairman.

Mr. BROOKS. I thank the gentleman for yielding.

Mr. Chairman, that is correct.

Mr. LAUGHLIN. So, if the extensive body of case law interpreting business necessity prior to Wards Cove didn't require or result in quotas, this bill will not change that. Is my understanding correct?

Mr. BROOKS. The gentleman's understanding is correct.

Mr. LAUGHLIN. I thank the chairman.

□ 1130

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. GEREN].

Mr. GEREN of Texas. Mr. Chairman, I would like to propose to the committee chairman a series of questions relating to the business necessity doctrine and allegations made by some that this bill continues to be a so-called quota bill. I believe that the amendments we are offering to this legislation serve to satisfy many of those who may be concerned that this bill requires an employer to hire or promote by quota.

My first question, Mr. Chairman, relates to the standard of proof in disparate impact cases. My references are to section numbers of title VII as amended by the bill.

I understand that section 703(k)(1)(A), as it is now contained in the Brooks-Fish substitute, is designed to make clear that a plaintiff challenging an employment practice or group of practices has the burden of proof of establishing that the disparate impact with regard to a specific kind of employment decision, such as hiring, results from the challenged practice or group of practices and that a nexus or cause and effect must be shown between the employment practice and the disparate impact as courts normally require.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. GEREN of Texas. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Chairman, the gentleman from Texas [Mr. GEREN] is correct, and there is nothing unusual here.

Mr. GEREN of Texas. I understand that the addition of section 703(k)(4) to the bill is intended to put to rest concerns that a disparate impact violation might be proven simply by introducing generalized population statistics from the Census or similar sources. That section is designed to make clear that cases like *Hazelwood School District v. U.S.*, 433 U.S. 299 (1977) and *Teamsters v. U.S.*, 431 U.S. 324 (1977), along with others, continue to set the legal standards for meaningful statistical proof under title VII. Am I correct in this view?

Mr. BROOKS. Yes, you are.

Mr. GEREN of Texas. Can an employer rely entirely on job related criteria, such as relevant education, experience, and past record of performance to prove business necessity?

Mr. BROOKS. That is the intent. So long as the criteria bear a significant and manifest relationship to job performance, then the employer can rely on those criteria in proving business necessity.

Mr. GEREN of Texas. Mr. Chairman, a unanimous U.S. Supreme Court in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981), a case involving sex discrimination, said in reversing the Fifth Circuit:

The views of the Court of Appeals can be read, we think, as requiring the employer to hire the minority or female applicant whenever that person's objective qualifications were equal to those of a white male applicant. But Title VII does not obligate an employer to accord this preference.

Mr. Chairman, if this bill becomes law, would it overrule this Supreme Court view of title VII?

Mr. BROOKS. No, it would not.

Mr. GEREN of Texas. In proving that a disparate impact results from a groups of employment practices, it is the intention of this legislation to make clear that the plaintiff has the burden of proof when a group of practices are challenged to demonstrate which specific practice or practices within the group results in the disparate impact. In making that demonstration the plaintiff is required to satisfy the Court that it has made a diligent effort to identify the specific practices that result in the disparate impact and that only after satisfying the Court that it was not reasonably possible from available records or other information for the complaining party to separate the impact of each practice, does the burden shift to the respondent under section 703(k)(1)(C). Is that the way the burdens work under the bill?

Mr. BROOKS. That is the way it is supposed to work.

Mr. GEREN of Texas. Mr. Chairman, I am concerned that the language in section 101(2) referring to the Supreme Court's decision in *Griggs v. Duke Power*, 401, U.S. 424 (1971) and to its Wards Cove decision, not be interpreted to overrule U.S. Supreme Court decisions interpreting *Griggs* that were de-

ceded prior to Wards Cove, such as *Albermarle Paper v. Moody*, 422 U.S. 405 (1975), *Dothard v. Rawlinson*, 433 U.S. 321 (1977), and *NY Transit v. Beazer*, 440 U.S. 568 (1979), as well as those earlier decisions upon which the Circuit Courts of Appeal were united on the interpretation of the term "business necessity." Is the intent of this section to overrule that portion of Wards Cove concerned with business necessity?

Mr. BROOKS. Yes, that is the intention.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Wisconsin [Mr. GUNDERSON].

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. GUNDERSON. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, we have heard a great deal this afternoon from our learned brethren on the other side of the aisle quoting the provisions in H.R. 1 that outlaw quotas. I would ask the gentleman if he has looked at page 16, lines 12 to 17, which define a quota and has been interpreted—I read it this way: I have been a lawyer since 1950, and there are a lot of us around here and a lot on the outside, and they say it is only a quota if a fixed number or a fixed percentage of persons are actually hired and an employer hires these persons regardless of their qualifications.

Mr. Chairman, I ask the gentleman, "Is that your interpretation of that?"

Mr. GUNDERSON. Mr. Chairman, there is no question that is my interpretation.

Mr. HYDE. That is a great definition. I thank the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Chairman, I appreciate the remarks of the gentleman from Illinois [Mr. HYDE] because no one wants a civil rights bill more than I do.

However, Mr. Chairman, I think we ought to be honest. This is not a civil rights bill. This substitute is a lawyer's rights bill, and let us be honest about the interest group we are serving here today, my colleagues. It is not the minority groups of America. It is the trial lawyers of America.

Mr. Chairman, it is no accident that the Trial Lawyers Association has donated \$106,000 to the Democrats on the Committee on Education and Labor in the last campaign and \$900 to the Republicans.

This bill does not mandate quotas, but this substitute results in quotas. It results in quotas because no business in America can do anything but establish quotas as their only solitary protection under this legislation. In the absence of that, disparate impact is found, the case goes to trial, it goes to a jury trial, and, as my colleagues know, if our goal was remedies for the victims, I would say to them, "I'm with you." But this bill, this sub-

stitute, does not deal with remedies for the victims. It deals with remedies for the lawyers.

I call my colleagues' attention to section 107. No waiver of all or substantially all of an attorney's fees shall be compelled as a condition of a settlement of a claim under this title.

My colleagues, we do want civil rights legislation. Unfortunately this substitute is not it.

Mr. BROOKS. Mr. Chairman, I yield 1½ minutes to the gentleman from Louisiana [Mr. JEFFERSON].

Mr. JEFFERSON. Mr. Chairman, I rise in support of the Brooks-Fish substitute.

I hail from a part of the country where politicians once made careers based upon one issue—race. The appeal then was overt, explicit, undisguised.

Today, the appeal to race is still being made. This time, it is under the cover of the sophisticated, inflammatory, incendiary concepts like quotas and race norming.

Who amongst us is for quotas? Not a Member on either side.

No one has argued for quotas and no one will. Yet, we are called upon to defend against an argument we have not made.

But, without stopping to ask why, the Brooks-Fish substitute dutifully undertakes to squelch the quota charge. It uses very direct language to do so, explicitly outlawing quotas, and if that were not enough, then creating a right to sue by those victimized by quotas.

Now this language is under attack by those who say the definition of a quota that this substitute uses in condemning quotas is too narrow. It, they say, outlaws only quotas requiring that meritless, unqualified minorities, and women be hired.

But, is this not what the President says he wants? Hiring based on merit?

Does he now contend that a court could not, upon a finding of discriminatory hiring against qualified black teachers by a school board, for example, require the hiring of two qualified black teachers for each qualified white teacher hired until the effects of the past discrimination are removed.

No. He cannot want to outlaw this practice now permitted by courts, for this would be remedial hiring based on merit.

Now, with all the stretching that Brooks-Fish does to meet the President's feigned quota argument, the President still declares, "it is a quota bill no matter now its authors dress it up. You can't put a sign on a pig," he says, "and say it is a horse."

Doubtless, this contorted analogy will not go down in history alongside the great utterances of American Presidents, but it may go down as one revealing of quite an embarrassing thought—our President does not know

the difference between dressing a pig and amending a bill.

For the record, Mr. President, a pig has immutable characteristics, which cannot be changed, no matter how hard one tries. But drafting anti-quota language to a bill is achievable and can be agreed upon if we are willing to try hard enough. Brooks-Fish achieves this.

The task before us, Mr. Chairman, is not changing a pig to a horse, it is changing the tenor of this debate and with it the tolerance of a nation toward securing equal employment rights for all.

I urge my colleagues to vote for the Brooks-Fish substitute.

Mr. HYDE. Mr. Chairman, may I inquire of my distinguished colleague, the gentleman from Texas [Mr. BROOKS], the chairman of the Committee on the Judiciary: Does the gentleman plan to yield any time to the gentleman from Texas [Mr. STENHOLM]?

Mr. BROOKS. Mr. Chairman, I would say to the gentleman from Illinois [Mr. HYDE], my beloved friend, "Have no fear about your beloved friend, Mr. STENHOLM, I have already assured him that I would yield him all the time he requested, which was 3 minutes. I told him he could have it. I told him I would be delighted to give it to him. I would yield it to him, and I am pleased to do that at the earliest opportunity. So, have no fear about that."

Mr. HYDE. Mr. Chairman, I say to the gentleman from Texas, "I can't tell you how gratified I am, having yielded 5 minutes to my distinguished friend from New York. If you would care to yield to Mr. STENHOLM now, then I would yield him a little additional time, and we can sort of have a Stenholm fiesta."

Mr. BROOKS. A little later.

Mr. HYDE. Oh, a little later.

Mr. BROOKS. We will get the mariachi band.

Mr. HYDE. Mr. Chairman, I say to the gentleman from Texas, "I want to see you in one of those big Mexican hats."

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Illinois [Mr. FAWELL].

□ 1140

Mr. FAWELL. Mr. Chairman, I thank the gentleman for yielding time to me. I know that his time is valuable here.

I want to make reference to the comparable worth debate that occurred a short time ago. I note that H.R. 1 deletes language from last year's vetoed bill stating that the legislation was not "intended to overrule existing cases involving comparable worth."

But in addition, I would point out that because we do not have a two-pronged definition of "business necessity," we are sticking with "significant relationship to effective job perform-

ance" as being the definition of "business necessity," and, therefore, the only defense which an employer can use then, when we get to the nonhiring criteria, not involving hiring or promotion, the only defense that an employer might have, for instance, to those employment practices which are not in the hiring category like wage plans would be that the particular employment practice or the wage plan is significantly related to job performance. And, of course, it is not significantly related to job performance; it is related to market forces, it is related to collective bargaining agreements and things of that sort. So in effect the employer has no defense whatsoever whenever a wage plan has a disparate impact, and, of course, a wage plan always has a disparate impact, and then the employer has no defense whatsoever.

There is one other point that I would like to make. So many people have talked about Griggs, what Griggs actually does say, and, of course, Griggs sets forth what the real defense of an employer ought to be to disparate impact. Disparate impact is something that unintentionally occurs because of an employment practice, and here is the language from Justice Brennan, who certainly is no conservative. This is what he says.

Griggs and its progeny have established a three-part analysis of disparate impact claims. To establish a prima facie case of discrimination, a plaintiff must show that the facially neutral employment practice had a significantly discriminatory impact. If that showing is made, the employer must then demonstrate that "any given requirement has a manifest relationship to the employment in question."

Now, that is the employer's defense, and the name of the game is if you tighten that up enough and you have it relate to job performances, what the employer knows is that he is not going to win that case and that, of course, means that if he knows he is not going to win that case, you have quotas. That is what we have been trying to bring across to the other side.

It is not that we are against civil rights or anything of that sort. I have enjoyed the speeches the other Members have been giving, I too, believe in civil rights, but what we are trying to say is that there is some sincerity on the part of the President and by a lot of us when we point out that you have so wangled and trashed that definition that Justice Brennan set forth as to what Griggs really said, that you do not have what Griggs said in regard to your bill, and as a result the employer cannot win. That is what we have been trying to say.

Mr. BROOKS. Mr. Chairman, I yield 1 minute to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise for the purpose of asking a question of the distinguished chairman of the committee in regard to the section of the bill that defines an illegal quota. The gentleman from Texas [Mr. BROOKS] has already indicated in colloquy with the gentleman from Missouri [Mr. GEPHARDT] that he did not believe that language defining an illegal quota applied only to unqualified workers, that it also applied to qualified workers.

I would like the chairman of the committee perhaps to answer this very straightforward question. Will the chairman support a language change to this definition of illegal quotas so that the language change conforms the language of the bill to the statement made by the chairman that illegal quotas would apply both to qualified and unqualified workers?

Mr. BROOKS. Mr. Chairman, if the gentleman will yield, I would be happy to do that.

Mr. TAUZIN. Mr. Chairman, I thank the chairman of the committee for his commitment.

PARLIAMENTARY INQUIRY

Mr. HYDE. Mr. Chairman, if I might make a parliamentary inquiry, the chairman of the Committee on the Judiciary has just committed himself to amending the definition of quota. He said that he is going to do that later. Does he want to do that now by unanimous consent?

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] has not stated a parliamentary inquiry.

Mr. HYDE. All right, Mr. Chairman. I will ask that privately, then.

Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. BOEHNER].

Mr. BOEHNER. Mr. Chairman, the so-called civil rights bill we are voting on today is not a civil rights bill, it is a quota bill, plain and simple. Yet supporters of this bill have done everything in their power to hide the quota requirements contained in the legislation. They have tried to hide the quota provisions through a slick public relations campaign and shrill personal attacks against the president. But like the Stealth fighter, the quota bill can hide for only so long before it is detected. That is why the civil rights community and their allies in Congress have created a stealth quota bill. They are hoping to fly this legal monster by the American public before it is detected for what it really is, a job destroying quota bill.

The circular logic contained in this legislation will do more than force quotas, it will clog our already overburdened legal system with thousands of lawsuits. The quota bill allows individuals to sue companies if they use quotas. However, companies must comply with the quota bill. To prove they are in compliance, supporters of the stealth quota bill have created an en-

tirely new form of analysis designed to prove business necessity. This new and improved analysis still stacks the deck against all employers, because the burden of proof is entirely upon them. If an employer cannot prove that their personnel practices "bear a significant and manifest relationship to the requirements for effective job performance," he will be subject to the so-called damages cap of \$150,000 or an amount equal to compensatory damages and backpay, whichever is greater.

Mr. Chairman, this bill before us today is wrong. It is wrong for America. We need to be competitive if we are going to compete in the worldwide economy we are in. We need labor and business to work together, and we need to provide equal opportunity for all. This bill does none of those things and will do nothing more than continue to destroy our ability to compete in the worldwide economy.

Mr. BROOKS. Mr. Chairman, I yield 1½ minutes to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Chairman, I rise in strong support of H.R. 1, the Civil Rights Act of 1991. It is a fair and just bill which will overcome the roadblocks to civil rights progress that were created by the Supreme Court decisions of the past few years. But the Supreme Court hasn't been the only obstacle to the progress of this legislation.

The President's political strategy has always been one of divisiveness; his quota argument has always been a smokescreen.

He called this bill a quota bill when it wasn't, and it isn't. He sabotaged the negotiations between business and civil rights groups. He dismissed the anti-quota language in the bill and called it cosmetic.

But a critical factor has stayed constant throughout the crafting of this bill. Democrats are fighting all forms of discrimination.

Anyone, including the President, who says otherwise, deserves to be second-guessed about their true motives and intentions.

To the President and members of his party who want to exploit the fears in our society about the prospects of reverse discrimination, Democrats have an answer:

"If you feel you are a victim of reverse discrimination because of a racial quota, here is a bill that empowers you to do something about it."

Republicans who join the President and vote against a bill that empowers women and minorities to take on powerful corporations and provides both victims of discrimination and reverse discrimination with a means to combat it, may encounter consequences that they don't envision here today. They do so at their own peril.

Politics aside, the debate we are having today is about whose side you are on—Democrats are standing with workers and the rights of businesses to hire without discrimination and without quotas. George Bush is standing on the side of those who oppose the rights of those workers to take action when they are discriminated against.

Republicans continue to practice the politics of racial divisiveness—pitting segments of our culture against each other, instead of looking for the common ground that we all can stand on.

The President and his party are looking to play the race card whenever it turns up in their hand. This bill, however, takes the quota issue, the race card, out of that hand in 1992.

Democrats bring to the House floor a bill that makes hiring quotas illegal, drives reverse discrimination out of the workplace, and thereby removes a dangerous weapon from the Republican campaign arsenal—race-baiting in political campaigns.

Clearly, the Republican strategy has been to promote racial divisiveness at every opportunity. On the one hand, they attack this civil rights legislation as a quota bill, when it is not.

And on the other hand, the Republican Party is aggressively arguing that minorities must be guaranteed a specific number of seats in redistricting.

After opposing the correction of minority undercount in the census, they then fight to pack minorities into districts guaranteed to defeat Democrats through the use of political quotas.

If you doubt me, I refer you to the critique of the Republican Congressional Campaign Committee by the Heritage Foundation's legal scholar, Bruce Fein.

The Republican strategy to "reach out" to minorities in the redistricting process is characteristic of a Party that will cynically manipulate opportunities and issues in an attempt to twist them to their advantage.

First, they oppose efforts to correct the undercount of minorities in the census, then argue for the creation of "packed" minority districts where it will help them and then ignore them where it won't. By packing districts with minorities, they are essentially legislating quotas in representative terms.

The conservative Mr. Fein wrote that "the prevailing redistricting strategy of the Republican National Committee is politically suicidal, legally inept and racially and ethnically divisive." He says the Republican National Committee strategy is at odds with Mr. Bush's adamant opposition to racial quotas.

He called the Republican strategy "bad law, bad Republican Party politics, and bad for racial and ethnic harmony."

Their plan on the surface may seem to political pros to be both obvious and

ingenious, but what the Republicans have left out of their plan is the very thing they have left out of this debate on civil rights, and that is principles.

There is no principled stand. Just more evidence of hypocrisy in the pursuit of partisan political victory.

But, it is time now to stop focusing on these exploitative, divisive tactics and instead to recognize the reality of H.R. 1.

What this civil rights legislation does do is reaffirm our commitment to ensuring equal opportunity in the work place and continue our tradition of guaranteeing equality for all.

This bill restores our legal protections against intentional discrimination in the work place and extends to women, the disabled and religious minorities the same rights that already apply to people of color.

We have an obligation to provide legal protection for all to ensure that none are treated as second class citizens.

Our Nation's longstanding commitment to equality demands that any discrimination based on race, gender, religion or national origin will not be tolerated.

Only the strong protections offered in this bill will give victims of employment discrimination an avenue of redress and access to equal justice.

Let us reaffirm our national commitment to civil rights. I urge my colleagues to support this bipartisan effort toward equality for all Americans.

□ 1150

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Texas [Mr. STENHOLM].

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Texas.

Mr. STENHOLM. Mr. Chairman, I sincerely had hoped to reach this point in the debate rising in support of the Civil Rights Act of 1991. I want to vote for a true civil rights bill, and I believe that the overwhelming majority of this body, and the President, want to enact a civil rights bill as well.

Regrettably, the civil rights bill before this body is not the right bill. I had hoped that a compromise could be reached that balanced the goals emphasized by the civil rights community with the concerns focused on by the business community.

Mr. Chairman, I have spent a great deal of time listening to Representatives from all sides of this issue. I had several concerns about the bill reported from committee, and expressed these concerns to the sponsors of the bill and to the civil rights community. A good faith effort was made by many to address the concerns that I and others have, and some of the troublesome parts and sections of the bill were improved.

Unfortunately, many of the problems that have been identified with this leg-

islation remain unaddressed, little things, like the words "manifest" and "significant;" little things, that will, in my opinion, become big things in the world of litigation.

Many of the provisions in the bill that I have difficulties with are not calamitous when considered individually, and could be debated in depth individually. However, when taken together, these provisions will have a chilling effect on legitimate employment practices of businesses and all of their employees across America.

Under the Brooks-Fish bill, employers would face an unreasonable burden when defending themselves against charges of discrimination, and, in effect, would be penalized for being guilty until, with great difficulty and cost, they could prove themselves innocent.

Mr. Chairman, I am also concerned about exposing small businesses to unlimited compensatory damages, such as those for pain and suffering, while simultaneously increasing the pool of possible litigation. Instead of restitution and conciliation, H.R. 1 will encourage further litigation and aversion in our society.

Mr. Chairman, I am inserting for the RECORD a more detailed explanation of the reasons for my opposition to H.R. 1.

A CONSERVATIVE DEMOCRAT'S REMAINING CONCERNS ABOUT H.R. 1

1. ISSUE: QUOTAS

Concern: Despite the appearance of having "fixed" the quota problem, quotas remain at the core of this civil rights bill.

Explanation: The anti-quota language included in the Committee substitute does not respond to the concern that employers are left only with "hiring and promoting by the numbers" if they are to avoid costly litigation. Without such "defensive hiring" employers would face a nearly impossible court defense with exorbitant legal fees. Furthermore, they frequently would be forced to hire the minimally qualified person rather than the well- or over-qualified individual.

In addition, the substitute's language intended to give the appearance of prohibiting quotas ends up placing employers in double jeopardy. As already mentioned, employers are liable if their hiring decisions do not closely reflect "the numbers," but they're also liable in cases, for example, brought by individuals claiming reverse discrimination, if they do hire by the numbers to avoid costly lawsuits.

2. ISSUE: DAMAGES CAPS

Concern: The caps are not real caps, but rather will act as floors. In addition, having caps for some groups of people but not for others is patently unfair.

Explanation: The misleading \$150,000 cap is solely limited to punitive damages, and in fact, that cap can be removed by an award which is an amount equal to compensatory damages (including pain and suffering) plus equitable relief (e.g. back pay), if that sum is greater than the \$150,000. In addition, the bill still allows unlimited compensatory damages. Compensatory damages would be allowed in class action intentional discrimination suits, which are often based on statistical imbalances between an employer's workforce and the relevant labor pool.

3. ISSUE: BUSINESS NECESSITY

Concern: The "business necessity" definition is unclear, would require extensive court interpretation, and would restrict the factors businesses may use in hiring and promoting.

Explanation: The substitute creates a new standard of "business necessity" that a business must meet to defend an employment practice whose result is a "disparate impact"—meaning the percentage of the employer's work force comprising women, minorities, or a given religious group, does not almost identically match that group's percentage in the available labor pool.

This new language defines business necessity as having a "significant and manifest relationship to the requirements for effective job performance." The courts, through much litigation, would then need to decide exactly what that definition means in practical terms. While the substitute's language purports to codify the court's holding in the Griggs case, that is not what is done, despite the fact that the "Griggs standard" is clearly referred to in subsequent cases as "... manifestly related to the employment in question." In fact, in the dissent of the Wards Cove case, Justice Stevens used this definition to describe the Griggs rule that Wards Cove was overturning.

In addition, the new language of "effective job performance" restricts factors—such as honesty, attitude, promotability, ability to get along with others, recruitment costs, and other legitimate business considerations—which may affect an employer's decision on whether to hire, promote or retain an employee. The new language combines subjective and legally unprecedented terms which, combined with the linkage to job performance, results in a nearly impossible standard for employers to meet.

4. ISSUE: RELATIVE QUALIFICATIONS

Concern: This language is advertised as easing the "business necessity" requirement but in actuality improves nothing.

Explanation: The substitute adds a new section, in response to criticism of H.R. 1's limiting the definition of business necessity to practices based on "effective" (i.e., minimal) job performance. But the Committee substitute states that an employer may rely on "relative qualifications" in hiring and promoting only as long as that preference does not result in a "disparate impact" which, in turn, could only be justified by business necessity. The logic of the provision is entirely circular.

5. ISSUE: "PARTICULARITY" WITHIN THE DISPARATE IMPACT CLAIM

Concern: The amount of paperwork and legal strategy a business would have to have on hand to defend against every employment practice would be overwhelming, especially to small businesses.

Explanation: The substitute's language still puts an employer in the position of having to defend each practice within a group of employment practices as non-discriminatory, and is contrary to case law even before the Wards Cove decision. The language allows a complainant to list a group of challenged practices, without specifying which of the practices causes a "disparate impact."

6. ISSUE: MIXED MOTIVES

Concern: The kind of relief available to plaintiffs in mixed motive cases would be new and inappropriate.

Explanation: The substitute's new language changes the grounds upon which an individual may bring suit against a company for discriminatory intent from that intent

being a "contributing" factor to a "motivating" factor. This change is cosmetic and will not materially change the courts' findings. An employer would be liable even if the employer had legitimate, non-discriminatory reasons for taking a challenged action and the result would have been the same.

Furthermore, under the substitute's language, employers who successfully defend themselves in mixed motive cases would still be subject to punitive and compensatory damages.

7. ISSUE: ATTORNEYS' FEES

Concern: Language espoused to remove the "attorney heaven" incentives of the bill is actually circular and maintains trial lawyers as the greatest beneficiaries of this bill.

Explanation: H.R. 1 as reported provides that a court may not settle a Title VII claim unless the parties attest that a waiver of attorneys' fees was not compelled as a condition of settlement. The whole issue as to whether a waiver of attorneys' fees was compelled obviously depends on whether or not the waiver was voluntary. The language in the substitute merely makes explicit what was implicit in the original formulation of the provision, still thwarting Title VII's goal of encouraging settlement of employment discrimination disputes.

8. ISSUE: TIMING—STATUTE OF LIMITATIONS & RETROACTIVITY

Concern: The statute of limitations is greatly expanded and retroactivity is allowed under the substitute. Both time elements place businesses at greater risk and provide attorneys still greater incentives.

Explanation: The current statute of limitations for discrimination cases is 180 days; the substitute would expand it to 540 days—a threefold increase.

Additionally with regard to retroactivity, only those cases considered "finally adjudicated" would be exempt from being reopened, and even those cases in which an issue was settled by the Supreme Court would be reopened if "justice" requires it. The result is that virtually no cases currently under consideration will be excluded from coverage. Businesses which have kept records in a way that complies with laws in existence today will suddenly find themselves unprepared to face the new retroactivity language.

9. ISSUE: RACE NORMING/TESTING

Concern: Objective measures of a potential employee's appropriateness for a given job would be severely restricted.

Explanation: This entirely new language places very strict limitations on the use of tests in hiring. The concept that a test must "validly and fairly" predict job performance for the job in question sounds desirable, but in actuality leaves many questions unanswered. For example, since the language specifies "for the job in question," does that mean that a general mechanical aptitude test could not be used to hire a machinist? Testing is a specific statistical science. Language should not be added to the bill before qualified experts have the opportunity to testify in hearings and full debate can occur.

10. ISSUE: COMPARABLE WORTH

Concern: This new language on comparable worth introduces an entirely new issue into civil rights law without hearings to discuss its appropriateness.

Explanation: All previous attempts to enact comparable worth legislation were limited to federal pay, and even they were rejected by Congress. This new language, which applies to all work places, not just the

federal government, was added to the bill without hearings or other debate. While some may argue that this language simply calls for a "study," we all know that today's technical assistance is tomorrow's court evidence and the next day's mandated pay schedule. Establishing a new program under the Department of Labor to develop "pay equity" across all sectors of industry does not belong in this bill, for certain, and has not even been able to move on its own merits.

11. ISSUE: CHALLENGING CONSENT DECREES

Concern: Individuals who were not parties to consent decrees would be unable to contest reverse discrimination that resulted from these decrees.

Explanation: In the case of *Martin v. Wilks*, the Supreme Court held that an individual should be allowed to challenge the validity of a consent decree under which he or she had suffered discrimination unless that individual had been a party to the original case leading to the decree. Consent decrees involve affirmative action programs and are often challenged for causing reverse discrimination. H.R. 1 would forbid an employee who is discriminated against because of a consent decree from challenging that consent decree, even if the employee did not know about the court action or have a chance to be heard when the consent decree was issued.

12. ISSUE: EXTRATERRITORIAL COVERAGE

Concern: Should the Civil Rights Act cover American employers and employees who are overseas? This was not in the original bill, but was added in the Brooks substitute.

Explanation: This provision is simply another example that, whatever the merits, we should not legislate before we have had a chance to explore an issue through hearings and debate. It is time to stop legislating by surprise.

Mr. Chairman, I do not think it serves the legislative process well when any of us question the motives of those who disagree with us. I do not question the sincerity and wisdom of the authors and supporters of H.R. 1 in attempting to address the very real problem of discrimination in America. In turn, I believe that the Members of this body, and the business community, who have expressed opposition to this bill, and some on the other side of the question who will be voting for this who still have differences of opinion in this legislation, but those who have expressed opposition to this bill, are not racists, but have legitimate concerns about the effect this bill would have on businesses, and, even more importantly, their employees.

Mr. Chairman, often overlooked in the heated rhetoric that has been going on in this Chamber over the last couple of days is the fact that employees will be affected by the concerns that I and others are raising about the effect of this legislation if it should become law.

I believe that a compromise can, could, and should be reached, which protects the rights of all citizens, black or white, woman or man, employee or employer, and hope that his body will have an opportunity to vote on such compromise sometime in the future.

Mr. Chairman, civil rights bills have never been easy, but they have passed

because they were right, right in principle, right in substance, right in legislative drafting.

In my opinion, this bill is not right. Perhaps it is wrong for all of the right reasons. Nonetheless, I urge Members to vote no on this bill, so that in the future we might have the opportunity to vote yes on the right bill; that we as a body and as a nation might find it in our hearts and in our minds and in our legislative agenda in this body to find the answer to those questions that divide us so bitterly today.

Mr. Chairman, I know as I have listened to Members on both sides of this question that in our hearts the overwhelming majority of us want to find that answer. Perhaps the eight Senators on the other side of this building that we stand in today can find the combination that some of us on this side failed to find, finding that proper wording that will give us the goal that each of us seeks.

Mr. HYDE. Mr. Chairman, I am honored to yield 2 minutes to the gentleman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Chairman, the civil rights debate in Congress is not about the President. The President is a good and decent man. And his record on civil rights is above reproach. When he was one of our colleagues, he cast an unpopular but courageous vote for the Civil Rights Act of 1964, though much of his home State of Texas opposed it.

This debate should be about jobs and opportunity for all Americans, regardless of race or sex. The hard cold fact is that discrimination on the basis of race and sex exists in our country. We absolutely do need a strong civil rights bill that prevents job discrimination and opens up opportunities for women and minorities.

We must focus on how to assure that victims of discrimination have timely, equitable justice. I do not define "timely justice" as an 8-year legal battle in which a victim's lawyer takes home more money than the victim as could clearly happen under this bill. Nor do I define "equitable justice" as a system that freezes out most victims of discrimination because of a prohibitively expensive and lengthy court process.

Further, I do not believe it is a good idea during tough economic times to pass legislation that will stack the deck against small employers. It is only human nature to expect that small employers will avoid situations in which they cannot possibly defend themselves, forcing them to look at numbers, not people.

The bills before us are, in reality, not very different from each other. There are problems that prevent both of them from being the piece of civil rights legislation we need. So today, I am voting against the Brooks-Field substitute. A

good piece of legislation is within our reach; the problems in this bill are solvable, but only if the parties work together instead of tearing each other apart on an issue which the American people hold dear—that discrimination on the basis of race or sex has no place in our society.

I hope my colleagues will step back and take a moment to look behind the labels and name calling, to wade through all the lofty rhetoric, and remember that we have a responsibility to pass the best possible legislation that will assure jobs and opportunities for all Americans. We are almost there. But the best solution will come when we lay down the verbal spears, cease the partisan posturing and work together to craft responsible policy that, in the real world, prevents discrimination and promotes jobs and opportunities for all. For that is what the American people elected us to do.

Mr. HYDE. Mr. Chairman, I yield 30 seconds to the gentleman from New York [Mr. FISH].

Mr. BROOKS. Mr. Chairman, I yield 30 seconds to the gentleman from New York.

□ 1200

Mr. FISH. Mr. Chairman, I am pleased to speak in support of the Brooks-Fish substitute, the compromise version of this legislation. The earlier discussions of the Towns-Schroeder substitute and the Michel substitute clarify that Brooks-Fish occupies the middle ground around which consensus hopefully will develop. The hours of debate point out the substitute presently before this body incorporates substantial accommodations to the business community—accommodations that go way beyond our attempts last year to address employer concerns.

During general debate, I pointed to explicit antiquota language stating that the use of quotas is unlawful. Employers do not protect themselves by relying on quotas but rather subject themselves to potential liability for intentional discrimination.

We must not overlook the fact that nothing in this bill gives employers a reason to hire by the numbers. During general debate, I quoted language permitting employer reliance on "relative qualifications or skills." At this point, I want to discuss some basic procedures in disparate impact cases under the Brooks-Fish substitute—steps that clearly provide no incentives for reliance on quotas.

The complaining party in a disparate impact case carries the heavy burden of linking adverse impact on women of members of minority groups to a specific practice or practices unless the employer's own conduct essentially forecloses the possibility of establishing such linkage. Here the Brooks-Fish formulation goes so far as to require a

judicial finding that the complaining party "after diligent effort cannot identify, from records or other information of the respondent reasonably available (through discovery or otherwise), which specific practice or practices contributed to the disparate impact." Surely it would be unfair to penalize the victims of alleged discrimination for not establishing specific linkage in such narrowly defined circumstances beyond their control—where an employer effectively prevents them from obtaining needed information about employment practices.

Employment practices resulting in disparate impact, of course, may not be unlawful. Business necessity serves as a potential defense. We incorporate the following simple, straightforward standard of business necessity: "[T]he practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance". The substitute's broad definition of "requirements for effective job performance" further protects employers by permitting consideration of a wide range of work-related factors. The Brooks-Fish substitute clearly facilitates proof of business necessity.

The proposed damages remedy in title VII of the Civil Rights Act is limited to cases of intentional discrimination. The fact that damages will not even be available in disparate impact cases—cases of unintentional discriminatory effort—again negates any suggestion that employers will need to rely on quotas to avoid damage awards. In considering the appropriateness of damages as a remedy, we need to bear in mind that damages already are available for racial discrimination under other legislation. There is nothing unique about damages in the context of other forms of intentional, invidious discrimination—such as sex discrimination—nothing, I repeat, that justifies surmising that employers now will resort to quotas in disparate impact cases involving unintentional discrimination.

Mr. Chairman, civil rights laws define our relation one to another in a multicultural society. They promote tranquility by guaranteeing all equal opportunity and equal justice regardless of race, religion, or ethnic background. And we have succeeded, Mr. Chairman, achieving a unified society.

In addressing redress for discriminatory employment practices, we implement the "equal protection of the law" clause of our Constitution. Surely discriminating employment practices without redress is a denial of equal protection.

In making the practice illegal quotas join countless other unfair employment practices on the books.

The Brooks-Fish substitute both safeguards employment rights. And

protects the needs of American business.

Mr. HYDE. Mr. Chairman, I yield the balance of my time to the gentleman from Georgia [Mr. GINGRICH], the distinguished minority whip.

Mr. GINGRICH. Mr. Chairman, I thank my colleague for yielding me this time.

Let me close for our side with a plea to every Member to look to the future. We disagree about H.R. 1, but this bill does not define or limit America's future. We have an obligation to every American, young or old, black, white, yellow, brown or red, male or female, every American to protect their civil rights.

My guess is that in a very few minutes, this bill will not have gotten enough votes to override a veto. My plea to the Democratic leadership at that point would be to work together to fashion a bill that can be signed. I think this country desperately needs a bipartisan effort focused on civil rights, and it should be possible to write a bill that does not threaten small businesses. It should be possible to write a bill that does not threaten unending litigation. It should be possible to write a bill that does not have any question about quotas.

I just want to say for our side, we think it is extraordinarily important to get beyond the heat of the last 2 days, to get beyond the hard language of the last 2 days, to join together against racism, to join together in favor of integration, to join together in favor of the civil rights of every person. If it turns out that the other side does not have the votes to override a veto, I would plead with my colleagues to sit down jointly with us and let us write a civil rights bill the President will sign and let us have a bipartisan joint signing ceremony in which every American gets the message that there is no room in America, there is no room in America, there is no willingness in America to tolerate racism of any kind under any form.

Mr. SHAYS. Mr. Chairman, I rise in support of the Brooks-Fish amendment.

Mr. Chairman, I rise as a legislator from an urban district and as a Republican in support of the Brooks-Fish substitute for H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991.

I support this substitute bill just as I believe I would have supported the Civil Rights Act of 1964, had I been a member of this Chamber at that time.

Regrettably, we wouldn't need to be considering this legislation were it not for the fact that the Supreme Court in several cases in 1989 seriously weakened the employment protection provisions of the landmark 1964 act.

The reality is we need the Brooks-Fish civil rights bill to undo the damage done by the Supreme Court.

The Brooks-Fish substitute is not a quota bill any more than the Michel substitute was a

quota bill, any more than the 1964 act was a quota bill.

Referring to this substitute as a quota bill is evidently a way to kill the bill and/or justify a no vote but, in my judgment, it is not a fair accusation.

I know many members whom I respect and admire, as well as the President whom I also respect and deeply admire, disagree on this issue. Despite our differences each of us must be true to our constituents and to ourselves.

This civil rights legislation is needed. It is a good and fair proposal and it deserves our support. It certainly has mine.

Mr. ZIMMER. Mr. Chairman, I rise in support of the substitute.

Mr. Chairman, the battle over this civil rights bill has been a long and increasingly bitter one.

While there is nearly universal agreement that legislation is needed to reverse several restrictive Supreme Court decisions, attempts to draft an equitable civil rights bill have led to an ugly political debate over the divisive issues of discrimination and fairness.

That debate needs to be put to rest. We should focus instead on reconciling the differences between the President's bill and the Democrats' bill and on correcting the recognized deficiencies in the current law.

Regardless of authorship, any civil rights bill should enable victims of actual discrimination to prevail in court and allow innocent employers to defend their business practices successfully.

Admittedly, this is easier said than done. Yet, if properly crafted, this civil rights legislation can create a fair employment system without forcing employers to implement quotas. I have followed the public debate about quotas and I have carefully read the Brooks-Fish substitute. If I thought that this legislation was a quota bill, I would oppose it. Quotas are anathema to true civil rights. In my considered opinion as a business attorney, the Brooks-Fish substitute is not a quota bill.

Unfortunately, the Brooks-Fish bill still has substantial shortcomings. I am particularly concerned that its punitive damages provisions could impose undue hardship upon small businesses. I strongly prefer the punitive damages provisions of the Michel substitute. I also prefer the Michel substitute's emphasis on conciliation rather than litigation. For these reasons, I voted for the Michel substitute.

However, now that the Michel substitute has failed, I will vote for the Brooks-Fish substitute because it is a significant improvement over the current law. For cases of disparate impact, it requires the plaintiff to identify the unfair practice or practices, returns the burden of proof to employer and defines business necessity in a way that provides any employer with the practical ability to justify his business practices. The new version also addresses race norming and appropriately limits challenges to consent decrees.

While there are flaws in both bills and I am completely satisfied with neither, together they provide the necessary framework for re-establishing balanced civil rights protections. I am voting for the Brooks-Fish substitute today to keep the ball in play with the hope that the bill can be improved as it moves through the Senate.

Mr. BROOKS. Mr. Chairman, I yield the balance of my time to the gentleman from Missouri [Mr. GEPHARDT], the distinguished majority leader.

Mr. GEPHARDT. Mr. Chairman, as the debate on our antidiscrimination bill draws to a close, I hope all of us might draw a deep breath so that we might remind ourselves how far we've come.

From boats and chains, to rural homelands, to a painful urban exile outside of America's vibrant life. From unspeakable acts of violence, to segregation, to separation and then impressive marches to new laws, new vistas and new opportunities.

We've spilled blood over these issues, JOHN LEWIS, someone we know and admire, and countless others whose names we'll never know, spilled their blood. And through these sacrifices, we've tried to close a national wound and to bind all of our people much closer together as any society would want itself to be drawn.

It's been hard, it couldn't have been easy, but it's worked. In every community we represent, African-Americans, Hispanics, women, religious minorities, and the disabled—people who heard the promise of American life but never quite got the promise fulfilled—have begun to enter America's mainstream.

Passing this bill is important, but it's not sufficient. We have to reignite the Nation's economy, and we have to challenge our sense of personal responsibility. We cannot let the national dialog on race relations in this country subside even after we put the conference report on the President's desk. Because this debate has exposed—honestly and obviously—that we have failed to talk with each other about these issues far too long.

But our periodic failures in candor cannot be an excuse for inaction today.

Now is the time for courage, for belief, for standing for and doing what is right. It is time for unity, and for healing, and for getting this job done.

In the American classic, "Our Town," the narrator looks out over a Civil War graveyard, and pays his personal testimony to the young men who gave their lives for national unity.

They had a notion that the Union ought to be kept together, though they had never seen more than fifty miles of it themselves. All they knew was the name, friends, the United States of America.

The United States of America.
And they went and died about it.

In our day in our time, we must not ever allow the clock to be turned back on race relations in this country.

Mr. LIPINSKI. Mr. Chairman, I rise in opposition to this amendment.

I believe all of the civil rights bills before us today continue to promote the use of quotas and cause reverse discrimination. Reverse discrimination has crushed the aspirations of so many of my constituents. For these reasons, I oppose all of these bills. The Demo-

crats, Republicans, liberals, conservatives, and moderates, who are speaking in the House of Representatives today, all say this bill would eliminate quotas. I cannot believe this because I know my constituents have been hurt by the 1964 Civil Rights Act. This act, according to its No. 1 proponent, Senator Hubert H. Humphrey, was not intended to be a quota bill or lead to reverse discrimination. Senator Humphrey, an honest man, would have vigorously opposed his own legislation if he believed that quotas would have in any way resulted from his bill.

Well, it has led to quotas, and it has also led this Nation to a public policy that condones reverse discrimination against my constituents and many other hard working Americans. Since I was first elected to public office in 1975, I have seen a great deal of suffering, pain, disappointment, and dejection due to reverse discrimination. I have seen it in the lives of my constituents whose names end in vowels, -ski, -wicz and other central and Eastern European names. I have seen them deprived of jobs, deprived of promotions, and deprived of entrance to prestigious universities. They have not only been outrageously and negatively impacted by quotas and reverse discrimination, but they have had no influence or power to pass laws permitting slavery, segregation, or discrimination. Instead, these people by their own initiative, imagination, and industry overcame the prejudice which exists in this country. I have seen my constituents, who have worked hard and studied hard, be in a position to achieve their dream and had it taken away by quota and reverse discrimination.

I am for every American—black, white, red, yellow, brown, male or female—having equal opportunity, and I believe that government has a duty to create such an environment for all its citizens. However, government has failed to create such an environment, and it is time we realize that by giving unfair advantage to one group, we will always discriminate against another.

Yes, African Americans have endured slavery and segregation. They along with other minorities and women have and continue to fight discrimination and prejudice. Unfortunately, all of these bills before us today fail to effectively address these negative aspects of American society; and, it is unfair, unjust and un-American to correct past injustices at the expense of my constituents. It must stop.

I believe if we would work together to develop a program that gives all Americans equal opportunity, we could achieve this goal. We must start by creating programs giving all Americans equal access to a quality education. Our emphasis should shift to promoting programs which rebuild and equip America to be competitive throughout the world. By providing decent housing, keeping families together, and fighting drugs and crime, we can more effectively combat discrimination and prejudice. This should be the American solution for ensuring equal opportunity.

It is obvious the social experiment that began with the Civil Rights Act of 1964 has caused quotas and reverse discrimination and has been an abysmal failure. Please stop the reverse discrimination against my constituents, for they have already paid too high a price.

Vote no, and let us work for an America that gives equal opportunity to all.

Mr. BROOKS. Mr. Chairman, I don't want anyone to think that the Brooks-Fish substitute is a perfect bill. I have been here far too long to believe that, and I fully expect that after a few years—or even a few months—people will be standing in line to suggest changes. But, that doesn't trouble me one bit; it's part of the legislative process.

And so, while I am never going to claim that our work here today is going to solve all the world's problems, it is my hope that we can at least make this a little better world to live in. And, if we err, we certainly ought to err on the side of compassion in helping those who want to do better in this world of ours.

Ms. SLAUGHTER of New York. Mr. Chairman, the tragedy of this debate is that we are dividing Americans on who gets to work and we should be spending our time creating jobs.

Mr. BERMAN. Mr. Chairman, I rise in strong support of the Brooks-Fish substitute.

I admit that my reasons for supporting this legislation cannot be expressed in a 30-second sound bite. But obstacles to justice that take the form of legal technicalities can cause intolerable harm just as surely as billy clubs, hoses, and dogs can.

We passed landmark civil rights legislation at a time when those horrid televised images were vivid. But now when the equal opportunities promised by that legislation are snuffed out, it happens not in the streets, at lunch counters, or at the schoolhouse door. It happens instead in hushed courtrooms where well-heeled counsel insist that they cannot explain why year after year their clients show lamentable records in minority hiring, and that since their clients do not intend to discriminate, minorities must bear the burden of proving that particular practices prevent their employment or promotion.

But I have enormous regard for the ability of my colleagues in this body—attorneys and nonattorneys alike—and I believe that all of us can understand that the rights guaranteed by our civil rights laws mean little without the remedies the Supreme Court has stripped from those laws.

And I know that every civil rights attorney in this country worth his or her salt has turned away meritorious cases—cases in which grievous wrong has occurred—because proving and winning those cases has been made immeasurably more difficult in light of the Supreme Court's rulings and the increasingly sophisticated and insidious practices of employers who are not committed to equal employment opportunities.

Make no mistake: The result is not just a problem for racial or religious minorities, for disabled persons, and for women. When Americans are discriminated against in their pursuit of employment opportunities, all of us pay the price.

The United States loses its international competitive edge when we consign millions of minority youths to—at best—a future of minimum-wage jobs at which they know full well they cannot support themselves and their families.

The President of the United States fosters the attitude that minorities in this country are lazily looking for handouts, while the rest of us have worked hard to get where we are today. Yet I know that many, many minority workers day in and day out face unlawful obstacles to getting hired, getting promoted, getting treated on the job with basic decency, that would daunt the sturdiest of us. Failure to enact this legislation this year would send a message to minority workers that they will receive no help from the Government of the United States in their efforts to overcome obstacles on the job.

I want to also say a word about the particular burdens women face in the workplace. The administration, by barring women from recovering compensatory or punitive damages in title VII cases, is in essence saying that they must continue to suffer intentional discrimination in silence, because we will not take it seriously.

Misconduct that offends us we make punishable by monetary damages under our system of civil justice. It is little wonder that at the same time the President rejects this principle in the context of the legislation before us today, he has also failed to insist that his personal physician apologize to the female White House reporter whom he sexually assaulted. The White House sees that incident as harmless horseplay, leaving women, yet again, without recourse. I, for one, believe that it is long past time that we take discrimination against women seriously, and act to prohibit and redress it.

For all these reasons, I strongly support the Brooks-Fish substitute. I prefer the Schroeder-Towns substitute, but I also am a realist. Enactment of a meaningful civil rights bill this year is essential, and the legislation reflecting the yeoman efforts of my chairman, Mr. BROOKS, and Mr. FISH, and Mr. EDWARDS of California is the means to accomplish that goal.

Mr. CARDIN. Mr. Chairman, I rise today in strong support of the Brooks-Fish substitute. Over the past few weeks, this bipartisan compromise has addressed many of the concerns about the original committee bill.

The right of people to be free from discrimination is fundamental. This Nation was founded on the principle that all men are created equal.

Over the past quarter century, we have seen significant progress on the civil rights front. The breaking down of past walls of injustice has been one of America's proudest accomplishments.

This civil rights legislation involves the always difficult task of establishing a balance between the legitimate claims of minorities seeking equal opportunity and the interests of individual members of the majority who have not committed acts of discrimination.

This bill seeks to reverse the Court's decisions that have skewed the policy balance too heavily against the legitimate interests of those who have in the past been denied an equal opportunity in America. Let us look at what this bill specifically accomplishes.

The Supreme Court in the *Patterson versus McLean Credit* case said that racial discrimination is prohibited only in the formation of private contracts. This legislation would clarify that discrimination is prohibited in all aspects

of private contracts, including employment contracts.

This legislation would require the employer to prove that an employment practice that has a disparate impact on women and minorities "bear a significant and manifest relationship to the requirements for effective job performance." It also requires the employee to challenge the specific employment practices that have resulted in the disparate impact.

The Supreme Court in its decision on the *Price Waterhouse versus Hopkins* case implied that discrimination was permissible as long as it was not the primary motivating factor. The civil rights bill specifies that it is illegal for intentional discrimination to be any factor in the employment process.

The Brooks-Fish substitute adds a provision that prohibits employers from adjusting test scores on a written employment test on the basis of an individual test-taker's race, color, religion, sex, or national origin.

This civil rights legislation also clarifies that the statute of limitations begins either when a discriminatory employment practice is implemented or when it has an adverse effect on the plaintiff, whichever occurs later.

The bill establishes a procedure to limit the ability of individuals who are not a party to an employment discrimination case from later challenging a consent decree that resolved the dispute.

In the final analysis, this legislation is designed to restore this Nation's commitment to judging individuals on the basis of their skills and qualifications. This civil rights bill will restore our commitment to eliminating discrimination on the basis of race, religion, sex, handicap, or national origin.

Mr. Chairman, we must pass a civil rights bill today. We cannot let this country reverse itself on civil rights matters. As a Congress, we must lead this Nation toward a day when all Americans are treated equal. Sadly, we have not reached that point yet, but this bill will enable us to move forward toward our goal.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in support of the Brooks-Fish substitute because I believe the Court simply made a huge mistake in rolling out a red carpet to prejudice. Our Government's role is not to create a freedom to be racist and sexist.

To begin with, courts have recognized that discrimination occurs not only in hiring, but also in promoting, layoffs, and other aspects of employment. In *Patterson v. McLean Credit Union*, the Court turned the clock back by saying that only hiring was relevant. The Brooks-Fish substitute would reinstate these modern-day protections.

Second, in the *Wards Cove* case, the Court overturned its decision in the earlier *Griggs* case by shifting the burden of proof from the employer to the employee on the critical question of whether the discrimination was justified. That conclusion was incomprehensible, because only the employer has access to the employer's information on why they made their decision. The Brooks-Fish substitute would restore the *Griggs* outcome.

Third, *Ward Cove* also lowered the *Griggs* standard of business necessity for justifying discrimination. This definition is the key to preventing justification of actions as a business

necessity when the primary motivation is discrimination. The Brooks-Fish substitute would reinstate Griggs here, too.

Fourth, in *Lorance versus AT&T*, the Court stated that the statute of limitations begins to run when a discriminatory practice is initiated. But that is patently unfair, since an individual employee is not able to keep abreast of every management decision. It may be years until that employee learns of the practice and is affected by it. That should be the time when the statute of limitations begins to run, and Brooks-Fish adopts that policy.

Fifth, in *Price Waterhouse versus Hopkins*, the Court allows intentional discrimination where it is not the primary factor in a management decision. That conclusion was unjustifiable since even our finest psychologists cannot distinguish between the number one and number two thoughts in the mind of an administrator. How do we really know discrimination was a primary factor? The Brooks-Fish substitute makes it clear that intentional discrimination is never acceptable.

Also, *Martin versus Wilkes* would be overturned by the two proposals. This case allowed a negotiated settlement from a discrimination charge to be challenged again, later. This means that a victim who finally wins could have everything taken away later. Brooks-Fish would reverse this case.

Now, there are provisions of the Brooks-Fish substitute that I find unacceptable. For example, it would prohibit use of quotas by employers; it would prohibit use of race norming; and, most importantly, it would cap punitive damages for the victims of intentional sex, religion, or disability discrimination in employment at \$150,000, or the amount of compensatory damages, whichever is greater.

These are very serious provisions that have been placed in the substitute in an effort to work with President Bush; and while I strenuously disagree with them, I shall vote for Brooks-Fish because I believe this Congress must exercise its constitutional responsibility to overturn unfair and discriminatory rulings by our Nation's highest Court.

Mr. Chairman, those critics who say that Brooks-Fish substitute goes too far are dead wrong.

One of the thorny issues that has emerged in the past few days is the issue of caps on punitive damages for sexual discrimination. The notion that there should be such a limit shows a fear of the American people. Why do I say this? Because damages are decided by juries. And juries are Americans. This is not a trial lawyers' provision; it is a provision in line with our system of jurisprudence which says that if a person is injured, he or she has a right to be made whole.

For all of these reasons, I support Brooks-Fish and urge my colleagues to vote for this substitute.

Mr. ORTIZ. Mr. Chairman, I rise in strong support of this legislation.

Mr. Chairman, I rise today as chairman of the congressional Hispanic caucus in strong support of the Civil Rights and Women's Equity in Employment Act of 1991.

The Civil Rights Act of 1991 will restore the integrity of Federal equal employment laws that have been severely weakened by a number of recent Supreme Court decisions.

While the caucus feels that it would have been preferable to have H.R. 1 as reported, we understand and appreciate the concerns raised by the business community and the need for legislation that will receive strong bipartisan support.

As such, the caucus joins the Education and Labor and Judiciary Committees in support of Brooks-Fish bipartisan compromise as the best bill that can be achieved under the current circumstances.

Our Nation has come a long way as a society in recognizing and addressing the incidence of prejudice and racism, and we should be proud of the steps we have made.

Unfortunately, despite our efforts, the occurrence of discrimination in the workplace is still all too prevalent.

Our actions here today, on this floor, will represent our best effort to address this vital concern.

The Federal Government has the societal obligation to ensure that victims of employment discrimination are assured fair and effective remedies regardless of their national origin, race, sex, religion, or physical ability.

Unfortunately, recent decisions by the Supreme Court, instead of furthering this goal, have worked only to its detriment.

The Court's decisions have cut back significantly on the rights of job discrimination victims and threaten to annul the gains we have made in the last quarter century.

The Brooks-Fish compromise represents our best effort to ensure that our Nation continues to move forward in the arena of civil rights, not backward.

The Brooks-Fish substitute is not a quota bill as the President would have the Nation believe.

It will not place onerous and overburdensome restrictions and regulations on businesses, allow excessive damage awards, or lead to unneeded litigation.

It will fulfill this Congress' and this Nation's overriding responsibility to ensure that each and every one of its citizens is treated fairly and equitably in the workplace.

Vote for the Brooks-Fish bipartisan compromise.

Vote for our future.

Mr. FOGLETTA. Mr. Chairman, I call upon the President of the United States to support our returning troops who fought so valiantly in the Persian Gulf and sign the civil rights bill which I support very strongly.

Mr. SMITH of Florida. Mr. Chairman, I rise in strong support of H.R. 1 and the substitute to bring together the fabric of society and put the Constitution back in the day-to-day lives of all American people.

Mr. JONES of Georgia. Mr. Chairman, I rise in strong support of the Brooks-Fish substitute. I urge that we put principles above petty politics, and I urge its passage.

Mrs. LLOYD. Mr. Chairman, I rise in strong support of this legislation because it is essential to the goal of eliminating discrimination in the workplace for working women.

Mr. Chairman, I rise in support of H.R. 1. The Civil Rights and Women's Equity in Em-

ployment Act is a top priority for women at both the national and local level. Its enactment is essential to the goal of a discrimination free workplace for working women.

This landmark legislation will go a long way toward restoring the law to its earlier intent and interpretation. For many years civil rights laws have opened doors in employment for women. We must ensure that we continue to make progress toward equity in the workplace so that every American woman can reach her full potential.

The Civil Rights Act of 1991 strengthens women's position in the workplace and will have long-lasting and beneficial effects not only on individual women and their families but also on the U.S. economy.

In the competitive new world of the 1990's, when America's destiny depends on bringing out the best in all our people, it is more important than ever to continue America's progress toward wiping out discrimination.

Business, labor, colleges, and universities, the professions, religious institutions—all understand that America must move forward, not backward in the march against prejudice.

The Civil Rights Act of 1991 will restore and strengthen the statutory protections of the civil rights of all women, and send a clear message that the Congress does not intend to reverse our national commitment to equal justice for all.

Opponents to H.R. 1 are mischaracterizing the act as a quota bill. Nothing could be further from the truth. It will instead restore the appropriate balance which long-governed the law of employment discrimination and make an enormous contribution to working women and their families across this country.

The Civil Rights Act of 1991 is not only one of the most important women's issues before the 101st Congress, it is probably one of the most important women's workplace issues that the Congress will consider in the entire upcoming decade.

Any attempt to undermine the Civil Rights Act's efforts to restore a woman's fundamental right to equal employment opportunity is an attempt to perpetuate employment discrimination against women.

This bill makes a clear statement that a woman's right to equal opportunity will not be compromised; 54 million working women are counting on its passage. I urge my colleagues to join with me in supporting H.R. 1.

Mr. ABERCROMBIE. Mr. Chairman, multiracial, multicultural, multiethnic Hawaii will be voting for H.R. 1.

Mr. Chairman, I rise today in support of H.R. 1, the Civil Rights and Women's Equity in Employment Act.

I would like to take a moment today to remind my colleagues in the House exactly what is at stake here. We are trying to restore effective protection against employment discrimination on the basis of race, national origin, sex, and religion. It seems rather simple Mr. Chairman, we are only talking about protecting fairness and opportunity.

The intent of the Civil Rights Act of 1964 was to eliminate discrimination. Unfortunately, the reality is that discrimination against women and minorities still exists, and is in fact widespread.

The problem is, Mr. Chairman, that in the last few years the Supreme Court has weakened civil rights legislation which is essential for protecting Americans against job discrimination, and now the President has labeled this the quota bill.

Even though over the last 30 years we have enjoyed unprecedented progress in the area of civil rights, we are still plagued with discrimination's evil curse.

The fact remains, that civil rights laws are meaningless protections if they do not ensure guarantees of legal recourse. Title VII of the 1964 Civil Rights Act prohibits discrimination in the workplace, but unfortunately it does not provide for fair restitution even in cases of intentional discrimination. It is only fair that title VII be expanded to guarantee that victims of intentional discrimination have the right to sue for some kind of reparation.

Finally, Mr. Chairman, the tragic misconception about this bill is that the administration has attempted to poison the well by branding this as a quota bill. This is not a quota bill. This is an antidiscrimination bill.

Indeed, H.R. 1 includes language that states that employers are not required or encouraged to adopt hiring quotas; and numerical imbalances alone cannot be reason for a violation.

The Civil Rights and Women's Equity in Employment Act simply clarifies that the burden of proof in hiring cases is clearly on the employer. It cannot be said that this will make it more difficult for employers to defend their hiring standards because it only restores the previous standard which was used for over 18 years.

What we have here is another sordid case of manipulating an issue for political purposes. Indeed, it is sad how the administration has done its best to hide the intent of this bill under the false notion of quotas.

Mr. Chairman, I urge my colleagues to remember the real issue at hand. This is not a quota bill. It is an antidiscrimination bill.

This bill is about fairness and opportunity for people as they attempt to find employment and improve their lives.

I urge my colleagues to support H.R. 1, because it gives people a fighting chance.

Mr. EDWARDS of California. Mr. Chairman, I rise in strong support of the Brooks-Fish substitute.

Mr. Chairman, I rise in support of the bipartisan substitute to H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991. The substitute is responsive to the quota and damages concerns raised by the business community. Most of the changes reflect the understandings reached between representatives of the Business Roundtable and the Leadership Conference on Civil Rights. However, there are three issues not part of those discussions which are included in this compromise. They are the cap on punitive damages, the ban on quotas, and the prohibition on discriminatory use of tests.

The substitute reflects the combined efforts of the two committees to which the bill was referred—Judiciary and Education and Labor. In addition, the substitute adds two new sections to reverse Supreme Court decisions announced after committee consideration of this year's bill—decisions which affect the underlying statutes amended by H.R. 1.

Title I, reported by both the Judiciary and Education and Labor Committees, amends the Civil Rights Acts of 1866 and 1964 to restore and strengthen their prohibition against employment discrimination. The Supreme Court dramatically narrowed these laws in a series of decisions in 1989.

The Wards Cove decision placed a nearly impossible burden of proof on plaintiffs in cases involving nonintentional discrimination. H.R. 1 requires employers to justify practices that have a discriminatory effect by going back to the standards enunciated by the Supreme Court in the Griggs decision.

The Brooks-Fish substitute clarifies what employers must show in justifying those practices and provides the flexibility essential to choosing qualified workers. It does so by making several changes to sections 101 and 102—the definition and disparate impact sections:

The term "required by business necessity"—used in section 102—is defined to mean a "practice or group of practices must bear a significant and manifest relationship to the requirements for effective job performance." Business representatives have asserted "manifest" is the best codification of the Griggs standard we are trying to recapture. "Significant" is also found in Griggs and the two terms together fully codify the standards described by the Court in that decision.

The term "requirements for effective job performance" includes factors, such as punctuality and attendance, which go beyond performance of the actual work task.

Section 102 is amended so that: First, there is a single standard applied to all employment practices in disparate impact claims—H.R. 1 had one standard for selection practices and another standard for nonselection practices; second, when a group of employment practices is challenged, instead of lumping them together, the plaintiff must identify each discriminatory practice unless the court finds the plaintiff, after diligent effort, was unable to do so from the employer's records or other information of the employer reasonably available through discovery or otherwise; third, when a group of employment practices are challenged, the employer need only defend against those practices which contribute in a meaningful way to the disparity; and fourth, it reaffirms that an employer may rely on relative qualifications or skills in making employment decisions.

All of these changes are designed to provide flexibility to employers in hiring qualified workers, while restoring the original standards of the Griggs decision.

The Price Waterhouse decision allowed employers to engage in intentional discrimination as long as they also could point to some non-discriminatory reason to justify their decision. H.R. 1 bans intentional discrimination in all cases.

The compromise allows plaintiffs in mixed motive cases to challenge discriminatory practices that were a motivating factor in the employment decision. H.R. 1 uses the term "contributing" factor.

The Martin versus Wilks case allowed individuals to reopen consent decrees, even where they had an opportunity to participate in the original litigation. H.R. 1 assures that set-

tlements can be reopened only if justified. This provision is unchanged by the Brooks-Fish substitute.

The Loran case created artificial time barriers for filing discrimination suits. H.R. 1 establishes fair time limits to file lawsuits.

The compromise changes the 6 months statute of limitations, currently in title VII and the ADEA, to 18 months, down from the 2-year period in H.R. 1.

The Patterson case allowed racial harassment on the job, saying that the 1866 Civil Rights Act prohibited discrimination only in the initial hiring decision. H.R. 1 prohibits racial discrimination at all stages of a contract.

The compromise amends the attorney's fees section by noting that negotiation of a voluntary waiver of attorney's fees is allowed and by removing the self-enforcing provisions of H.R. 1.

H.R. 1 allowed all cases, including closed cases, to be reopened. The compromise applies the new law to pending cases only.

The compromise contains important antiquota language which defines quotas, prohibits their use, and reaffirms congressional approval of Supreme Court cases validating the lawfulness of voluntary or court-ordered affirmative action plans.

The compromise imposes a \$150,000 cap on punitive damages, or an amount equal to compensatory damages, whichever is higher. As in H.R. 1, these damages are limited to intentional discrimination claims.

The bill contains three new sections. Two of those sections respond to recent Supreme Court rulings. The third section responds to concerns first raised at the Judiciary Committee markup of H.R. 1:

Section 117 of the bill provides protection against employment discrimination to American citizens working for American companies overseas—reversing *Aramco*, decided March 26, 1991.

Section 118 extends the title VII attorney's fees provisions of H.R. 1 to the Civil Rights Attorney's Fees Act (42 U.S.C. 1988)—reversing *West Virginia University Hospitals*, decided March 19, 1991.

Section 115 prohibits the use of tests which do not "validly and fairly" predict the ability of test taker to perform the job without regard to race, color, religion, sex, or national origin. Section 116 prohibits the adjustment of test scores or use of different cut-off scores for written employment tests on the basis of race, color, religion, sex, or national origin.

Title II encourages the provisions added to H.R. 1 by the Education and Labor Committee:

Section 201 establishes a 4-year class ceiling commission to conduct a study and to make findings and recommendations on the elimination of artificial barriers to the advancement of women and minorities to executive and management positions in business.

Section 202 directs the Secretary of Labor to develop a pay-equity program. The program will disseminate information, promote research, and provide technical assistance to employers seeking to eliminate wage disparities.

Section 204 authorizes EEOC to establish outreach and public information programs for individuals, such as Hispanics and Asians,

who historically have been victims of employment discrimination, but who have been undeserved by EEOC's enforcement apparatus.

Last year the President did not have a comprehensive proposal until after both Houses considered the bill. He has weighed in now and the Republicans will offer his proposal as a substitute. There have been news accounts and op-ed pieces suggesting there is not a significant difference between H.R. 1 and the President's bill. That simply is not true.

The Michel Republican substitute reverses only one of the devastating 1989 Supreme Court decisions, the Patterson case. It does not overrule *Martin versus Wilks*, thus, allowing endless relitigation of settled cases. It fails to overturn *Price Waterhouse*, which means employers can commit intentional discrimination so long as they can justify their job action with some other nondiscriminatory motive.

The Michel substitute mitigates the harsh results of *Lorance* only for seniority systems, not all employment practices. Furthermore, The Republican proposal only partially reverses *Wards Cove*—it properly returns the burden of proof to the employer to justify discriminatory practices as a business necessity, but then codifies the lower business necessity standard announced by the Court's *Wards Cove* majority.

Finally, the remedies section is most perplexing. Unlike race claims brought under the Civil Rights Act of 1866, the Republican alternative would not permit compensatory or punitive damages. Instead, it would authorize courts to grant an additional equitable remedy of up to \$150,000, but only if the court determines that such a remedy "is needed to deter" the respondent from discriminating, and only if it is "otherwise justified by the equities, consistent with the purpose of this Title, and in the public interest." These remedies would only be available for harassment claims. In fact, the Republican alternative would legalize untimely harassment claims—victims of other intentional discrimination would be limited to the existing "make whole" relief currently available under title VII. There are other restrictions too, which, when added together, provide second-rate remedies for persons with sex, religious, and disability claims.

In conclusion, we have heard much in last year's debate and this year's as well about the "quota" issue. Much of this debate has been inflammatory and divisive. I urge opponents not to resort to this harmful rhetoric. But to those who still want to tag this a quota bill we say in the words of Eliza Doolittle, "Show me."

In addition, Mr. Chairman, I would like to address the testing issue at some length, as it is a new issue for this body, one that was not raised until the very end of the committee process.

The substitute does two things in response to this issue:

The substitute bill flatly prohibits the practice of adjusting scores of, or using different cut-off scores for, written employment tests on the basis of the race, color, religion, sex, or national origin of an individual test taker. There are no exceptions to this prohibition. It includes all entities covered under title VII: Employers, labor organizations, employment agencies—which include State employment services—and joint labor management com-

mittees controlling apprenticeship or other training or retraining—including on-the-job programs. Moreover, it applies broadly to the selection or referral of applicants or candidates for employment or promotion.

As a result, where written tests are used in connection with employee selection, an applicant for employment or a promotion will be judged on the test score he or she receives without alteration.

At the same time, the substitute reinforces the requirement which has been in the law since 1964 that tests must not themselves discriminate. Indeed, the practice which has come to be known as race norming arose because certain tests predict job performance differently based on the race or gender of the test taker.

The general aptitude test battery [GATB] which has sparked the debate over race norming presents precisely this problem. In an exhaustive analysis, the National Academy of Sciences determined that the GATB provides different information depending on the race of the test taker, to the decided disadvantage of minority test takers. It weeds out black good workers at a much higher rate than white good workers while white poor workers pass the test at a disproportionately high rate. Indeed, other studies have shown that the GATB often selects white poor workers at approximately the same rate that it selects black good workers.

The controversial score adjustments were designed to adjust for this important problem with the test, not to give black job applicants an unfair advantage. While we are making these score adjustments unlawful, it would be unconscionable to permit the continued use of such a racially skewed test.

The substitute incorporates the standard which exists in the Uniform Guidelines for Employee Selection Procedures for evaluating whether employment tests unlawfully discriminate. Because the guidelines may be changed at any time, and may not even be subject to the protections of the Administrative Procedure Act, it is essential that these standards be included in title VII itself. Indeed, there have been recent press reports that the administration is currently considering proposals to weaken the standards which have governed employment tests since 1967.

It is important, at the outset, to be perfectly clear that the mere fact that blacks or women may score lower on a given test has never—and does not now—make that test unlawful. Instead, the question which must be asked is whether the test validly and fairly predicts the ability of test takers to perform the job with respect to which the test is used without regard to the race, color, religion, sex, or national origin. Only then may a test properly be used to allocate valuable employment benefits.

Validity refers to the correspondence between test performance and performance on the job at issue. According to the Standards for Educational and Psychological Testing, published by the American Education Research Association, the American Psychological Association, and the National Council on Measurement in Education, validity is "[t]he degree to which a certain inference from a test is appropriate or meaningful." It should go without saying that a test which does not pro-

vide useful inferences regarding performance on the particular job for which it is being used has no place in selecting employees. The amendment incorporates the requirements in the uniform guidelines and the interpretive case law regarding establishing test validity.

It is possible, however, for a test to be valid but not to be fair. Fairness refers to the requirement that the test must work in the same fashion for all test takers, predicting equally the performance of equally capable candidates without regard to their race, national origin, religion, or gender or disability.

An example of a test which may be valid but not fair is the Scholastic Aptitude Test [SAT]. Although the SAT is an education test, it is illustrative of the problems inherent in many employment tests. The test which is used widely in connection with college admissions, scholarship selection, and other purposes, is justified as a predictor of first-year college grades. However, it predicts such performance differently for males and females. If no adjustment is made either in the score or in the predictive analysis, the same score will overpredict a male's performance and underpredict a female's performance.

Based on this differential prediction by gender, the College Board explicitly recommends that college use "separate prediction equations for each sex, rather than a single equation based on the total group." "The Common Yardstick: A Case for the SAT," The College Board, 1989 at 17. This phenomenon also formed the basis for the court's decision in *Sharif v. Department of Education*, 709 F. Supp. 345 (S.D.N.Y. 1989), that the SAT could not be used as the sole criterion for allocating State-sponsored scholarships in New York State.

It is also possible for a test to be valid for one race or gender but not valid for another. Less than a month ago, the Federal Court in Houston, Texas, handed down its decision on the settlement of a case involving challenges to eight promotional examinations used by the Houston Fire Department. The court found that among white test takers there were sometimes statistically significant correlations between test score and job performance, but found that there was:

*** no statistically significant correlation between test score and job performance for blacks taking any of the eight challenged Chauffeur and Junior Captain examinations. The number of blacks taking the Chauffeur examinations was sufficiently high—66 in 1983, 71 in 1984, 63 in 1988, and 115 in 1990—that the failure to find a statistically significant relationship between the test and job performance cannot be dismissed as an artifact of small sample size.—*Houston Chapter of the International Association of Black Professional Firefighters v. City of Houston*, C.A. No. H-86-3553 (S.D. Tex., May 6, 1991, findings 75 and 77, slip opinion at 36-37).

There is nothing confusing, technical, or new about the term "fairly." It is drawn from the Supreme Court's 1975 decision in *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 435 (1975), requiring test users to investigate the possibility that the test in question might not work as well, or in the same manner, for women or minorities as it does for men or for whites. It is drawn from the study performed by the National Academy of Sciences on the

Labor Department's General Aptitude Test Battery, finding that whites performed much better on the test than they did on the job, and that blacks performed much better on the job than they did on the test. It is drawn from bipartisan standards in effect over the last 21 years: the "test fairness" requirements of the Nixon administration's 1970 EEOC Guidelines on Employee Selection Procedures, 35 Fed. Reg. 12333 (1970), the Ford administration's 1976 Federal Executive Agency Guidelines on Employee Selection Procedures, 41 Fed. Reg. 51734 (1976), and the 1978 Uniform Guidelines on Employee Selection Procedures, 43 Fed. Reg. 38290 (1978). It is also drawn from common sense.

It does not take an expert to understand that a test is fair if it helps employers predict which persons will be effective for the job in question, and if it makes these predictions just as well for women as for men, and just as well for minorities as for whites. This is what any employer seeking to hire or promote employees based on merit would demand from a test: To be assured that persons with the same test scores will have the same likelihood of being effective employees.

No employer who wants to hire on merit would want to use a test like the GATB because the test makes so many mistakes that it excluded capable black workers and fails to exclude white workers who cannot perform the job well. Similarly, no employer concerned with merit would want to use an exclusionary test which predicts effective job performance for men or for whites, but which fails to do so for women or for blacks.

It is difficult to understand why those who oppose this provision think there is something worth defending in tests which are invalid and unfair. No employer is helped by a test which is invalid and no employer is helped by a test which is unfair. Every reasonable employer wants to be able to consider every candidate who can do the job effectively and every reasonable employer wants to have confidence that the same test score predicts the same quality of job performance for all persons who are equally qualified to perform the job.

This provision would put directly into the statute requirements which are now only based in the guidelines and, as such, are subject to administrative revision. It will help make sure that hard-working women and minorities are not unthinkingly excluded from jobs they can perform well. It will also help save employers from being sold a bill of goods by the makers and marketers of shoddy tests which needlessly harm the employer's real interests and needlessly blight the hopes and dreams of fully qualified women and minorities.

With the prohibition of any score adjustments in employment tests based on the race, color, national origin, gender, or religion of a test taker and the strengthening of the prohibitions against using discriminatory tests, the substitute takes a major step forward to assure that employment decisions based on test scores will truly be based on merit. This is the way it should be.

□ 1210

Mr. AUCOIN. Mr. Chairman, I rise in strong support of the Brooks substitute.

Mr. Chairman, I rise today as a cosponsor of H.R. 1, the Civil Rights and Women's Equity in Employment Act, in full support of its passage. Today we find ourselves debating once again a historic measure that we should have seen signed into law last year.

I ask my colleagues, what is our fundamental purpose here in Congress? Is it not to preserve and protect the rights guaranteed to Americans by our Constitution and legislate accordingly. So how can we allow the strength of the Civil Rights Act of 1964 to be slowly eroded away by an indifferent Supreme Court? Today it is our moral imperative to restore by statute the full spirit of civil rights and equality to our laws.

We have been through this debate before. In 1964, we provided stronger protection for rights guaranteed by the Constitution, protections against race discrimination. Many of us here in this Chamber know that that discrimination has not vanished. We have made progress. But, look around, and you see regression. Today we have an opportunity to prevent employees from being discriminated against on grounds of gender, ethnic or religious origin, and handicap. By passing this legislation, we can put fighting words behind the Americans With Disabilities Act that the President signed into law last summer. We can show our troops who fought to preserve world order in the Persian Gulf that we are fighting for social order here at home.

Let us finish today what we set out to do last year. Let us not put civil rights on hold any longer. I urge my colleagues to vote yes on Towns-Schroeder and yes on final passage.

Mr. KOPETSKI. Mr. Chairman, I rise in strong support of the Brooks-Fish substitute and final passage of H.R. 1.

Ms. NORTON. Mr. Chairman, I rise in strong support of the Brooks-Fish substitute, as one who had the great privilege to enforce this act when it was at its zenith and has seen it transform the United States of America.

Mr. Chairman, this began as an exercise to save the basic job discrimination statute from the Supreme Court. It is ending as an effort to save the statute from the Republican minority and from the President of the United States. A conservative court, presumably deferential to the legislative branch, departed from its own principles, usurped legislative intent, and rewrote title VII. Some Republicans and business groups, such as the Chamber of Commerce, always opposed to the statute, have struck while the statute was down.

Even the Court did not do what has been attempted here. It did not disturb affirmative action. To the contrary, a conservative Supreme Court spent the 1980's rejecting Reagan administration attacks on affirmative action.

Mr. Chairman, despite the fact that affirmative action has benefited white women more than blacks, the administration and its agents have left the impression with the American public that racial quotas have been at the heart of the statute. Employers have not used quotas because they know that quotas will only buy more lawsuits, this time from others who have been excluded. If employers have tracked their progress in selecting qualified

people, using flexible goals, they have been far more successful with the wives and daughters of white America. This is understandable. One-third of blacks are poor, and many of them are unskilled and therefore are not always prepared for the jobs to which most affirmative action often is directed today. Most white women have had better life chances, come from the same backgrounds as white men and thus, but for discrimination, would occupy many of the same jobs. Thus, all the major women's rights groups have lobbied this body as hard to save affirmative action as they have to keep limits off of damages.

This exercise has sometimes strayed far from the mark; but it will be remembered for high moments as well. Women, people of color, and many others have stood together here. Black men have rejected the proposition that white women should be treated unequally and white women have denied the link between race and quotas. American Jews, the major victims of quotas in America, have strongly urged that Brooks-Fish be passed and have persuasively argued that the bill will not lead to quotas. Many who have no personal stake in this bill also have stood with us.

Mr. Chairman, it was my great privilege to administer the act we seek to amend today. I have seen it transform opportunities and change the American workplace to one in which we can take increasing pride. Title VII has been a bipartisan achievement of the American people that has vindicated our faith in peaceful change through law. Please affirm that faith today by restoring this great statute to full strength.

Mr. COSTELLO. Mr. Chairman, I rise in strong support of the substitute.

Mr. Chairman, I rise today to join a large majority of my colleagues in supporting the bipartisan Brooks-Fish substitute to the civil rights bill.

This bill is not at all a quota bill. What this legislation does is make discrimination illegal, to provide basic rights for employees so that when they interview for a job they will not be discriminated against.

Quotas are something that I do not at all favor, and in fact one of the reasons why I support this substitute is because it specifically forbids quotas by writing that intent into law. The language in the bill reads, "quotas shall be deemed to be an unlawful employment practice under title VII."

This legislation attempts to make the workplace more fair for all employees. In fact, lawsuits can be filed for reverse discrimination by white workers who feel that an employment system is the product of quotas.

It is appalling that the Bush administration is seeking to make the 1991 civil rights bill and the entire civil rights issue the Willie Horton of the 1992 Presidential election. This legislation is about equal opportunity for all workers, and not handouts, quotas, or unfair advantages. I urge my colleagues to support the Brooks-Fish substitute.

Mr. COX of Illinois. Mr. Chairman, I rise in strong support of the Brooks-Fish substitute.

Mr. Chairman, I rise in support today of the Brooks-Fish substitute amendment to the 1991 Civil Rights Act.

The Brooks-Fish substitute is a bipartisan bill which restores the rights of women and minorities reversed by five key Supreme Court cases in 1989. At the same time, this substitute meets the concerns of the business community and does so very effectively.

This substitute addresses everything the President has stated as being wrong with the original bill, H.R. 1. However, the President continues to promise to veto this bill as amended in the Brooks-Fish substitute. The President and some Members of the House continue to falsely claim this bill is a quota bill, ignoring the contents of the bill entirely.

This substitute contains provisions needed to protect both the employer and the employee. It contains a cap on punitive damages at \$150,000 under title VII claims, or the amount of compensatory damage claims, whichever is higher. The substitute prohibits race norming by use of adjusted test scores. It provides a burden of proof requirement on the employer that gives the employer more flexibility in defending hiring practices, and provides for a general prevention of retroactive disturbance of court orders.

Most important, I must state again this substitute contains a provision which specifically claims that quotas are prohibited. If an individual believes they are a victim of an unfair quota system they can in turn file suit just like anyone else under the Civil Rights Act. How the administration and some of the Members of this Chamber can still call this bill a quota bill is simply unbelievable.

I think it is clear the administration is using this as an issue of political gain at the expense of the people of this country. If the President truly wanted to sign a civil rights bill, this substitute would be exactly what he has asked for. It addresses all of the concerns of employers and employees, and it prohibits the use of quotas. Yet the administration still does not support this bill. For an administration, which claims to be supportive of civil rights legislation, such actions have proven quite the contrary.

I have met with both small and large businessmen to discuss the civil rights bill. I described to each my unwillingness to support a quota bill, and that is why I support this substitute. It is not a quota bill. Today, I have seen some Members wearing buttons on their lapels which say "Quotas" with a red bar over it. I was curious as to where they got them because I should have been wearing one too. I have been a small businessman all of my life; to think I would support any legislation that would create quotas of any shape or form is utterly ridiculous.

Let's ignore the political rhetoric and support the Brooks-Fish substitute and pass a civil rights bill we can all support.

Mr. BROOKS. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Chairman, I rise in strong support of the Brooks-Fish substitute. I urge its adoption.

Mr. Chairman, I rise today in strong support of the Civil Rights Act of 1991 and in particular the Brooks-Fish substitute. I would like to thank and commend the chairman of the Judiciary and Education and Labor Committees, Chairmen BROOKS and FORD, DON EDWARDS,

chairman of the Judiciary Subcommittee on Civil Rights, the ranking member of the Judiciary Committee, HAMILTON FISH, and all who have worked tirelessly to bring a workable bipartisan compromise to the floor of the House.

I am greatly disturbed that we are back again to do what we know is fair and just and we once again are being threatened with a Presidential veto. We know that this bill can pass the House. We know that this bill can pass the Senate. It has been done. Those of us who understand the need to overturn the recent Supreme Court decisions which in effect say that it is OK to discriminate against individuals on the basis of race, sex, or religion or disability, understand that many Americans are no longer afforded protection under the law against discrimination. The Supreme Court managed in 1 year to unravel what took decades to build and which has been in place for 25 years. What we are asking for today is that those fundamental protections which guarantee that every American has an equitable opportunity to compete for jobs or a promotion be restored.

Mr. Chairman, last year we passed and the President signed the Americans With Disabilities Act, the most sweeping antidiscrimination legislation since the 1964 civil rights bill. The business and the disability community got together and with the President's blessing worked out a bill that prohibits discrimination against persons with disabilities. This same President who claims he wants to sign a civil rights bill has quashed all efforts to come to a reasonable compromise on the bill and has sabotaged the efforts of the business and civil rights communities to work together to resolve their differences. I see the Civil Rights Act as an extension of the Americans With Disabilities Act eliminating discrimination not only for the disabled but for minorities, women, and religious groups.

Mr. Chairman, the President and others have raised the red herring of quotas and race norming. The Brooks-Fish substitute seeks to restore equal opportunity for all Americans as was previously in place before the Supreme Court dismantled an individual's ability to claim damages involving racial and ethnic harassment, shifted the burden of proof, and allowed employers to consider factors such as racial, religious, gender, or ethnic stereotypes.

In the years 1971 to 1989 under the law prior to the 1989 Supreme Court cases, there was not a hue and cry that quotas or race norming were undermining equal opportunity. I conclude therefore that this is a political issue that the administration and others are using in a cynical effort to continue the so-called Southern strategy employed in all regions of the country to exacerbate rather than resolve the racial conflicts which for so long have been a cancer on the body politic of America. This effort is fundamentally immoral.

We have spent the past 25 years trying to overcome discrimination in employment and it is incumbent upon us not to retreat from our effort to ensure a society of opportunity for all our people based upon ability and effort rather than prejudice and discrimination.

Over the last 2 years, we have tried to work with the administration to come to a fair and reasonable compromise on this bill with the Brooks/Fish substitute. Although the civil rights

act is not now nor was it ever a quota bill, nonetheless the Brooks/Fish substitute seeks to address these concerns by explicitly prohibiting the use of quotas by employers, by stating that the use of quotas is an unlawful employment practice. The substitute also addresses the concern over race norming by prohibiting the race norming of employment test scores.

Every effort has been made to reach a consensus on doing what everybody agrees needs to be done. That consensus is to restore the opportunity that was undermined by the Supreme Court. That is why the President has expressed his support for that objective. However, his actions and those of his staff have ignored the stated objective for obviously political, partisan reasons. We will overwhelmingly reject that cynicism today and act to reiterate this Nation's commitment to equal opportunity for all our citizens.

Mr. DE LUGO. Mr. Chairman, on behalf of the people of the U.S. Virgin Islands, I rise in strong support of this legislation and urge its passage.

Mr. RITTER. Mr. Chairman, the Democratic version of the so-called civil rights bill is still a quota bill. The only way an employer is going to avoid getting sued is to hire "by the numbers" and statistics, not by merit. You can put a "caviar" label on a tin of sardines, but when you open it up, it still reeks of sardines.

The Democrats' bill forces employers to hire less-qualified applicants to avoid being sued. The whole idea of it is unfair. It hurts the workers of America and it's murder for small business—as if small business does not have enough problems.

By basing employment on race, gender, or whatever else other than merit, the Democrats' bill results in reverse discrimination.

President Bush doesn't want a Balkanized, fragmented America. He has taken on some real mud thrown by the Democrats on civil rights. But he's trying to do the right thing, the fair thing for all Americans.

Here's something—by not allowing employment decisions to be based on merit, the Democrats' bill, H.R. 1, is anticompetitive for U.S. workers, U.S. companies, and U.S. jobs. It amounts to a jobs bill for offshore employees. Yes, it is a real export promotion bill. The export of American jobs!

We can't continue to put more and more pressure on American employers. They need to be nurtured, not presumed guilty until proven innocent, as H.R. 1 does, as so much of our legislation and regulation does. Ever-increasing payroll taxes, reduced investment incentives, stifling regulations, and litigation, litigation, litigation. They are killing American businesses—making us uncompetitive. Jobs are lost when litigation's sword of Damocles threatens the very existence of American businesses.

H.R. 1 is a litigation nightmare. It is a litigation nightmare and it is unfair.

The President's bill is fair to all Americans. The only people who win with the Democrats' bill are the trial lawyers. America and American workers lose.

Mr. COYNE. Mr. Chairman, the House is considering a major civil rights bill that has been the subject of lengthy debate and compromise. Unfortunately, this important legisla-

tion is being judged by many not on its merits, but on its usefulness as a political campaign tool.

I believe the vast majority of Members and the American people agree that men and women should be protected from discrimination in the workplace. It is unfortunate that political rhetoric about "quotas" has succeeded in obscuring our view of this goal.

While the administration's bill is silent on this issue, the compromise language of H.R. 1 explicitly states that quotas are illegal. Not only are prohibitions against quotas codified for the first time, but the bill provides opportunities for a worker who is injured by an illegal quota practice to seek monetary damages. Still, some refuse to acknowledge that any effective action has been taken to address this issue.

It seems that some elected officials have become bewitched by the allure of using the quota issue on the campaign trail. They are willing to close their eyes to the meaningful steps taken by the bill's sponsors to clear away any suggestion of quotas from this legislation.

This year, members of the Business Roundtable and civil rights leaders were making progress on addressing many areas of concern about the effect of new civil rights legislation. As business leaders began to negotiate a resolution to these issues the administration was able to encourage business leaders to end their talks with the civil rights community.

When the administration is showing its "kinder, gentler face" it is willing to admit that the court went too far in creating hurdles for workers to overcome in proving job discrimination. Sadly, the same administration that discovered Willie Horton has discovered the battle cry of "quotas."

In 1989, the Supreme Court issued six separate rulings that effectively narrowed the rights of individuals to protection from workplace discrimination or harassment on the basis of sex or race. The Bush administration agreed with congressional leaders that the Court has gone too far, and has proposed its own legislation to restore much of these antibias protections. Unfortunately, the administration's proposals fail to provide women and minorities with the full protection of the law which they deserve as U.S. citizens.

Last year, the House and Senate succeeded in crafting a reasonable compromise civil rights package that would restore protection from job discrimination for U.S. workers. This bill, which passed the House by a vote of 273 to 154, stated explicitly that nothing in the bill would require employers to use hiring quotas. I voted for this bill. When President Bush became the first President since Andrew Johnson to veto a civil rights bill, I voted to override that veto. Unfortunately, the administration was able to successfully sustain its veto in the Senate.

The House Judiciary Committee has now once again reported a civil rights bill that effectively responds to the still present fact of discrimination in the workplace. H.R. 1 achieves this goal, and for the first time, establishes a statutory prohibition against quotas. I am proud to be a sponsor of this legislation.

H.R. 1 also provides victims of sex, religious, and ethnic discrimination with certain opportunities for legal redress which are now available only to victims of racial discrimination. In a long overdue response to the injury suffered by women and other victims of job discrimination, H.R. 1 would provide these victims of intentional discrimination the right to recover compensatory and, in egregious cases, punitive damages. Both workers and employers would be able to demand a jury trial. H.R. 1 is a fair and responsible compromise bill that places our Nation once again back on course in protecting the rights of all Americans.

The Congress must pass this legislation and be prepared to override the President's veto, which, if past practice is followed, will occur.

Ms. SLAUGHTER of New York. Mr. Chairman, the opponents of this bill have demonstrated that they are more concerned with creating civil unrest than civil rights. They have attempted to pit different groups of working Americans against one another at a volatile time when millions of our citizens are either out of work or worried about losing their jobs.

By using their politics of fear, opponents have sought to threaten the American public by falsely claiming that passage of a civil rights bill will determine who gets the opportunity to work in America.

The truth is, Americans have been losing their jobs in alarming numbers; 1½ million jobs have been lost since last July. Our current high unemployment rate is due to a Republican recession, not civil rights.

Opponents are using this civil rights bill as a smokescreen for an administration that has failed to meet the needs of working people. Once again, it is easier to use words to divide and deceive the American public than implement an economic policy to employ them.

Mr. Chairman, this divisive debate today reminds me of a similar debate on the Civil Rights Restoration Act in 1988. That bill—which eventually became law—prohibits discrimination by any part of an organization that receives Federal funding. Before final passage, however, opponents said many of the same things we are hearing today—namely that passage of this bill would "be the end of the world."

Let me cite for you what some opponents said on the House floor about the 1988 bill. One member, for example, proclaimed:

If this bill becomes law, without doubt there will be an open floodgate of lawsuits, making it extremely difficult for small businesses to stay in business.

In fact, the Justice Department tells me that only 12 rulings have been made in 3 years. The floodgates did not open then, and they won't now. And can anyone name a business that failed as a result of the veto override in 1988?

Let me cite other dire predictions of 3 years ago. Another Representative predicted:

This bill is going to result in the claim being made that a church in America must hire a professing homosexual who has the virus for AIDS because the claim will be made under the Arline decision that such a person fits within the definition of a handicapped person * * *

Citizens, prompted by organized letter campaigns, wrote to Members of Congress with misplaced fear about the results of the bill. One letter said:

This bill is the greatest threat ever to religious freedom and traditional family values.

Another letter said:

Homosexuals, drug addicts, alcoholics, and transvestites are "handicapped persons" by their own choice * * * But should schools be forced to hire them just because their chosen lifestyle has made them undesirable? * * * Should they have the same privileges as upright, law-abiding citizens?

Still another included:

The next things they'll be saying is theft, rapists, murderers, etc., are an accepted life style and we wish to protect them, too.

Most of this rhetoric was ginned up by groups less interested in affecting public policy than in adding to their coffers by scaring citizens in order to make them contribute to their group.

In fact, I was pleased to note that 21 firms just withdrew from membership in the so-called Fair Employment Coalition because they could no longer abide the rhetoric put forward by the Coalition against the Civil Rights Act of 1991.

So today I urge my colleagues not to be swayed by all the misleading negative rhetoric. Look at history. Three years after passage of the Civil Rights Restoration Act, none of the dire predictions from opponents have come true.

It didn't happen then, and it's not going to happen now when we pass the Civil Rights Act of 1991.

Mr. McMILLEN of Maryland. Mr. Chairman, I rise today in support of the Brooks-Fish, bipartisan Civil Rights Act of 1991. Opportunity in employment has been a key facet of American society since the civil rights movement first began. We are in a position today to reaffirm our commitment to equal opportunity and restore the status quo that existed before the six recent Supreme Court decisions.

For minorities and women, discrimination persists in America, and only through the application of fair laws will this problem be consistently addressed. Many people feel that the Brooks-Fish civil rights bill will lead to quotas. As a legislator committed to ensuring that Americans are hired due to merit, and not race, religion or gender, I will not vote for a bill which results in quotas.

I will vote, however, for a civil rights bill which stands on its own merits, due to the veracity of the reasoning behind its provisions and for the fair applicability of its provisions to the American public. I think the Brooks-Fish substitute does that.

I am concerned, however, that race, gender, disability, and religious motives for discrimination not be separated into categories or relative discrimination. Discrimination for whatever reason should be treated equally under the law; subject to the same judicial remedies and awards.

Creating a two-tiered approach to discrimination by placing a cap on punitive damages for women and the handicapped is undesirable. However, I do understand the need to craft a bipartisan civil rights bill that takes into consideration the concerns of the business

community and other groups which are worried that the Schroeder-Towns substitute could be misinterpreted as requiring hiring quotas.

Reluctantly, after weighing the pros and cons of the Towns-Schroeder proposal versus the Brooks-Fish bipartisan substitute, I have concluded that the bipartisan substitute has the best mix of protection against sex and race discrimination with the proper prohibition against hiring quotas. This, it appears, is the only way to pass a civil rights bill in today's Congress.

I am pleased that the Brooks-Fish substitute extends punitive damages beyond just victims of racial bias to include victims of sexual discrimination as well. The maliciousness of intentional discrimination must be countered with punitive damages for all individuals subjected to it by an employer, whether the bias targets minorities, women, the disabled or those with differing religious convictions.

The language is clear: If an employer "engaged in the unlawful employment practice with malice, or with reckless or callous indifference to the federally protected rights of others," then punitive damages may be awarded. This does not mean that suddenly every employer accused of discrimination suffers massive lawsuits and fines. It does mean that employers shown to be determinedly and cruelly discriminatory will pay a significant financial penalty.

I am pleased that this civil rights legislation addresses the changes in America's workplace.

Women have become an ever-larger component of this Nation's workforce. The inclusion of women in the workplace should be matched by extending protections against sex discrimination. The Brooks-Fish substitute achieves this for the first time. Clearly, we have farther to go to truly achieve the proper protections against discrimination for minorities and women and this bill recognizes this.

I commend Chairman BROOKS and Representative FISH for their relentless drive to allay the concerns of those who are justly worried about quotas. The language of their legislation could not be more clear: With this bill there will be no quotas.

This substitute uses Supreme Court Justice Sandra Day O'Connor's definition of quotas, and explicitly outlaws them. It uses the business roundtables definition of "business necessity". This bipartisan compromise addresses all of the legitimate concerns raised by the business community and the administration.

The Brooks-Fish substitute even goes so far as to explicitly prohibit the use of quotas. If an individual of any race or sex believes that they were not hired or promoted due to a quota-hiring policy of an employer, then they may themselves sue on grounds of a reverse discrimination suite. This provision permanently lays to rest the spurious notion that advocates of this Civil Rights Act are in favor of quotas.

As a final word about quotas: For 18 years quotas were not used by the business community while the precise provisions of this law were in place prior to the Supreme Court decisions since 1986 which disrupted the status quo. Quotas will also not be used in the future after the Brooks-Fish substitute is passed.

Mr. MARKEY. Mr. Chairman, the mood of debate over the past weeks regarding the Civil

Rights and Women's Equity in Employment Act of 1991, H.R. 1, has been an unpleasant one. The debate over this legislation has not centered around equal and fair rights for all working Americans. It has not focused on the dream of creating a society in which one's physical appearance or gender has no bearing on the measure of a person's abilities. This debate has been dragged into the quagmire of partisan politics and racial divisiveness. We must make an effort to maintain perspective on the issue at hand.

During the year 1989 the Supreme Court of the United States of America succeeded in altering adversely not only the employment opportunities, but the general employment environment for millions of Americans. These Americans were affected because they happened to be racial, ethnic, or religious minorities, disabled persons or women. A series of five decisions that year made defending against discrimination by an employer essentially a losing endeavor. In various ways, from placing the burdens of proof in discrimination cases on the employee to actually legalizing certain instances of intentional discrimination, these five decisions ensured that persons seeking justice against discriminatory action would be met by hostile legal interpretations in the courts.

The Civil Rights and Women's Equity in Employment Act of 1991, H.R. 1, seeks to redress the injury caused by these Supreme Court decisions. This legislation would overturn those five decisions and make any intentional discrimination in the employment process illegal. It would restore the burden of proof to the employer to show that business necessity required a practice that would have a disparate impact on an employee, and it would extend the statute of limitations for filing discrimination cases. This legislation would also allow for compensatory and punitive damages for the first time for women, religious minorities, and the disabled.

Today we are faced with a compromise measure, the Brooks-Fish substitute amendment, worked out in a bipartisan fashion designed to restore the rights of job discrimination victims while attempting to calm the unwarranted fears of the business community. I was in full support of the Towns-Schroeder substitute amendment to H.R. 1. The Towns-Schroeder substitute would not have included a ceiling on damages for women, the disabled, and religious minorities. Now we are asked to vote on the Brooks-Fish substitute when it includes such a ceiling. Despite my opposition to such a ceiling, I, nonetheless, must now support the Brooks-Fish substitute as the strongest version remaining that can correct the weakening effects of recent court decisions.

The Civil Rights and Women's Equity in Employment Act is legislation that will set meaningful equitable standards in employee hiring and treatment. This bill is not a threat to business or nonminorities in America. It is an attempt to create a level playing field for all Americans striving to exercise their inalienable rights to life, liberty and the pursuit of happiness through productive employment. I ask my colleagues to do the right thing, support this Civil Rights legislation.

Mr. MATSUI. Mr. Chairman, democrats are constantly being accused of trying to redistribute wealth—but the Civil Rights Act gets at the need to redistribute economic opportunity by eliminating job discrimination. As our Nation gears up to meet foreign trade competition from Mexico, Europe, and the Pacific rim, employers must clear away discrimination hiring and promotion practices that hinder companies from reaching their total potential in productivity and market competitiveness.

The legislation ensures that individuals are allowed the opportunities to employ their skills to their highest potential. Virtually everyone agrees that people should be hired for reasons based on "business necessity." Let ability be the criteria standard, not skin color, not gender, nor religious faith.

Throughout history, stereotypes and unfounded prejudice has hindered certain minority groups from attaining managerial and positions of executive decisionmaking. Displacing minorities from these higher positions has driven them to exercise their business savvy, customer relations, and creative ingenuity in small businesses. Current business trends demonstrate that they have ability. A disproportionately high share of minorities have started their own businesses. According to the Small Business Administration, Hispanic-owned business start-ups soared from 1982 to 1985 at six times the rate of growth for all businesses. Some 97 percent of United States small business entrepreneurs are engaged in service industries. We cannot hope to compete effectively in world trade so long as some of our best and brightest talent are relegated to service industry jobs.

I want to emphasize that this debate is not just about civil rights. Employment discrimination has real economic impact. And it's tying one hand behind the back while we're fighting to reduce our trade deficit. Glass ceilings and employment discrimination don't just hurt women and minorities: They are also hurting our economy.

Mr. WEISS. Mr. Chairman, I rise in support of the Brooks-Fish substitute, although, I voted for the Towns-Schroeder substitute and believe that it, and the committee's original bill (H.R. 1), would better protect victims of discrimination. Given political realities and the need for a veto-proof measure, however, the Brooks-Fish compromise represents a practical alternative.

The Brooks-Fish substitute accomplishes the basic goals of civil rights legislation. It restores worker protections seriously weakened by five key 1989 Supreme Court decisions that narrowed the reach and remedies of employment discrimination laws. For example, the Brooks-Fish substitute overturns the Price Waterhouse decision, which implies that it may be permissible for employers to intentionally discriminate based on race, color, religion, sex, or national origin, as long as the discrimination was not the primary motivating factor in the action taken.

The Brooks-Fish substitute also overturns the Martin versus Wilks decision which permits endless, repetitive litigation challenging title VII consent decrees and thus discouraging settlement of title VII disputes by such decrees.

The Brooks-Fish substitute overturns the Supreme Court decision of EEOC versus

Aramco, handed down on March 26, 1991. It stipulates that the employment discrimination protections of title VII apply to Americans working overseas for American-owned or controlled companies.

The Brooks-Fish substitute overturns Supreme Court cases limiting awards of attorneys' fees in title VII cases, in order not to deny the dwindling group of attorneys willing to take title VII cases fair compensation.

The Brooks-Fish substitute overturns two key aspects of the Wards Cove versus Atonio decision. First, it restores the burden of proof to the employer to prove that an employment practice that has a disparate impact on women or minorities is required by business necessity. Restoring the burden of proof on the employer is both logical and consistent with general legal principles. Because the employer controls the employment process, it makes sense to hold them responsible for demonstrating the practice's business necessity.

The Brooks-Fish substitute also overturns Wards Cove by restoring the standard of business necessity that was established in Griggs versus Duke Power Co. While I favor the Griggs standard of business necessity over the nearly unprovable standard of Wards Cove, I much prefer the higher standard provided in the Towns-Schroeder substitute.

Notably Brooks-Fish substitute grants victims of discrimination based on gender, religion, and disability the right to collect punitive and compensatory damages, a right racial minorities already enjoy. However, it unfairly caps the amount that women, religious minorities and individuals with disabilities can collect.

The sponsors of the Brooks-Fish substitute have always argued that the reason for adding contemporary and punitive damages to Title VII was to ensure that victims of intentional job discrimination on the basis of gender, religion, and disability would be entitled to the same remedies that victims of intentional job discrimination on the basis of race already have under section 1981. Yet, by adding a cap on punitive damages to title VII, the Brooks-Fish substitute enshrines unequal remedies into the law because the cap will only be applied to women, religious minorities, and the disabled, whereas racial minorities face no cap under section 1981. The Brooks-Fish substitute, therefore, permanently condemns women, religious minorities, and the disabled to second class status. I much prefer the damages provision included in H.R. 1 and the Towns-Schroeder substitute, which both ensure equal treatment for all victims of intentional job discrimination.

While I favor the original Committee bill and the Towns-Schroeder substitute over the Brooks-Fish substitute, the Brooks-Fish substitute is an important civil rights bill that I will support. It will restore the pre-1989 reach and remedies of employment discrimination laws without establishing a quota system. Even though quotas are already prohibited by law, the measure explicitly prohibits the use of quotas by employers, stipulating that the use of quotas is an unlawful employment practice.

Nevertheless, the Bush Administration continues to mislabel this substitute a quota bill. This demonstrates its willingness to sacrifice civil rights legislation and the victims of dis-

crimination for the sake of partisan advantages. The Administration's attempts to derail real civil rights legislation are inflaming racial tension and polarizing our society along lines of gender and skin color. Such tactics, though shameful, are not surprising when one recalls Republican racial strategies, such as Richard Nixon's in 1972, and epitomized by George Bush's Willie Horton ads in 1988.

I urge my colleagues to cast a decisive and principled vote for equality by supporting the Brooks-Fish substitute to the Civil Rights and Women's Equity in Employment Act. It is a compromise bill that deserves broad partisan support.

Ms. OAKAR. Mr. Chairman, the Equal Pay Act requiring equal pay for equal work, was signed into law in 1963. The following year saw passage of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, sex, or physical disabilities. Yet, the reality of the situation is that more than 25 years after passage of these landmarks pieces of legislation, inequities in the work place still exist. Individuals are still facing discrimination because of their gender, their race, or their national origin. Women constitute over 45 percent of the work force, yet they only make 63 cents for every dollar that men make. A woman with a college degree working full-time can expect to earn the same amount as a man with no more than an eighth grade education. I feel that it is time, once again, for the Federal Government to take the leadership role to secure economic justice.

I come before this House today to ask that the Civil Rights and Women's Equity in Employment Act of 1991 be strongly passed, allowing this country to regain some of the rights and protections that we thought we had originally won in 1963 and 1964.

I take special pride in this legislation because it includes a provision that deals with pay equity, an issue that I have championed since first coming to Congress. Pay equity has had a long history of support from the Congress, and the inclusion of H.R. 386, the Pay Equity Technical Assistance Act, in The Civil Rights and Women's Equity in Employment Act of 1991 further reflects the importance of this issue to Congress.

The goal of the pay equity provision is to make resources and assistance available to those employers who have decided to take steps to address wage inequities in their work places. This would be accomplished by calling on the Secretary of Labor to develop and establish a clearinghouse for the dissemination of information on efforts being made in the private and public sectors to reduce or eliminate wage disparities. This clearinghouse would operate under the auspices of the Women's Bureau which was established in 1923.

Currently, the Women's Bureau operates a "work and family clearinghouse" which was used as a model for H.R. 386. This work and family clearinghouse has an operating budget of \$260,795 for fiscal year 1991, and it is expected that the pay equity clearinghouse would have a comparable operating cost.

Timely implementation of the clearinghouse would assist employers with the long-range planning that will be necessary to meet the challenges presented by changes in the workforce in the next decade. New demands

on employers will be made by the shift of the economy to services, the expected labor shortage, international economic competition and workers balancing the requirements of job and family. More than ever, employers will need to concentrate on policies that will stabilize their work force.

By identifying, then eliminating wage inequities based on sex, race or national origin, employers can lessen recruitment and retention problems, such as the present crisis hospitals and health care facilities are experiencing due to the nursing shortage. Since women, people of color and/or immigrants will comprise 68 percent of all new entrants into the labor force between now and the year 2000, examining discriminatory wage-setting practices in the present makes good business sense. Many employers in the private and public sectors have expressed interest in achieving pay equity in the workplace, and I think that the Federal Government should encourage those initiatives.

The Civil Rights and Women's Equity in Employment Act of 1991 puts the country back on the right track. It moves us that much closer to ensuring that every man, woman, and child in America can freely pursue happiness because they are guaranteed the liberty our constitution demands for them.

Mr. SKAGGS. Mr. Chairman, America needs to regain the ground lost in civil rights as a result of recent Supreme Court decisions. The Brooks-Fish substitute amendment to the 1991 Civil Rights Act is the best way for us to do that.

A series of 1989 and 1990 Supreme Court decisions severely narrowed the scope and effectiveness of title VII of the Civil Rights Act of 1964 and section 1981 of the U.S. Code, the two main laws barring job discrimination. And at a time when our society is becoming ever more diverse, and its workplaces are reflecting that diversity, we can not afford to step backwards.

The civil rights movement, with the extraordinary courage and selflessness of its participants, changed this Nation, and changed it for the better. The struggle for equality for women has similarly changed the Nation and benefited our society. We are closer to realizing and recognizing the talents and strengths of that half of our population.

Americans have long expressed their respect for diverse religious views. But words alone do not guarantee respectful treatment. Our civil rights laws provided the legal assurance that religious groups not suffer prejudice. And last year, Americans who we call disabled, but who might more properly be called differently abled, gained their rightful status among those legally entitled to a place in the mainstream.

Title VII and section 1981 were building blocks in the long and often painful struggle to construct a more equal and more democratic society, with economic opportunities available to more of our citizens. These laws, and the Supreme Court decisions that enforced them, moved the country forward toward its goals of equality and mutual respect.

These laws are not perfect. They have not ended discrimination. Their implementation often has not been easy. But have they been right for America? You bet.

Mr. Chairman, we need to put the country back on the track of progress from which the High Court derailed us in 1989 and 1990. Passage of the Brooks-Fish substitute amendment will do so—it will put us back on course in our ongoing pursuit of equal opportunity.

I've been baffled by the President's insistence that this measure is a prescription for quotas. This substitute codifies the standards of the Griggs case, a Supreme Court decision under which this country lived and prospered from 1971 to 1989, an 18-year period of time in which, so far as I know, George Bush never once complained that the Nation's businesses were encumbered by hiring quotas.

The efforts made by the Judiciary Committee and the Democratic leadership have further alleviated the concerns of the President and others about quotas—by adding provisions on employer prerogatives, further defining business necessity to accommodate business concerns, requiring plaintiffs to identify specific employment practices in discrimination suits, and categorically outlawing quotas as an employment practice. These provisions more than meet rational doubts.

What more does the President want? Or is it that he really does not want a civil rights bill, that he's more interested in an issue to divide Americans and benefit his party's political agenda? Why did the President's chief of staff intervene to kill the efforts of civil rights leaders and the Business Roundtable to reach a compromise?

The administration makes an appeal to fear by talking about quotas. We talk about fairness and equality of opportunity and the promise for every American to share in the American dream.

This debate, and the lobbying that's attended it, has been diverted and distracted too much by an inaccurate, almost fictional, view of the scope and handling of discrimination cases in America prior to 1989. You would think, from the arguments offered up against this bill, that there were thousands of specious cases being brought and enormous money judgments being won by legions of unscrupulous civil rights lawyers. The facts are otherwise. These cases were hard to win, even before the recent court decisions. When won, the judgments have been modest.

It's a serious distortion to paint a picture of America that suggests that victims of racial, sexual or other discrimination are in the driver's seat of our legal or economic institutions. There's still a real struggle out there for equal opportunity. And all we're talking about is the removal of arbitrary, unwarranted impediments in the way of those who have the will and the abilities to participate and to succeed.

The issue of caps on damages available to victims of discrimination persists. Last year, I voted for a cap on punitive damages available in cases of discrimination based on sex, religion, or disability. Like many Members, I did so in pragmatic consideration of the views of the administration; I hoped the President would sign the bill. Similarly, the inclusion of a cap in Brooks-Fish is one more instance of the effort made by supporters of this bill to enact a law, not acquire a campaign issue. I look forward to the day when such pragmatic necessities yield to the better principle that equal

remedies be available for all victims of discrimination.

Mr. Chairman, yesterday I joined a number of my colleagues in going to the Chinese Embassy to commemorate the second anniversary of the massacre in Tiananmen Square. We did so out of the belief that those who are free are trustees for those who are not, and are obliged to speak for them. As we spoke out for human dignity in China, we must also speak out for human dignity here at home.

Rights are not simply words stated in sacred documents like our Constitution. Rights are fragile expressions of what's best in human nature, and they have to be preserved by constant vigilance against our less noble instincts. We do that by passing and enforcing laws that express our unfolding vision of a decent and caring society. Let us move forward to ensure that those precious liberties first guaranteed as the cause of white men truly belong to all who call themselves Americans.

Mr. BUSTAMANTE. Mr. Chairman, this week we have the opportunity to move ahead in providing greater equality for all residents of the United States, no matter what their race, color, religion, sex, or national origin. Our country was triumphant in coming together as one in support of our military efforts in the Persian Gulf area, yet it seems to me an extreme irony that our country still struggles to come together to guarantee civil rights for all.

The Civil Rights Act of 1964 was a great step toward equality for all, but Supreme Court decisions of the 1980's were deplorable setbacks. By no means has the Civil Rights Act of 1964 advanced civil rights as expected, especially for our country's minorities. The interpretation by the Supreme Court of the rights presumably secured by the spirited efforts of so many courageous leaders illustrates the need to strengthen minority rights in the United States.

I believe we have the opportunity to overturn some Supreme Court decisions by supporting the Brooks-Fish substitute for H.R. 1. I support the Towns-Schroeder substitute as well; however, I would like to point out the Brooks-Fish substitute provides the strongest legal support preventing discrimination. Though job discrimination has no place in society to begin with, there must be practical and encouraging support for those who suffer from unfair employment practices. Unfortunately, recent civil rights rulings by the Supreme Court have unduly complicated the matter, by narrowing the scope of legislation designed to prevent workplace discrimination. Without the necessary support to override certain Supreme Court decisions the chances for minorities to have full equality will again be unnecessarily interrupted.

Mr. DE LUGO. Mr. Chairman, the debate on this civil rights legislation, from the Halls of Congress to homes across America, from conferences to committees, from the White House to corporate offices, has engendered the most significant political and social controversy of 1991. In Congress, we have seen an original bill, the original amended, the amended bill substituted three times, and now we debate the final version which, in all likelihood, will be vetoed by the President.

We have sought compromise but have seen efforts between labor and business leaders

scuttled by the administration. We have altered this legislation to satisfy the majority of our Members, only to hear continuing threats of a Presidential veto. We have gone far indeed to achieve consensus on legislation whose goal is to insure harmony, equality, and fair play for all Americans.

Today, we debate on a bill that seeks to allow every American the right to work, to be chosen fairly for that work, and to work under conditions that are equal for all. We have quibbled over quotas, quarreled over testing, and squabbled over semantics, some designed outright to frighten rather than inform, to divide rather than unite.

The leadership of this House has worked sincerely and diligently to frame legislation to overturn 1989 Supreme Court decisions that severely reduce remedies for civil rights violations. This legislation explicitly prohibits that frightening word, quotas. This bill bans unfair employment testing. This legislation outlaws adjusting test results based on race, color, religion or national origin. This bill establishes but caps punitive damages. And this legislation meets business concerns about business necessity standards.

Mr. Chairman, I make a final appeal to this House to pass this important legislation which restores the balance in the business place, returns the ability of minorities in America to obtain equality if it is denied them, and renews faith that in our Nation, all men—and women—are created equal under the law.

As the Representative of the people of the United States Virgin Islands, a territory where racial harmony is one of the hallmarks of our cultural heritage, I urge my colleagues to vote in favor of this civil rights legislation, and to vote so firmly that any threat of a veto will be resoundingly denied.

Mr. DELAY. Mr. Chairman, I rise in opposition to the quota bill. I am concerned that when we seek to outlaw the use of quotas, the definition of "quota" is unclear.

In a recent memorandum, the Heritage Foundation's resident expert on regulatory and business affairs, William Laffer, noted this problem. He wrote:

The latest version of H.R. 1 ostensibly would prohibit the use of quotas. Its definition of a "quota" is so narrow, however, and it has so many loopholes, that the provision would be useless. While employers would supposedly be prohibited from setting aside a fixed number or percentage of positions for people of a particular race, color, religion, sex or national origin, they would be free to engage in other forms of preferential treatment.

As an example, Mr. Laffer says employees could be forced to give job applicants extra credit on employment tests for being black or Hispanic or could adopt a policy of always choosing a minority whenever two applicants are otherwise equally qualified.

Mr. Laffer states further that:

An employer would be forced to use quotas as long as everyone hired met the minimum necessary qualifications to perform the job. And, while it might not be illegal for an employer to fire a department head for failing to meet a hiring quota, the employer could make department heads' bonuses, raises, and promotions contingent on achieving quota targets.

The problem remains that businesses face expensive lawsuits unless they hire employees under a quota system and ignore employment based on merit. America cannot become a color-blind nation until we end giving preferential treatment based upon color and not merit. This provision alone is enough to force me to oppose this bill.

However, there is another sinister provision in the bill which seeks to undermine our free market economy—comparable worth.

At the last minute, without any hearings, without any public debate, the Democrats inserted a provision in the quota bill to try and implement comparable worth.

Under comparable worth, we abandon our free market economic system and let bureaucrats decide wages and salaries for everyone.

The economies of Communist countries throughout the world lay in ruins. This is because bureaucrats, with a strong bias toward government interference in the marketplace, have little understanding of how free markets operate.

Government bureaucrats would mandate wages and salaries for all jobs based upon their subjective value of the job. Supply and demand would be removed from this wage setting scheme.

First, employers will be forced to hire according to statistical requirements. Then employers will be forced to pay according to a bureaucrat's belief. This bill will remove both merit and market from our economy.

I strongly urge all Members to oppose this bill.

Mr. KLECZKA. Mr. Chairman, today I rise in support of the Towns-Schroeder and Brooks-Fish substitutes to H.R. 1, the Civil Rights and Women's Equity in Employment Act of 1991, which has my backing as a cosponsor.

Much of the controversy over this measure arose from false charges that it is a quota bill. However, hiring by the numbers would not result from H.R. 1 or the two substitutes receiving my support.

The disparate impact provision in H.R. 1 that has been the target of quota charges merely restores the 1971 Griggs decision—a unanimous decision by the Burger Supreme Court. The landmark Griggs opinion held that employment practices which appear neutral, but in fact exclude qualified women and minorities disproportionately, are prohibited by title VII of the 1964 Civil Rights Act unless an employer can prove the practice is required by business necessity. Only practices significantly related to successful job performance may be used to exclude qualified individuals, according to the business necessity exception.

The Towns-Schroeder substitute retains the disparate impact language of H.R. 1. It is a matter of public record that after nearly two decades of experience under the Griggs law, prior to the 1989 Wards Cove ruling, no pattern of quotas was generated.

To improve chances for the bill's passage the Brooks-Fish substitute takes an additional step by making job quotas unlawful. To further placate opponents, the definition of quota used in the Brooks-Fish substitute was taken from a 1986 opinion written by Justice Sandra Day O'Connor—*Local 28 of Sheet Metal Workers v. EEOC*, 106 S.Ct. 3019—a Reagan appointee. The definition states a quota

"would impose a fixed number or percentage which must be attained or which cannot be exceeded" and would do so "regardless of the number of potential applicants who meet necessary qualifications." The O'Connor definition spells out in plain English, for layman and lawyer alike, what a quota is. The Brooks-Fish substitute also just as clearly bans it.

As for title VII, the employment discrimination section of the 1964 Civil Rights Act, H.R. 1 would expand it so that for the first time certain minorities and women would receive the same treatment as victims of racial discrimination. This is the other major issue in dispute. Eliminating the unfair, two-tiered system of damages for intentional discrimination is long overdue, and has my full support.

Unlike title VII, section 1981 (an 1866 law) permits unlimited money damages for intentional racial bias. The Towns-Schroeder substitute also applies the section 1981 policy to practices banned by title VII. Malicious bias is no less harmful for people of color than it is for women, the disabled, ethnic or religious minorities. Given the pervasiveness even today of bias in the workplace, all intentional job exclusion should be addressed.

Unfortunately, the Brooks-Fish substitute imposes a \$150,000 cap on title VII punitive damages, preserving a two-tiered system of compensation for victims of workplace bias. This portion of the measure is inequitable, but apparently necessary for passage of H.R. 1.

This Chamber must give civil rights restoration priority over the politics polluting this debate. Through our actions today, we can prove our commitment to job rights for all Americans by voting for what is right—and not what is expedient. I encourage my colleagues to vote for passage of the Towns-Schroeder and Brooks-Fish substitutes, and final passage of H.R. 1.

Mr. TAUZIN. Mr. Speaker, today as we consider H.R. 1, the Civil Rights and Women's Equity in Employment Act, the debate still turns primarily on the issue of employment quotas. This debate over quotas has been amplified by an attempt in the substitute authored by Chairman BROOKS of the House Judiciary Committee to define the term quota in order to clarify the practice which would be made illegal by the substitute. Unfortunately, the attempt at clarity has only further clouded the issue for many, including this Member.

The definition of quotas contained in the substitute is written in such a way as to imply, by one interpretation, the legality of employment quotas for qualified employees as opposed to those who might not be qualified. The reason for such an interpretation lies in the phrase which stipulates that an employer may rely on qualifications in making employment decisions—the phrase implies that as long as a prospective employee meets the minimum standards for job performance he is an acceptable job candidate and should be hired by the numbers. It indicates that the only employment quotas made illegal by the definition are those which would force the hiring and promotion of unqualified workers.

Chairman BROOKS in a colloquy with Majority Leader GEPHARDT has asserted on the floor that his own interpretation of the quotas definition contained in the substitute is that all quotas, those applicable to qualified as well as unqualified employees, would be made illegal

by the language used in that definition. There remains a great difference of opinion on that point, however.

In a subsequent colloquy with this Member, Chairman BROOKS agreed to such language changes in the bill—obviously in conference with the Senate—to clearly conform the language of the definition of quotas with his own declared interpretation; that is, that employment quotas deemed illegal by the act would include quotas applicable to qualified as well as to unqualified employees. With such a language change, now agreed upon by Chairman BROOKS, the act would clearly declare that nothing contained in it would encourage nor mandate employment quotas, and the act would further make employment quotas of any kind an illegal employment practice. As such, any employee affected by such a quota would have a right of action for reverse discrimination, a right some members of the white majority in America have long desired.

With the assurance by Chairman BROOKS that the definition of illegal employment quota will be perfected to cover quotas affecting both qualified and unqualified employees, I have decided to vote for H.R. 1 as amended, in order to keep the process alive. I do so in the sincere hope that negotiations will continue to close the remaining differences between the proponents of H.R. 1 and the administration, so that the President may be presented with a bill which he can and will sign. I also do so with the caveat that I am not prepared to vote to override a Presidential veto if the remaining problems in the bill are not resolved. I speak of the following problems:

First, the problem of unlimited damages coupled with the new provisions for jury trials. I do not personally like punitive damages, and I do not support the notion of codifying the practice. But if juries rather than judges will, under the bill, decide these punitive damages, and if there are no real limits on how high the juries may award these damages, I believe the combination will prove legally deadly. Potential liabilities under the bill will either destroy employment opportunities in America, or will force employers to hire by the numbers—the very practice the illegal quota language is meant to forbid.

If juries will decide these cases and if the bill codifies the practice of awarding punitive damages, then real, not fake, limits must be placed upon those potential damages. H.R. 1 now contains, as everyone knows, a fake limit or "cap" on these punitive damages. That must be corrected.

Second, the problem of the language defining an employer's defense of "business necessity." The President's civil rights bill, H.R. 1375, restores the exact phrase of the Griggs decision on this point, specifically in stating that any given job requirement must have a "manifest relationship" to the "employment in question." H.R. 1 seeks to restore the Griggs decision on this point, but uses language composed of words found in Griggs, but pieced together in a new and uninterpreted phrase which declares that employment criteria "must bear a significant and manifest relationship to the requirements for effective job performance."

In order to restore the status of the civil rights laws of our Nation, as they existed prior

to the 1989 Supreme Court term, I believe the exact phrase used in Griggs and contained in H.R. 1375 should be used in H.R. 1. I will watch the conference carefully to determine whether or not an agreement can be reached on this point.

The President has made it rather clear that he will veto H.R. 1 unless those specific problems are resolved. I believe the interest of the eventual success of civil rights legislation this year, and perhaps for many years, requires that those problems be resolved.

Therefore, my vote today will be to keep the process alive. The process must now, however, include negotiations and agreement, or there will be no success in the end. There will only be retreat, failures, and politics as usual. Democrats blaming the President for the demise of civil rights reform, and Republicans chanting "quotas" to the ugly beat of a new Willy Horton political ad. It ought not end that way. We should find agreement and the President should be part of the agreement—I think Americans would be both surprised and appreciative if we did.

Mr. SMITH of New Jersey. Mr. Chairman, I rise in strong support of President Bush's civil rights bill and in opposition to the latest Democratic version of H.R. 1.

Throughout my tenure in office I have championed human rights abroad and civil rights at home. In fact, I have voted in favor of every civil rights bill that has become law during the past decade, including the Voting Rights Act Amendments of 1981, the Civil Rights Restoration Act of 1988, the Fair Housing Act Amendments of 1988 and the Americans with Disabilities Act of 1990, which I also cosponsored. And today I will vote in favor of legislation to expand and enhance civil rights for women and minorities. I will not vote, however, for legislation that will clearly result in quotas.

Mr. Chairman, make no mistake about it, the Democrats' civil rights bill will force businesses to use quotas. To quote the former Democratic mayor of New York City, Ed Koch, "H.R. 1 is not a civil rights bill. It is a bill which will encourage quotas based on race, ethnicity, religion and gender."

Mr. Chairman, the President has offered a genuine civil rights bill—one that will foster civil rights without forcing quotas. Contrary to assertions by proponents of the quota legislation, the President's civil rights bill contains important provisions that provide extra protection for workers against both intentional and unintentional discrimination—without leading to quotas.

First, the President's civil rights bill reverses the Wards Cove decision which made it harder for employees to challenge hiring practices that unintentionally discriminated against minorities and women. Under the President's bill, the burden of proof in such cases would be returned to the employer, using the same standards of evidence that had been used successfully for 20 years prior to the Wards Cove decision.

Second, the President's civil rights bill will reverse the Patterson decision concerning discrimination in contracts by expanding the definition of "make and enforce contracts" to include "the making, performance, modification and termination of contracts and the enjoy-

ment of all benefits, privileges, terms and conditions of the contract."

Third, the President's civil rights bill reverses the Lorance decision and specifies that, with regards to seniority systems, the statute of limitations begins to run when the violation occurred or on the date the employee is adversely affected.

Fourth, the President's civil rights bill would establish, for the first time, a right to file civil suits against employers on the grounds of harassment in the workplace based upon an employee's race, color, religion, sex or national origin.

Fifth, the President's civil rights bill raises the amount of money that may be recovered for expert witness fees to \$300 per day, thereby providing victims of job discrimination another tool to prove their case.

Sixth, the President's civil rights bill extends the statute of limitations for cases brought against the Federal Government from 30 to 90 days.

Seventh, the President's civil rights bill contains provisions to apply title VII to the Congress, which is currently exempt from most federal antidiscrimination laws.

In addition, the President's civil rights bill outlaws the practice of race-norming by making it illegal to adjust the result of employment tests on the basis of race, color, religion, sex or national origin.

Mr. Chairman, the Democrats' latest version of H.R. 1 is not much different than last year's bill which the President vetoed, with the Senate sustaining his veto.

While the President's civil rights bill restores a fair balance between employee and employer rights, the Democrats' bill makes it virtually impossible for employers to defend themselves against any allegation of unintentional discrimination.

Under the Democrats' bill, any employee who can show that the composition of the work force does not exactly match the composition of the population, may allege that a group of unspecified employment practices has had a "disparate impact" on women and minorities. Employers would then be required to prove that each and every one of their employment practices is indispensable. In addition, the employer must prove that there is no other criteria that can be used for making hiring decisions.

Mr. Chairman, the only sure way for employers to prevent costly litigation and large damage awards will be to insure that the composition of their work force exactly matches that of the population—in other words hire by the numbers and establish quotas.

Despite their repeated protestations, the Democrats' bill does coerce employers to use quotas in hiring and promotion. The cynical and shallow attempt to include antiquota language will not work. Even the liberal Washington Post acknowledges that the Democrats' antiquota language won't work:

"We don't think the Democrats helped their cause by including in their bill a definition of quotas that, whatever its legal provenance, is a straw man. Quotas cannot be limited in definition to forcing employers to hire the unqualified; the question is whether, as among qualified applicants, they will have to hire by the numbers based strictly on race."

Further, in Sunday's New York Times, another liberal publication, columnist Steven A. Holmes also dismisses the Democrats' purported antiquota language:

"... because the civil rights bill defines quotas so narrowly, such programs would still be permitted, even though the measure's supporters say that they are explicitly outlawing quotas."

Mr. Chairman, the difference between the President's civil rights bill and the Democrats' quota bill are real and substantive. The Democrats' bill will force the use of quotas in hiring and promotion. The President's bill will provide new protections against both intentional and unintentional discrimination in the workplace without resorting to quotas. I urge all of my colleagues to stand up for true civil rights legislation and vote for the President's bill and against the Democrat quota provisions of H.R. 1.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Texas [Mr. BROOKS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HYDE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 264, noes 166, not voting 1, as follows:

[Roll No. 130]

AYES—264

Abercrombie	Cramer	Hall (OH)
Ackerman	Davis	Hamilton
Alexander	de la Garza	Harris
Anderson	DeFazio	Hatcher
Andrews (ME)	DeLauro	Hayes (IL)
Andrews (NJ)	Derrick	Hefner
Andrews (TX)	Dicks	Henry
Anthony	Dingell	Hertel
Applegate	Dixon	Hoagland
Aspin	Donnelly	Hobson
Atkins	Dooley	Hochbrueckner
AuCoin	Dorgan (ND)	Horn
Bacchus	Downey	Horton
Bellenson	Durbin	Houghton
Bennett	Dwyer	Hoyer
Berman	Dymally	Hubbard
Bevill	Early	Hughes
Bilbray	Eckart	Jacobs
Boehlert	Edwards (CA)	Jefferson
Bonior	Edwards (TX)	Johnson (SD)
Borski	Engel	Johnston
Boucher	English	Jones (GA)
Brewster	Erdreich	Jones (NC)
Brooks	Espy	Jontz
Browder	Evans	Kanjorski
Brown	Fascell	Kaptur
Bruce	Fazio	Kennedy
Bryant	Feighan	Kennelly
Bustamante	Fish	Kildee
Byron	Flake	Klecicka
Campbell (CA)	Foglietta	Klug
Campbell (CO)	Ford (MI)	Kolter
Cardin	Ford (TN)	Kopetski
Carper	Frank (MA)	Kostmayer
Carr	Frost	LaFalce
Chapman	Gaydos	Lancaster
Clay	Gejdenson	Lantos
Clement	Gephardt	LaRocco
Coleman (TX)	Geren	Laughlin
Collins (IL)	Gibbons	Leach
Collins (MI)	Gilman	Lehman (CA)
Condit	Glickman	Lehman (FL)
Conyers	Gonzalez	Levin (MI)
Cooper	Gordon	Levine (CA)
Costello	Gray	Lewis (GA)
Cox (IL)	Green	Lloyd
Coyne	Guarini	Long

Lowey (NY) Payne (NJ) Slaughter (NY) Walker Wheat Young (FL) Brooks Hochbrueckner Penny
 Luken Payne (VA) Smith (FL) Washington Wolf Zelfiff Horn Perkins
 Machtley Pease Smith (IA) Weber Wylie Young (FL) Brown Horton Peterson (FL)
 Manton Pelosi Snowe Slaughter Wolf Young (FL) Bruce Houghton Peterson (MN)
 Markey Penny Solarz Solarz Wolf Young (FL) Bryant Hoyer Pickett
 Martinez Perkins Spratt Spratt Wolf Young (FL) Bustamante Hubbard Pickle
 Matsui Peterson (FL) Staggers Staggers Wolf Young (FL) Byron Hughes Poshard
 Mavroules Peterson (MN) Stallings Stallings Wolf Young (FL) Campbell (CA) Jacobs Price
 Mazzoli Pickett Stark Stark Wolf Young (FL) Campbell (CO) Jefferson Rahall
 McCloskey Pickle Stokes Stokes Wolf Young (FL) Cardin Johnson (SD) Rangel
 McCurdy Poshard Studts Studts Wolf Young (FL) Carper Johnston Ray
 McDermott Price Swett Swett Wolf Young (FL) Carr Jones (GA) Reed
 McHugh Rahall Swift Swift Wolf Young (FL) Chapman Jones (NC) Richardson
 McMillen (MD) Rangel Synar Synar Wolf Young (FL) Clay Jontz Rinaldo
 McNulty Ray Tallon Tallon Wolf Young (FL) Clement Kanjorski Roe
 Mfume Reed Tanner Tanner Wolf Young (FL) Coleman (TX) Kaptur Roemer
 Miller (CA) Richardson Thomas (GA) Thomas (GA) Collins (IL) Kennedy Ros-Lehtinen
 Mineta Rinaldo Thornton Thornton Wolf Young (FL) Collins (MI) Kennelly Rose
 Moakley Roe Torricelli Torricelli Wolf Young (FL) Condit Kildee Rostenkowski
 Mollohan Roemer Towns Towns Wolf Young (FL) Conyers Kleczka Rowland
 Moody Ros-Lehtinen Trafficant Trafficant Wolf Young (FL) Cooper Klug Roybal
 Moran Rose Traxler Traxler Wolf Young (FL) Costello Kolter Sabo
 Morella Rostenkowski Traxler Traxler Wolf Young (FL) Cox (IL) Kopetski Sanders
 Mrazek Rowland Unsoeld Unsoeld Wolf Young (FL) Coyne Kostmayer Sangmeister
 Murphy Roybal Valentine Valentine Wolf Young (FL) Cramer LaFalce Sarpalius
 Murtha Sabo Vento Vento Wolf Young (FL) Davis Lancaster Savage
 Nagle Sanders Visclosky Visclosky Wolf Young (FL) de la Garza Lantost Lancaster Sawyer
 Natcher Sangmeister Walsh Walsh Wolf Young (FL) DeFazio LaRocco Scheuer
 Neal (MA) Sarpalius Waters Waters Wolf Young (FL) DeLauro Laughlin Schiff
 Neal (NC) Sawyer Waxman Waxman Wolf Young (FL) Dellums Leach Schroeder
 Nowak Scheuer Weiss Weiss Wolf Young (FL) Derrick Lehman (CA) Schulze
 Oakar Schiff Whitten Whitten Wolf Young (FL) Dicks Lehman (FL) Schumer
 Oberstar Schulze Williams Williams Wolf Young (FL) Dingell Levin (MI) Serrano
 Obey Schumer Wilson Wilson Wolf Young (FL) Dixon Levine (CA) Sharp
 Olin Serrano Wise Wise Wolf Young (FL) Donnelly Lewis (GA) Shays
 Ortiz Sharp Wolpe Wolpe Wolf Young (FL) Dooley Lloyd Sikorski
 Owens (NY) Shays Wyden Wyden Wolf Young (FL) Dorgan (ND) Long Skaggs
 Owens (UT) Sikorski Yates Yates Wolf Young (FL) Downey Skelton Skelton
 Pallone Skaggs Yatron Yatron Wolf Young (FL) Durbin Skelton Slattery
 Panetta Skelton Slattery Slattery Wolf Young (FL) Dwyer Luken Slaughter (NY)
 Patterson Slattery Slattery Slattery Wolf Young (FL) Dymally Manton Smith (FL)
 Slattery Slattery Slattery Slattery Wolf Young (FL) Early Markley Smith (IA)
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NOT VOTING—1
 Sisisky

□ 1230

Mr. KOSTMAYER changed his vote from "no" to "aye."

So the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. MFUME, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under the consideration the bill (H.R. 1) to amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes, pursuant to House Resolution 162, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the Committee amendment in the nature of a substitute, as amended.

The Committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BROOKS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 273, nays 158, not voting 1, as follows:

[Roll No. 131]

YEAS—273

Allard Annunzio Archer Armye Baker Ballenger Barnard Barrett Barton Bateman Bentley Bereuter Billrakis Bliley Boehner Boxer Broomfield Bunning Burton Callahan Camp Chandler Clinger Coble Coleman (MO) Combest Coughlin Cox (CA) Crane Cunningham Dannemeyer Darden DeLay Dellums Dickinson Doolittle Dornan (CA) Dreier Duncan Edwards (OK) Emerson Fawell Fields Franks (CT) Gallegly Gallo Gekas Gilchrist Gillmor Gingrich Goodling Goss

Abercrombie Ackerman Alexander Anderson Andrews (ME) Andrews (NJ) Andrews (TX) Anthony Applegate Aspin Atkins AuCoin Bacchus Beilenson Bennett Berman

Bevill Bilbray Boehlert Bonior Borski Boucher Boxer Brewster Brooks Browder Brown Bruce Bryant Bustamante Byron Campbell (CA) Campbell (CO) Cardin Carper Carr Chapman Clay Clement Coleman (TX) Collins (IL) Collins (MI) Condit Conyers Cooper Costello Cox (IL) Coyne Cramer Davis de la Garza DeFazio DeLauro Dellums Derrick Dicks Dingell Dixon Donnelly Dooley Dorgan (ND) Downey Durbin Dwyer Dymally Early Eckart Edwards (CA) Edwards (TX) Engel English Erdreich Espy Evans Fascell Fazio Feighan Fish Flake Foglietta Foley Ford (MI) Ford (TN) Frank (MA) Frost Gaydos Gejdenson Gephardt Geren Gibbons Gilman Glickman Gonzalez Gordon Gray Green Guarini Hall (OH) Hamilton Harris Hatcher Hayes (IL) Hefner Henry Hertel Hoagland Hobson

NAYS—158

Allard Annunzio Archer Armye Baker Ballenger Barnard Barrett Barton Bateman Bentley Bereuter Billrakis Bliley Boehner Broomfield Bunning Burton Callahan Camp

Chandler Clinger Coble Coleman (MO) Combest Coughlin Cox (CA) Crane Cunningham Dannemeyer

NOES—166

Gradison Grandy Gunderson Hall (TX) Hammerschmidt Hancock Hansen Hastert Hayes (LA) Hefley Herger Holloway Hopkins Huckaby Hunter Hutto Hyde Inhofe Ireland James Jenkins Johnson (CT) Johnson (TX) Kasich Kolbe Kyl Lagomarsino Lent Lewis (CA) Lewis (FL) Lightfoot Lightfoot Lipsinski Livingston Lowery (CA) Marlenee Martin McCandless McCollum McCreery McDade McEwen McGrath McMillan (NC) Meyers Michel Miller (OH) Miller (WA) Mink Molinari Montgomery Moorhead Morrison

Myers Nichols Nussle Orton Oxley Packard Parker Paxon Petri Porter Pursell Quillen Ramstad Ravenel Regula Rhodes Riggs Ritter Roberts Rogers Rohrabacher Roth Roukema Russo Santorum Savage Saxton Schaefer Schroeder Sensenbrenner Shaw Shuster Skeen Slaughter (VA) Smith (NJ) Smith (OR) Smith (TX) Solomon Spence Stearns Stenholm Stump Sundquist Tauzin Taylor (MS) Taylor (NC) Thomas (CA) Thomas (WY) Upton Vande Jagt Vucanovich

Darden	Kasich	Rhodes
DeLay	Kolbe	Ridge
Dickinson	Kyl	Riggs
Doollittle	Lagamarsino	Ritter
Dornan (CA)	Lent	Roberts
Dreier	Lewis (CA)	Rogers
Duncan	Lewis (FL)	Rohrabacher
Edwards (OK)	Lightfoot	Roth
Emerson	Lipinski	Roukema
Fawell	Livingston	Russo
Fields	Lowery (CA)	Santorum
Franks (CT)	Marlenee	Saxton
Gallely	Martin	Schaefer
Gallo	McCandless	Sensenbrenner
Gekas	McCullum	Shaw
Gilcrest	McCreary	Shuster
Gillmor	McDade	Skeen
Gingrich	McEwen	Slaughter (VA)
Goodling	McGrath	Smith (NJ)
Goss	McMillan (NC)	Smith (OR)
Gradison	Meyers	Smith (TX)
Grandy	Michel	Solomon
Gunderson	Miller (OH)	Spence
Hall (TX)	Miller (WA)	Stearns
Hammerschmidt	Molinari	Stenholm
Hancock	Montgomery	Stump
Hansen	Moorhead	Sundquist
Hastert	Morrison	Taylor (MS)
Hayes (LA)	Myers	Taylor (NC)
Hefley	Nichols	Thomas (CA)
Henger	Nussle	Thomas (WY)
Holloway	Orton	Upton
Hopkins	Oxley	Vander Jagt
Huckaby	Packard	Vucanovich
Hunter	Parker	Walker
Hutto	Paxon	Weber
Hyde	Petri	Weldon
Inhofe	Porter	Wolf
Ireland	Pursell	Wylie
James	Quillen	Young (AK)
Jenkins	Ramstad	Young (FL)
Johnson (CT)	Ravenel	Zeliff
Johnson (TX)	Regula	

NOT VOTING—1

Sisisky

□ 1255

Mr. WASHINGTON changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered and passed.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERSONAL EXPLANATION

Mr. SISISKY. Mr. Speaker, due to a long standing family commitment, I will be absent when the House considers the Civil Rights Act of 1991 this week. However, had it been possible for me to be here for this important vote, I would have voted in favor of the Brooks-Fish substitute and in favor of the bill.

As a supporter of a similar civil rights measure that passed this body last year and, as someone who believes strongly in equal opportunity for all Americans, I endorse the objectives of H.R. 1 and encourage my colleagues to do the same.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1790

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 1790.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries.

GENERAL LEAVE

Mr. FAZIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and that I may include extraneous and tabular material on H.R. 2506, the bill about to be considered.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1992

Mr. FAZIO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2506) making appropriations for the legislative branch for the fiscal year ending September 30, 1992, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not exceed 1 hour, the time to be equally divided and controlled by the gentleman from California [Mr. LEWIS] and myself.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER. The question is on the motion offered by the gentleman from California [Mr. FAZIO].

The motion was agreed to.

□ 1259

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2506, with Mr. DONNELLY in the chair.

The Clerk read the title of the bill.

By unanimous consent, the bill was considered as having been read the first time.

The CHAIRMAN. Under the unanimous-consent agreement, the gentleman from California [Mr. FAZIO] will be recognized for 30 minutes and the gentleman from California [Mr. LEWIS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Chairman, it is a pleasure to present H.R. 2506, the legislative branch appropriations bill for fiscal year 1992 to the House.

The bill and the report, House Report No. 102-82, were filed on Thursday, May 30, 1991.

I do not intend to go into every detail of this bill. The report and the bill have been available to the Members for several days, so at this point I will simply summarize.

I would before I begin, though, want to thank each member of my Legislative Subcommittee on Appropriations. First of all, my good friend and the ranking minority member, the gentleman from California [Mr. LEWIS] who has worked so diligently with me on this bill for the last 11 years.

The other members of the subcommittee: Messrs. MRAZEK, SMITH of Florida, ALEXANDER, MURTHA, TRAXLER, PORTER, and Mrs. VUCANOVICH.

Also, Mr. WHITTEN, the chairman of the full committee, is a member of the subcommittee. Mr. MCDADE, the ranking minority member is an ex officio member of the subcommittee.

I should also point out that we work very closely with the Committee on House Administration, and I also want to express my appreciation to the members and leadership of that committee, primarily the chairman, the gentleman from North Carolina [Mr. ROSE], and the gentleman from California [Mr. THOMAS], the ranking minority member of that committee; the gentlewoman from Ohio [Ms. OAKAR] and the gentleman from Kansas [Mr. ROBERTS], the chair and ranking member on the personnel and police subcommittee.

The gentleman from Connecticut [Mr. GEJDENSON] and the gentleman from New York [Mr. WALSH], the chairman and ranking minority member of the Subcommittee on Office Systems and the gentleman from Pennsylvania [Mr. GAYDOS], and the gentleman from Ohio [Mr. GILLMOR], chairman and ranking member of the Accounts Subcommittee.

Then there is BILL CLAY, and BILL BARRETT, chairman and ranking member of the Subcommittee on Libraries and Memorials.

We also work closely with our dear friend Chairman FRANK ANNUNZIO and ranking member MICKEY EDWARDS of the Subcommittee on Procurement and Printing.

SUMMARY OF BILL

Mr. Chairman, the bill before the House totals \$1.8 billion (\$1,805,378) in budget authority for fiscal year 1992.

COMPARISON WITH FISCAL YEAR 1991

In fiscal year 1991, we provided \$1.74 billion to the activities and agencies funded in this bill. I am excluding funds for the Senate which will be added when the bill goes to the other

body. The funding for fiscal year 1991 includes the funds in the regular bill, and the supplemental which was necessary for some of our operations.

The increase between 1991 and 1992 is \$64.6 million (\$64,575,474). That's an increase of only 3.7 percent.

We have had to constrain the legislative budget severely. The budget requested an increase of \$353 million, which was trimmed by 82 percent.

COMPARISON WITH 602(b) ALLOCATION

Under section 602(b) of the Budget Act, our committee allocated \$2.344 billion for the legislative bill. The bill before us contains \$1.805 billion in budget authority. That means we are \$539 million under the target.

However, if we add the \$504 million that we have left for the Senate—which is their baseline—and then if we add the \$34 million that we have been scored as an advance appropriation even though that money was appropriated in the fiscal year 1991 bill, we are within \$1 million of our 602(b) BA target.

We did a similar analysis on our outlay target. Our calculation is that the bill is about \$7 million under the 602(b) outlay ceiling. If we can hold that level in conference with the Senate, that will be a further contribution to deficit reduction that goes beyond the budget summit agreement.

COMPARISON TO BASELINE

Another measure of the bill is the extent to which we are close to the baseline estimate by CBO and the Office of Management and Budget.

The baseline is supposed to tell us what level of funding is required just to stay at the current level of services. That is, only an allowance for prospective COLA's, health and retirement contribution increases mandated by law, and an allowance for the inevitable increase in prices to acquire the same amount of pencils, computer paper, electricity, gas and oil, travel, and other routine expenditures.

The \$1.8 billion in this bill is eight-tenths of 1 percent above that baseline.

That is true even though we had to add about \$30 million to the bill to take care of a few projects that are absolutely essential, such as the \$5.2 million deacidification project at the Library of Congress, removal of toxic PCB's and asbestos from the Capitol complex and the General Accounting Office building, and several small, but unavoidable maintenance projects.

COMPONENTS OF INCREASE OVER 1991

As I have pointed out, the bill contains \$64.6 million more than the current fiscal year 1991 appropriation, including supplementals, and the advance appropriations provided in the 1991 bill. That increase over the current level can be explained by its five components.

First, mandatory items cause an increase of \$82.1 million. These items

consist of COLA increases paid to our employees, the normal merit and longevity increases, and increases in health and retirement benefits.

Second, the effect of price increases in contracts, rents, supplies and materials, and other normal expenditure items is about \$25.8 million.

Third, we have provided a net increase of \$1.1 million for mandated legislative requirements, the primary one being a proposed compression in the amount of time it takes for our Capitol police to reach the top step of their salary longevity ladder. That proposal is currently pending before the Committee on House Administration. The funds are in the bill if that proposal is enacted.

Since the increase necessary in those first three categories is \$109 million, and we have only provided a \$64.6 million increase overall, we had to reduce the final two components under the 1991 level by over \$44 million to reach our mark.

There is a net reduction of \$10.8 million in workload items.

Some workload items were increases, others decreases. Overall, there is a net decrease of the \$10.8 million.

Essential increases:	Millions
Book deacidification	\$5.2
LOC automation	1.0
Congressional printing	6.8
Decreases required to meet targets:	
Mail (net decrease under 1991 bill) ..	12.0
Police overtime and equipment	7.0
Position and base reductions at GAO	5.6
Depository library publications	1.4

Finally, a net reduction of \$33.5 million in the fifth component of equipment, alterations, maintenance, and repairs.

There were a few repair, renovation, and equipment items that cannot be deferred. In the architect's budget alone, we denied over \$58 million in projects. But a few things have to be done.

Major essential increases:	Millions
Library of Congress day care center	\$1.0
PCB removal	2.0
Energy efficient lighting (1st installment)	1.0
Escalator and elevator repairs	0.5
Emissions monitors, pipe insulation, steamline repairs, other crucial maintenance	2.0
Asbestos removal and renovation at GAO building (continuing project)	6.8
Illustrative decreases necessary to meet target:	
Office equipment (House)	6.3
St. Cecilia's purchase (one time)	5.9
Capitol and office building maintenance	16.5
Talking book machines	8.5
GAO computer hardware and software	3.1

MAJOR ITEMS IN BILL

House of Representatives: We have allowed \$709.2 million for the oper-

ations of the House. This is the budget baseline level, less a reduction of \$16 million under the baseline for House mail. This is a \$61.5 million increase over 1991. The components of the increase are +\$5.3 million was allowed for benefits (retirement, health benefits, thrift savings); +\$20 million for clerk hire; +\$6.9 million for Committee employees; +\$4.2 million for administrative staff salaries and expenses; +\$6 million for various office expenses. Included is \$80 million for House mail, a reduction of \$13.4 million under the budget estimate.

Joint Items: We have allowed \$80 million for Joint Items, including salaries of police, Joint Committees, the guide service, and the Attending Physician.

Architect of the Capitol: For the Architect of the Capitol, the bill appropriates \$111.4 million. That's a reduction of \$8.8 million below 1991. In addition to the one-time projects that we were able to eliminate because they were funded last year, we had to reduce annual and cyclical maintenance by \$6.1 million, and allowed only one position. We did add \$2 million to continue removing PCB's, and we added \$2 million to continue the electrical wiring renovation at Cannon and to make structural repairs at the northwest corner of Cannon tunnel where there is a constant water seepage problem. We also provided \$1 million for a major test of an electric energy retrofit program. We did allow some funds to rehabilitate space for a day care center for the Library of Congress. But by and large, this is a very austere year for our physical plant maintenance. Overall, we denied \$58 million in projects submitted by the Architect.

I want to point out that we have been advised that the Palm House at the Botanic Garden (the glass enclosed central portion of the building) has to be demolished because it has been found to be structurally unsafe. We don't have the funds to replace it.

Congressional Research Service: \$55.7 million is allowed for CRS, the CBO baseline. That may necessitate a reduction in services, even though the baseline is generally understood to be the current service level. Certainly, CRS will have to hold open a number of vacancies to meet this tight budget level.

Library of Congress: \$248.5 million is allowed for the Library of Congress in several accounts. We allowed \$5.2 million and 10 positions to finally begin the task of deacidifying the 15 million books in the Library's collections that are deteriorating due to the high acid content of the paper. We also added \$1 million for automation, and funds for the equipment needed to equip the day care center. In order to finance these essential items, we had to go into the Library's operating budget and reduce it by \$3.5 million.

Government Printing Office: We have provided \$116.3 million for printing and

distribution of congressional documents and for the operation of the depository library program. The funding provides \$3.5 million for a recent increase in GPO page rates, \$3.2 million for an expected increase in the volume of congressional printing, and \$3.6 million to begin paying off a \$17.6 shortfall in what we owe GPO for our printing bill from previous years.

General Accounting Office: For the GAO, there is \$440.9 million, plus \$6.2 million in building rental collections. We had to add \$6.8 million to keep the asbestos removal and renovation program going at the GAO building (\$114 million total cost of project). In order to continue that program and meet our target, we had to reduce the employment base by 38 positions, block another 41 positions, and make a base reduction of \$5.6 million.

LEGISLATIVE BRANCH STAFFING

Of the 245 new permanent positions requested, a net increase of one new position has been allowed. Also, funding is allowed for 41 blocked, unfunded positions already authorized at the Library of Congress, but that increase is canceled out by blocking 41 currently authorized positions at GAO.

GENERAL AND ADMINISTRATIVE PROVISIONS

There are several housekeeping provisions in the bill, most of which have been contained in previous bills. The new ones cover equipment charges, a funds transfer to pay for leased space, adjustments in a few staff salary ceilings, and performance awards. We also have included language which authorized the House to operate its day care center.

MAINTAINING THE 1991 LEVEL OF OUTPUT

Mr. Chairman, I have often said the legislative branch is just people and computers. The Members and staff of the House and Senate are paid salaries by the American taxpayer. We have excellent assistance from the CBO, OTA, General Accounting Office, the Congressional Research Service, our Government printers, our maintenance and custodial people, and a few other small entities. Plus we have the Nation's library, the Library of Congress.

Our assets and our capability in this branch of Government are our people. And they need, just like office workers everywhere, computers, calculators, telephones, the ability to send and respond to mail, fax machines, and a variety of communication devices.

The charts in the Speaker's lobby tell the story. They were prepared by the Congressional Research Service from data collected on fiscal year 1990 expenditures and salary data generally. One chart is a pie chart, and it documents my point precisely. The personnel expenses of the legislative branch consist of 50 percent of this bill. Fifty cents of every dollar in this \$1.8 billion appropriation is for the salaries of our staff resources for the legislative branch of Government.

The second chart in the Speaker's lobby documents the reality of paying our staff. To typify a legislative employee, we used the average clerk on a Member's payroll who makes about \$25,000. When you add the health and retirement benefits and last January's COLA, and next January's COLA, and a modest allowance for merit increases, that \$25,000 employee's total cost in fiscal year 1991 would be \$31,204.

That same employee will require \$33,368 in the fiscal year 1992 bill, after the COLA, a probable increase in health or retirement costs, and perhaps another very small merit increase.

That means this bill must have a 6.9 percent increase in personnel compensation just to pay the current staff. That allows no growth in staff.

That works out to an increase of about \$60 million.

The balance of the bill, primarily computers, telecommunications, maintenance, and a small element of capital improvements, primarily is driven by price levels in general.

If we assume a modest 4 percent increase in projected prices—which is consistent with OMB projections—that would be another \$35 million.

So in order to just stay even with this year, our appropriation in this bill would have to increase by \$95 million over the fiscal year 1991 level.

Our bill is up by only \$64.6 million, or only 68 percent of the level necessary to maintain our current level of services. We have reduced this bill that much in order to meet our budget target.

I think that is a remarkable achievement.

And I don't think you will find anything even remotely comparable in the executive branch.

Their salary and expense budgets will go up by amounts far in excess of the 3.7 percent in this bill. If you want further savings, let's first bring executive agencies down to our modest level.

COMPARISONS

In conclusion, Mr. Chairman, we have developed some interesting comparisons.

Since 1978 the legislative appropriation has grown at an average annual rate of 5.6 percent. The executive budget has grown at an annual rate of 8.3 percent. The CPI has grown at an annual rate of 5.6 percent. That means the legislative branch has just about stayed even in real terms while the rest of the Federal budget has grown at an annual rate about 48 percent higher.

This bill is only 3.7 percent higher than the overall budget authority provided in the 1991 bill.

We have tried to protect core legislative functions. Members can be assured we have trimmed the maximum, but the House will have the funds needed for essential operations. There is no need to apologize for this bill, or to make meat ax reductions.

I urge an aye vote for the bill.

□ 1300

Mr. Chairman, I reserve the balance of my time.

Mr. LEWIS of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is approximately a decade that I have been working on this bill with my colleague, the gentleman from California [Mr. FAZIO]. It seems that maybe on that 10th year anniversary it is appropriate for me to mention to the House that the work of this subcommittee not only addresses itself to the pure appropriations whereby we operate the Congress and its related agencies, the support agencies, but we very much as well affect some of the fundamentals that make up the interworking of the House.

The chairman of the subcommittee has played a very, very significant role in seeing that the funding that is available for our office staff, official expenses, as well as the Members themselves.

I might mention further that the gentleman has played a very key role in making certain that the facilities of the House, namely, the Capitol Building itself, is kept up in a reasonable manner. That was long overdue before the gentleman became chairman of the subcommittee. I might mention to the Members that when the gentleman from California [Mr. FAZIO] and I arrived here, there were 20-by-20 inch pillars in the west front of the Capitol that had been holding up that part of the building for some 20 years. It was this subcommittee chairman who was willing to bite the bullet and put together a sizeable package of some \$45 million needed to renovate that portion of the Capitol.

Mr. Chairman, while the legislative branch appropriations bill provides the funding for the House in this year, in my own judgment we have gone forward on a very conservative basis. On the total appropriations of \$1.8 billion, of which \$1.1 billion is for the congressional operations themselves, it is important to note that the remaining 40 percent of the bill, \$728 million, is for the operation of other legislative branch related agencies. That is a reduction of 13.8 percent or \$288.3 million under the budget request.

□ 1310

Over the 1991 appropriations, there is an increase in total of \$64.6 million. Not included in this bill, but scored against it, is some \$29.9 million that actually was appropriated in the 1991 fiscal year. The bill reflects, thereby, an increase of only 3.7 percent over the 1991 years.

Within the bill, the Architect of the Capitol, as the gentleman from California [Mr. FAZIO] indicated, has come under serious scrutiny. The bill allows

for \$111.4 million, which is a reduction of \$8.8 million below the 1991 baseline.

Any number of other areas of responsibility of the legislative branch will come under serious scrutiny today. I might mention to Members that indeed our ability to expedite our work on this bill today will very much depend upon the kind of rhetoric we decide to go forward with as we amend various sections of the bill. It has been a pattern in the past that a number of Members have enjoyed themselves demonstrating that we as Members of Congress are willing to cut our own appropriations.

There are a number of areas that could be addressed for possible reductions. Indeed, if we are willing to, if we address those amendments one by one in a relatively moderate way, it is conceivable that we may not only complete the bill at a much earlier hour than expected, it is my own judgment it is possible that we might adjourn in time to enjoy the President's barbecue.

Mr. Chairman, I reserve the balance of my time.

Mr. FAZIO. Mr. Chairman, I yield 2 minutes to my friend, the gentleman from California [Mr. PANETTA], a member of the Committee on House Administration.

Mr. PANETTA. Mr. Chairman, I rise in support of H.R. 2506, the legislative branch appropriations bill for fiscal year 1992. This is the third of the 13 annual appropriations bills. Again, I commend the gentleman from California [Mr. FAZIO], the chairman of the subcommittee, and the ranking member, the gentleman from California [Mr. LEWIS], for adhering to the limits established by both the budget resolution and the budget agreement, as well as the allocations provided through the appropriations process.

The bill provides \$1.839 billion in discretionary budget authority and \$1.836 billion in discretionary outlays. This includes \$34 million in budget authority provided in the 1991 bill which has been scored, for budget scorekeeping purposes, as advance appropriations for 1992. I am pleased to note that the bill is \$505 million below the level of domestic discretionary budget authority and \$481 million below the domestic discretionary outlays as set by the 602(b) spending subdivision for this subcommittee. I also note that, in keeping with tradition, Senate items are excluded from this bill.

As chairman of the Budget Committee, I plan to inform the House of the status of all spending legislation, and will be issuing a "Dear Colleague" on how each appropriations measure compares to the 602(b) subdivisions.

I look forward to working with the Appropriations Committee on its other bills.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, June 3, 1991.

DEAR COLLEAGUE: Attached is a fact sheet on H.R. 2506, the Legislative Branch Appropriations Bill for Fiscal Year 1992. This bill is scheduled to be considered on Wednesday, June 5.

This is the third regular Fiscal Year 1992 appropriations bills to be considered and the bill is below the 602(b) subdivision.

I hope this information will be helpful to you.

Sincerely,

LEON E. PANETTA,
Chairman.

Attachment:

FACT SHEET OF H.R. 2506, LEGISLATIVE BRANCH APPROPRIATIONS BILL, FISCAL YEAR 1992 (H. REPT. 102-82)

The House Appropriations Committee reported the Legislative Branch Appropriations Bill for Fiscal Year 1992 on Thursday, May 30, 1991. Floor consideration of this bill is scheduled for Wednesday, June 5.

Comparison to the 602(b) Subdivision
COMPARISON TO DOMESTIC SPENDING ALLOCATION

The bill, as reported, provides \$1,839 million of discretionary budget authority, \$505 million less than the Appropriations 602(b) subdivision for this subcommittee. This includes \$34 million in budget authority provided in the 1991 bill (P.L. 101-520) which has been scored, for budget scorekeeping purposes, as advance appropriations for 1992. The bill is \$481 million under the subdivision total for estimated discretionary outlays. In keeping with tradition, Senate items are excluded from the House bill. A comparison of the bill with the funding subdivisions follow

(In millions of dollars)

	Legislative branch appropriations bill		Appropriations Committee 602(b) subdivision		Bill over (+)/under (-) committee 602(b) subdivision	
	BA	O	BA	O	BA	O
Discretionary	1,839	1,836	2,344	2,317	-505	-481
Mandatory ¹	81	81	81	81		
Total	1,920	1,917	2,425	2,398	-505	-481

¹ Conforms to the Budget Resolution estimates for existing law.
BA = New Budget authority.
O = Estimated outlays.

Following are major program highlights for the Legislative Branch Appropriations Bill for fiscal year 1992, as reported:

PROGRAM HIGHLIGHTS

(In millions of dollars)

	Budget authority	New outlays
House of Representatives, salaries and expenses	709	684
Congressional Budget Office (CBO)	22	20
GPO—Congressional Printing and Binding	90	78
Congressional Research Service	56	50
Library of Congress, salaries and expenses	194	142
General Accounting Office (GAO)	441	384

The House Appropriations Committee reported the Committee's subdivision of budget authority and outlays in House Report 102-81. These subdivisions are consistent with the allocation of spending responsibility to House committees contained in House Report 102-69, the conference report to accompany H. Con. Res. 121, Concurrent Resolution on the Budget for Fiscal Year 1992, as adopted by the Congress on May 22, 1991.

Mr. LEWIS of California. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Chairman, This is my first year on the Appropriation Committee and I feel very fortunate to have been assigned a seat on the Legislative Branch Subcommittee. It is a privilege to serve with such distinguished Members as the chairman, VIC FAZIO and the ranking member, JERRY LEWIS. I would like to commend them for their hard work on this bill. This is always a controversial piece of legislation and Mr. FAZIO and Mr. LEWIS have worked hard to bring a fair and balanced bill to the floor.

Mr. Chairman, this year's bill is no exception. The bill would appropriate \$1.8 billion for the operations of the House and other congressional agencies in fiscal year 1992, such as the Library of Congress, General Accounting Office, and Government Printing Office. Although this is about \$65 million or 4 percent more than this fiscal year, it is \$288 million or 14 percent less than the amount requested.

This is, by its very nature, a difficult debate. I would like to point out, however, that the restrictions we put on House Members' use of taxpayer funds for mass mailings last Congress appear to be reducing the cost of the frank. For fiscal year 1992—an election year—this bill includes \$80 million for mailing costs. The figure for the past 4 election years ranged between \$96 million and \$114 million. In addition, there are no additional funds for the fiscal year 1991 franking appropriation of \$59 million. This is one of the first years when we have not been embarrassed by a shortfall of funds.

Let me also point out that this bill contains no funds for Members' salaries. Salaries for Members are paid out of a permanent appropriation for the compensation of Members.

Appropriations for the Architect of the Capitol total \$96 million, \$3 million less than the 1991 appropriation and \$44 million less than the amount requested. Although the committee understands the historical importance of this magnificent building, the report directs the Architect to sort out his priorities in future budget presentations, so the committee will have a more reliable estimate of essential activities.

Mr. Chairman, on the whole, I support this bill and I urge my colleagues to do the same.

I know that this is an easy bill to criticize but this funding is necessary for the efficient operations of the House. A lot of hard work on both sides, has gone into this bill and I urge passage of H.R. 2506.

Mr. FAZIO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to thank the gentlewoman from Nevada [Mrs.

VUCANOVICH] for her comments and for her general participation in the work of the committee. I would also like to simply say to the gentleman from California [Mr. LEWIS], how much I not only enjoy working with him, but I appreciate the leadership he provides. He really is a true partner in the way this bill is drafted and managed, and it has been a great privilege to spend the last decade working on these issues, issues that are really important to this institution and to the people of this country.

Mr. LEWIS of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would echo the comments of the gentleman from California [Mr. FAZIO] that the time we have worked together on this bill has been among the most satisfying experience in my professional career here. There is no doubt that the work of this subcommittee is very important to the House. While controversial, it is a fact of life that the House of Representatives needs professional personnel. Indeed, we need facilities to allow us to adequately carry forward the people's work. So the decade or so we have worked together in this bill has been very rewarding for me as well.

Mr. McDADE. Mr. Chairman, I rise in support of the legislative branch appropriation bill, and I commend the chairman and ranking members of the subcommittee, in particular, for their work. Theirs is a thankless task and one which is of little positive impact back home in their districts. But their colleagues know and appreciate what they are doing.

Mr. Chairman, the legislative branch bill is the third fiscal year 1992 appropriation bill brought before the House this year. Once again it makes clear that the Budget Enforcement Act of 1990 does impact the appropriations process. It has imposed considerable discipline; spending constraints are real and they are difficult.

This is the only appropriation bill which funds one of the three branches of the Federal Government in its entirety and only that branch of government. The funding for that branch, the people's branch, totals \$1.8 billion. It contains \$1.1 billion, or 60 percent, for actual operations of the Congress—excluding Senate items—and, \$728.8 million, or 40 percent, for the functions of other agencies such as the Library of Congress, the Government Printing Office, the General Accounting Office and the Botanic Garden which are not specifically related to the Congress.

The total appropriation provided in this bill, \$1.8 billion, represents a \$288.3 million, or 13.8 percent, reduction to the budget request. The bill is under the subcommittee's section 602(b) allocation by \$539 million, and is over the 1991 appropriation by \$64.4 million, or 3.7 percent. Mr. Chairman, not included in this bill, but scored against it is an advance appropriation of \$34 million.

Mr. Chairman, this bill holds the line. The subcommittee had some difficult decisions to make and they did so as a team. The commit-

tee has reported a balanced, fair and disciplined bill. I urge my colleagues to support it.

Mr. GAYDOS. Mr. Chairman, I rise in strong support of the legislative branch appropriations bill for fiscal year 1992. This bill is a fiscally responsible piece of legislation which will limit the potential for growth in legislative branch expenditures. It is the product of a very rational and systematic process of reviewing in detail every budget request from the entities comprising the legislative branch. The bill, as skillfully crafted by the Subcommittee on Legislative Branch Appropriations, prudently balances the demand for fiscal restraint in the expenditure of public funds with the critical need for the legislative branch to discharge its constitutional responsibilities in an effective manner. Consequently, I commend the chairman of the subcommittee, Mr. FAZIO, the ranking minority member, Mr. LEWIS, and the members of the subcommittee for their hard and thoughtful work.

The recommended total new budget authority for fiscal year 1992 is only \$64,575,474 more than the total amount available for fiscal year 1991. Furthermore, the recommended total amount for fiscal year 1992 is \$288,313,000 less than the sum total of all the budget requests from the respective legislative branch entities. In effect, the total of all the requests was cut by 13.8 percent. Thus, the recommended total appropriation for fiscal year 1992 is very reasonable and it certainly cannot be considered as excessive in any way. In other words, the subcommittee has presented to the house a true product of fiscal restraint and prudence.

In terms of understanding the relationship of the pending appropriations bill with the legislative branch budgets approved over the past several years, the committee report is very instructive. Since 1978, a year in which legislative branch operations stabilized, the legislative branch budget has remained approximately the same in real terms. As the report indicates:

The average growth since 1978 has been 5.6 percent per year, the same as price levels measured by the consumer price index. Congressional operations, title I of the bill (and adding the budget estimates for the Senate), also have been restrained, growing at only 5.9 percent annually. During the same period, the executive branch has averaged an 8.3 percent annual rate of growth, an increase in real dollars at an annual rate of 48 percent higher than the legislative budget.

Finally, I strongly urge my colleagues to support this bill. It is a very responsible allocation of Federal funds. In particular, I would recommend against supporting any indiscriminate across-the-board cut. Approval of such a cut would seriously negate the careful judgments made by the appropriations subcommittee during its meticulous budget review process. In fact, the adoption of such an amendment would impair the process itself and it would lead to unforeseen consequences. It would be a defeat for the House's effort to apportion its funds in a fiscally responsible manner.

Mr. CLAY. Mr. Chairman, the Appropriations Committee is to be commended for providing a responsible legislative appropriations bill. In fiscal year 1992, the legislative appropriation would be \$1.8 billion, which represents a

\$64.5 million increase over the fiscal year 1991 appropriation, an increase of only 4 percent. This legislation appropriately accommodates the basic needs of this body while remaining well within the budgetary constraints faced by all Federal agencies.

Additionally, in my role as chairman of the Franking Commission, I would like to commend the committee and Mr. FAZIO for the fine work he has done in the area of reformed control of official mail costs.

Finally, I would like to state my strong opposition to the Lewis amendment, requiring House committees to pay for GAO detailees. It is important that we recognize the chilling impact that such a requirement would have on the effectiveness of this body. The majority of the congressional committees are understaffed and lack expert investigatory support on certain issues. For these reasons Congress recognized more than 20 years ago the importance of GAO detailees to its operations. The need for GAO detailees is just as strong today as it was then.

I urge my colleagues to oppose the Lewis amendment, an amendment that would serve to cripple the oversight and investigatory functions of this legislative body.

Mr. LEWIS of California. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FAZIO. Mr. Chairman, I have no further requests for time, and yield back the balance of my time.

The CHAIRMAN. All time has expired for general debate.

The Clerk will read.

The Clerk read as follows:

H.R. 2506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending September 30, 1992, and for other purposes, namely:

TITLE I—CONGRESSIONAL OPERATIONS
HOUSE OF REPRESENTATIVES

MILEAGE OF MEMBERS

For mileage of Members, as authorized by law, \$210,000.

SALARIES AND EXPENSES

For salaries and expenses of the House of Representatives, \$709,001,000, to remain available until expended, as follows:

AMENDMENTS OFFERED BY MR. SANTORUM

Mr. SANTORUM. Mr. Chairman, I offer six amendments, and I ask unanimous consent that they be considered en bloc. Furthermore, I ask unanimous consent that other amendments on pages 1 through 7 of the bill be considered after my amendments.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

Mr. FAZIO. Mr. Chairman, I reserve the right to object.

The Clerk read as follows:

Amendments offered by Mr. SANTORUM:
Page 2, line 8, strike "to remain available until expended."

Page 4, strike line 22 and all that follows thereafter through page 5, line 2.

Page 6, strike lines 14 through 18.

Page 6, line 23 through line 24, strike "HOUSE LEADERSHIP OFFICES"

Page 6 Through Page 7, Lines 24 Through line 3, Strike "COMMITTEE EMPLOYEES", "CONTINGENT EXPENSES OF THE HOUSE (STANDING COMMITTEES, SPECIAL AND SELECT)", "CONTINGENT EXPENSES OF THE HOUSE (HOUSE INFORMATION SYSTEMS)", "CONTINGENT EXPENSES OF THE HOUSE"

Page 7, Lines 3 Through 6, Strike "OFFICIAL MAIL COSTS", and "SALARIES, OFFICERS AND EMPLOYEES"

□ 1320

The CHAIRMAN. Does the gentleman from California reserve a point of order?

Mr. FAZIO. Mr. Chairman, we have just received copies of the amendments and at the moment we are still analyzing them. I am not sure that I have a right to object, but I do want to consider whether they should be allowed en bloc.

The CHAIRMAN. The gentleman from California reserves the right to object.

Mr. FAZIO. Mr. Chairman, I continue to reserve my right to object.

Mr. LEWIS of California. Mr. Chairman, if the gentleman will yield, I will try to clarify for us. I believe what the gentleman from Pennsylvania [Mr. SANTORUM] is trying to accomplish here is while he puts his amendment en bloc, because he is addressing those sections, he will not stop another Member who wishes to present an amendment later that deals with one of the sections that is involved.

It is an amendment that we presumed would be considered. So frankly, I do not think there is a problem.

Mr. DINGELL. Mr. Chairman, reserving the right to object, until we know what the different amendments might be that are included in this unanimous consent request with regard to en bloc, I would have to object.

The CHAIRMAN. There is a possibility of a pending point of order.

Mr. DINGELL. Mr. Chairman, I would like to know about that, too.

The CHAIRMAN. Does the gentleman from Michigan make a point of order?

Mr. DINGELL. Mr. Chairman, at this point I do not, but I reserve one.

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] reserves the right to make a point of order.

Mr. LEWIS of California. Mr. Chairman, I can assure the gentleman from Michigan the amendment involved is not one that he is concerned about in a direct way.

Mr. DINGELL. Mr. Chairman, if the gentleman would permit, I feel very much affected by a lot of amendments that I gather might be offered today, and I would like to know what they all are before I become more cooperative. But I do withdraw my reservation.

Mr. LEWIS of California. Mr. Chairman, it is my understanding that the amendment he is concerned about is the one that addresses the official mail

cost. We are going to deal with that amendment sooner or later anyway and so he is suggesting he does not want this en bloc to block that other amendment.

Frankly, if we could agree upon that, I do not think there would be a problem.

Mr. FAZIO. Mr. Chairman, is the gentleman's amendment simply directed towards the transfer of funds issue solely and only?

Mr. SANTORUM. Mr. Chairman, that is exactly right. It is reprogramming the funds.

Mr. FAZIO. Mr. Chairman, so the amendment that he wishes to take up en bloc, which is all in order, as I read it, is simply directed at that only?

Mr. SANTORUM. That is correct.

Mr. FAZIO. Then I would not object, Mr. Chairman, and I withdraw any reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. SANTORUM] is recognized for 5 minutes in support of his amendments.

Mr. SANTORUM. Mr. Chairman, I, too, want to pitch in on my part, and I commend the gentleman from California, Mr. FAZIO and Mr. LEWIS, for the job that they have done on this appropriations bill. As a new Member, one of the things I like to do is read the bills and try to find if there is anything there that I object to. And while there are certain things that I do object to, by and large I think they have done a very fine job.

As a new Member, I was elected, obviously, to represent my constituency. And one of the things that I heard loud and clear during my election is that we have got some things in the Congress that we are not particularly happy about. I do not think I ran as a Congress basher, and I do not think that I ran as the gentleman from California [Mr. FAZIO] said, to save the Congress and am in fact trying to destroy it. I think frankly the system is doing a pretty good job of destroying itself right now, and what I would like to do is see what I can do about pitching in to bring things aboveboard and let people know exactly what is being done here.

Again, I commend the gentleman from California for the job he has done by and large, but that does not mean that we are all perfect and that there are not changes that can be made along the way. That is what I am hoping to do here.

Let me say that what I am not doing in this amendment is attacking the budget amount. That is not a concern of mine. What I am saying is that we should live within our budget. And that is exactly what this amendment does.

It says that if we live within our budget and we spend at or less than the amount, then the money, a Member can spend that money but if a Member spends less than that amount, the money does not go into some fund to be spent for some other purposes that we know not what. But the money would go back to the Treasury, would go back to the taxpayers to reduce the Federal deficit. That is all my amendment does.

It says that the moneys appropriated for whatever function of the legislature should go for that function. And if it is not expended, then the money should go back to the Treasury to reduce the Federal deficit. To be lapsed back. It should not go into some account managed by the Speakers, the leaders, whomever, to be spent in a way that they see fit. I think that that is inappropriate. I think that is something that the people in America would not like to see done with their taxpayers' dollars.

They would like to see where it is budgeted and spent for that purpose. That is what this amendment does.

I am confident that this type of radical reform is generally well accepted here in the Congress since we have been doing it for many, many years. And it has only been in the last couple years that we have created this system that allows unspent funds to be kept in house to be used for other purposes.

If I can give an example of how this money is being spent for other purposes and what I am aware of is that this recent increase that we got in our clerk hire account was a result, this \$40,000 increase was a result of funds being reprogrammed, unused funds being reprogrammed and divvied back out to the Members. I have been asked by Members who I am asking for support on this whether I have accepted that money. My answer is, "Heck, yes, I have." Because if I do not accept that money, it is just going to go back to the leaders for them to spend in some other way. So I guess the answer is, those of us who want to be somewhat responsible and restrained in using our account really find ourselves in a catch-22. If we do act responsibly and restrain our spending, then the money goes back to the leadership for them to use for whatever purposes they want to use it for. And so we are forced in a situation to spend our money or give it back to someone to use it for another purpose.

I think I should have the option, as a Member of Congress, to either spend my money for the purposes of the district that I represent or the money should go back to the Treasury to the people who paid those taxes in the first place.

That is what my amendment does. I seek the support of both sides of the aisle.

Mr. Chairman, I yield back the balance of my time.

Mr. FAZIO. Mr. Chairman, I rise in opposition to the amendment.

I really do appreciate the fact that the gentleman from Pennsylvania [Mr. SANTORUM] has offered this amendment because I think it is very important to clear up a number of misunderstandings that are typical and which sort of feed upon themselves from one Congress to another.

We have always had this question of whether there is a Speaker's slush fund somewhere where all the money that is not spent ends up going. And then of course the Speaker, the story goes, has the unilateral authority to decide how these funds are spent.

Nothing could be further from the truth. There is a very clear process which the gentleman from California [Mr. LEWIS] and I use to reprogram funds. It is the same process that is used in other appropriation, and it is certainly something that is a great aid and assistance to any agency of the Federal Government that is trying to make the best use of their resources.

Let me begin with a little bit more information for the gentleman from Pennsylvania [Mr. SANTORUM] because I think this is important. I do not want to repeat myself but I do think there is some basic information that we have to get across here. We do not appropriate the full amount of funds authorized for either clerk-hire or for a Member's office expenses. We already know that many Members will not fully expend those allowances.

So we have already reduced the appropriation from the authorized amount to what we think is a reasonable expectation.

For example, clerk-hire in this bill is funded at 93 percent of the authorization and at only 82 percent if you factor in the \$75,000 transfer from their office account allowance that Members are authorized to move into that account should they make that decision.

Members' office accounts are only funded at 91.9 percent and at 67 percent, if you factor the transfer in.

So if Congressman A, as your material refers to does not spend his full amount, he or she can truly say that the unspent funds will stay in the Treasury or, more likely, will be spent for something else since we are in a deficit. But they do not come to the Hill. They do not come to our coffers. They stay in the Treasury. You are drawing on that.

So there is no loose money slipping around from one account to another. One would think that from hearing the arguments that we routinely use clerk-hire funds or Members' office accounts for other purposes, that we are somehow engaging in a sleight-of-hand. That is not the case.

For those who are concerned about this so-called slush fund, we have

looked at our records for several years and found not one instance where those Members' clerk-hire funds have been utilized elsewhere.

□ 1330

There have been several instances when we have had to transfer savings, however, into Members' clerk hire, since we had not provided enough in those instances obviously for cost of living adjustments to give our staff, the same increase that other Federal agencies give their employees. In three instances, for example, we used excess office account funds to make up deficiencies in the clerk hire account, but that is only right, because under the rules, Members are allowed to transfer, as some may know, from office account to salaries. Therefore, we needed to have the flexibility to transfer the funds.

We did transfer \$6 million in fiscal year 1989 from office account funds to purchase the new telephone switch and related equipment. That was one of the best investments we ever made, and the life-cycle savings from that investment are going to be somewhere in the neighborhood of \$26.6 million. I think technology will be even more important to us in the future.

We have also used surplus office account funds for equipment for Members' district offices in the years when we were not charging Members for their equipment use. I do not see anything wrong with this. I think it is good management. These adjustments are required.

Without this flexibility, we would need supplementals. We would pass up improvements that lead to reduced spending, and we would not be taking advantage of the skills and expertise of our financial managers in the operations of the House.

There really are a number of areas within the bill where the committee has to retain authority to transfer funds from areas where a surplus may exist to an area where a deficit may occur because of unforeseen circumstances and because we have occasionally underestimated our requirements. This is prudent fiscal management. There is nothing sinister, nothing underhanded about it. It is not unusual. This is a tool that is practiced in every agency of the Government, in every corporation in America.

So we think it is good business to allow some flexibility in the budget plan and to provide a procedure which is very much up front, signed off on both sides of the aisle, for making that flexibility as efficient as possible.

Mr. LEWIS of California. Mr. Speaker, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from California.

Mr. LEWIS of California. Mr. Chairman, I appreciate the gentleman yielding.

Mr. Chairman, I would like to say to my colleague, the gentleman from Pennsylvania, that I very much appreciate the thrust of his amendment, the effort to focus upon places within a bill like this where money can be saved rather than being reserved and then transferred elsewhere. On the surface, it is an obvious difficulty. I commend the gentleman for focusing in that detail upon this very important piece of legislation.

I must say that I reluctantly oppose the amendment because of some of the difficulties that my chairman has suggested.

We do, from time to time, find ourselves in a circumstance where an expenditure planned for a year ahead exceeds itself a good deal, and that expenditure turns out to be totally unpredictable. For example, we usually, in the even-numbered years, if you will, budget more money for mail costs than in odd-numbered years, because it just seems that a lot of Members mail more in those even-numbered years. From time to time, you will find yourself having to deal with a supplemental to solve such a problem.

We have presently a circumstance dealing with office property that people, Members, are in line for. There are a lot of Members who are interested in a two-drawer filing cabinet that might be available if there was funding available for it. There are 130 Members in such a line. If we had funding that was left over in reserve, we might reprogram it to make that equipment available to those Members who need that kind of equipment in their office.

Sometimes these sorts of reserves become highly technical in terms of the way the House operates. Nonetheless, transfer authority has been very, very helpful.

The gentleman has raised questions about the opportunity to transfer from fund to fund causing the bill to overspend. There is little doubt that in an appropriation bill like this one there is that possibility. But I must say that within the subcommittee we have made every effort to be extremely conservative with the legislative branch and, indeed, cutting every category of spending wherever it was possible, and for that, Mr. Chairman, I reluctantly oppose the amendment.

Mr. STEARNS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I commend the gentleman from Pennsylvania for his amendment.

This amendment would require that funds not spent on clerk hire be used to reduce the deficit.

Now, within the realm of what we have here, we have a huge deficit, and I appreciate the analogy between corporate America and the Government here. But we are talking about taxpayers' money that we are shifting fund to fund here, and I think the gen-

tleman from Pennsylvania is saying that if you are a Member and you are giving back part of your clerk hire, you want to be sure you know where it is going.

The patriotic thing to do is to try and return it to the Treasury, so I think that is what his amendment is saying, let us specifically designate it to reduce the deficit.

As many Members know, several months ago we were notified that our clerk hire accounts would be increased by \$40,000. Now, even though the House rejected this increase last October, we were told savings had been realized in other areas. It was not explained to us how this came about, but it was just sent to us in a memo, so that the clerk hire could be increased.

Several Members, including myself, have declined this increase. While the reasons may be varied, I am hopeful that all Members who turn their money down all want to see it returned to the Treasury to reduce the deficit.

The question is: What is going to happen to the \$1 million saved by the 23 Members who declined this additional increase? I do not think they want this money to be put toward rugs, new hair dryers, or new decorator furniture. A more worthwhile expenditure is to put this money toward the growing deficit.

Previously the House was instructed to give any unspent legislative branch money back to the Treasury. However, under last year's legislative branch appropriations bill, any remaining funds are not to be returned to the Treasury but are simply to stay in the account to be used on any other House project.

Members without this amendment that the gentleman from Pennsylvania has introduced will not be assured that there is an incentive to save this money and to reduce the deficit. In private industry, managers are rewarded for coming under budget. However, here in the House of Representatives money saved simply means money that can be spent somewhere else.

Mr. SANTORUM. Mr. Chairman, will the gentleman yield?

Mr. STEARNS. I am happy to yield to the gentleman from Pennsylvania.

Mr. SANTORUM. Mr. Chairman, just a clarification for the purposes, that the amendment that the gentleman offered last year that defeated the increase in the clerk hire basically is going to be overrun by this reprogram. Is that my understanding?

Mr. STEARNS. To put it in perspective, it was overwhelmingly voted that we would reduce the clerk hire to the cost of living. Now, what happened was in January they came back and they put more funds than the cost of living which brought it up to a little over 8 percent increase in the clerk hire. Then with the recent memo from the committee, it went up to 15.8 percent. For a matter of record, it is even more than

my legislative amendment was fighting against. So we now have the Congress spending even more than was even talked about in October.

Mr. SANTORUM. If the gentleman will yield further, those people who voted with the gentleman against the increase in clerk hire should vote for this amendment if they really want to see clerk hire accounts kept reasonable?

Mr. STEARNS. I think so, and I think the gentleman is putting it out in black and white where the money would go so there would be no question that a Member would have his funds returned to the Treasury to reduce the deficit rather than going from a multitude of funds which we know not where they would go.

Mr. SANTORUM. If the gentleman will yield further, is it my understanding that this money, when it is sent back into this reprogramming fund, can stay in there for years and does not have to be spent the next year; it can stay there as long as it wants?

Mr. STEARNS. What the gentleman is saying is that there is no accountability, and that is true.

Mr. FAZIO. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from California [Mr. FAZIO] is recognized for 5 minutes.

There was no objection.

Mr. FAZIO. Mr. Chairman, I just simply have to clarify the record. The reason that the gentleman from Florida is mistaken is that he, in fact, did cut the funds that were to be appropriated for the additional clerk hire raise for staff. He did not remove the authorization, and as I said earlier in my remarks on the amendment offered by the gentleman from Pennsylvania [Mr. SANTORUM], we appropriate as well as authorize in this bill, and in this case, we clearly used a pay-as-you-go approach.

We went back, scrubbed all the accounts and found some savings so that we will not increase the deficit. We simply made up for the reduction in the appropriation that the gentleman from Florida [Mr. STEARNS] and the gentleman from North Carolina [Mr. HEFNER] offered on the floor with other funds, so there was no net increase to the cost to the legislative branch.

I noted that the gentleman from Arizona [Mr. KOLBE] was quoted in Roll Call as having said that that is the reason he felt comfortable accepting the clerk hire allowance, and I am sure many Members, even some who supported the gentleman from Florida [Mr. STEARNS] and the gentleman from North Carolina [Mr. HEFNER], have made that decision, because they felt it was appropriate since they were not adding to the cost of the legislative branch or the Federal budget.

□ 1340

The money that the gentleman struck on the floor did go back to the Treasury just as the gentleman wished. In fact, it never came out of the Treasury. We did not fund the increase in the clerk hire allowance for our staff, other than in the routine procedure to reprogram funds available from legitimate savings.

Mr. STEARNS. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I yield to the gentleman from Florida.

Mr. STEARNS. Mr. Chairman, I thank the gentleman for yielding. Let me ask a simple question. I am sure the American people do not quite understand the difference between appropriation and authorization.

Mr. FAZIO. I think many Members do not understand.

Mr. STEARNS. And I understand your point, but the fundamental fact that Members do understand, and the American people do understand, we voted on the House floor to reduce the clerk hire, would the gentleman agree?

Mr. FAZIO. We certainly voted to eliminate the funds to pay for an increase in the clerk hire account, and we also adopted language that authorized an increase in the clerk hire.

Mr. STEARNS. If the gentleman will continue to yield, if the vote was overwhelmingly to give just a cost-of-living to the clerk hire in the appropriations rather than the authorization, does that not in a sense represent the will of Congress, the will of all the Members, to say let Members hold spending on the legislative side to the cost of living, and then Members on the committee decide to thwart this through some legislation?

Mr. FAZIO. We want to make it clear we were not telling Members how to act. We were not thwarting any Member's needs.

In fact, it was indicated that each Member who felt it appropriate to take the funds for clerk hire should stipulate so, and many Members did. Many who voted with the gentleman from Florida and many who voted against the gentleman from Florida on the premise that they were not adding to the deficit, they were using other funds that had been derived through savings. I think every Member has to make that decision, and everyone now must make it publicly. I think that is a fine way to determine what the real will of Congress was.

Mr. STEARNS. If the gentleman will continue to yield, I will close, if the gentleman will allow me a few moments more.

The basic premise a lot of Members felt was that we voted to reduce this, as an act of courage.

Mr. FAZIO. An act of courage?

Mr. STEARNS. I think it took courage to vote to try and limit Congress' spending; does the gentleman think it

does not take courage to limit Congress' spending?

Mr. FAZIO. I would not typify it that way.

Mr. STEARNS. Any time a Member comes on the House floor to reduce Government spending, I think it takes courage.

In a sense, this has been thwarted through your not only giving more than was talked about, 15 percent. You are now up to 15.8.

Mr. FAZIO. All we did was allow the amount to be provided for on an annualized basis. We did not even fund it at the cost that was represented on a full year basis.

Mr. STEARNS. The gentleman will admit it is more than our amendment called for?

Mr. FAZIO. No, I think that simply allowed the clerk hire to be funded for part of the year at the level that was authorized by our bill last year.

Mr. HEFLEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentleman mentioned that by doing this maneuver, we did not increase the deficit. I think that is perfectly correct. We did not increase the deficit but we did not decrease the deficit either. Should that not be our goal here, to decrease the deficit, and not just hold our own? We held our own, perhaps, in this because we found the money other ways within the budget, but we did not decrease.

I think we need some kind of a motivation to help Members control their own spending. I cannot tell Members how many of the people that I have talked to that voted for the gentleman from Florida [Mr. STEARN'S] amendment last year and that told me that I was silly to be 1 of the 23 that turned my back, because if they turned theirs back it will just be spent somewhere else, and it does seem silly to turn mine back under those circumstances. Why turn it back, to let somebody else's priority take over? I could take it and use it to good effect.

However, it seems to me we have a role to play in trying to reduce the deficit. So, should there not be a motivation here to do that, if we turn that money back, if we make that choice?

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. HEFLEY. I yield to the gentleman from California.

Mr. FAZIO. We have never transferred any funds out of clerk hire for any other purpose in the records we have looked at. So any dollars that the gentleman does not spend in his clerk-hire remains in the Treasury, does not go back to the Treasury, it remains in the Treasury. It must be drawn down from the Treasury. If a Member does not spend it, it remains there.

Therefore, I would urge Members to continue the policies that, obviously, they have adopted, which is to make the deficit reduction your No. 1 prior-

ity and reduce the size of the spending on your staff. The money spent does not come to the Hill. It remains in the Treasury. If a Member does not spend it, it stays there. No money has ever been transferred out of clerk-hire.

Mr. HEFLEY. If the gentleman will share with me, why is he opposed to the gentleman's amendment, then? Is that not what the gentleman is trying to get at?

Mr. FAZIO. If the gentleman will continue to yield, I have the same question. I wonder about the intent of the amendment.

Mr. HEFLEY. What the gentleman is saying, basically, it seems to me is that the amendment does no good because that is what happens anyway? Why fight the amendment? Make Members feel better by supporting the amendment and be assured what the gentleman is supporting us actually is what happens.

Mr. FAZIO. If the gentleman will continue to yield, his amendment goes far beyond your clerk hire and far beyond your office expenses and would restrict any transfers.

Mr. HEFLEY. Is it not that kind of motivation that we would like to have here? I think it was the height of hypocrisy for Members, last year, to stand before the election when everyone was upset, that the Nation was upset over the way the Congress was handling the budget matters, and we came up here and we voted courageously to cut our own clerk hire fund just before an election time. Now the election is gone. There will not be another election for a year and a half. When there is not another election for a year and a half miraculously we find the money somewhere.

Mr. LEWIS of California. Mr. Chairman, will the gentleman yield?

Mr. HEFLEY. I yield to the gentleman from California.

Mr. LEWIS of California. The gentleman is making an important point, but perhaps I could clarify for those who would like to understand the way our bill operates. The need for transfer within the legislative branch from time to time become very real.

In another subcommittee, to illustrate the point, the Subcommittee on Foreign Operations that I used to serve on that provides all the money for foreign assistance, many, many times every year the administration will come in and ask for transfer of funds, because a crisis developed in a different part of the world. So funds are taken from one category and moved to another in order to be able to accomplish that which is necessary. As a practical fact, this does not compare with those kinds of concerns and needs, but is a fact of life that within the legislative branch we do need to transfer from time to time.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. HEFLEY. I yield to the gentleman from Wisconsin.

Mr. OBEY. As a chairman of the Subcommittee on Foreign Operations, Export Financing and Related Programs, I would like to buttress what the gentleman from California is saying.

The fact is that while many Members seem to have the impression that we are appropriating specifically for spending for specific countries or specific accounts in the foreign aid bill, the fact is that we get hundreds and hundreds of transfer notices from the agencies every month. The fact is that the executive branch has mammoth ability to move funding around between accounts.

They may come in and tell Members that they intend to appropriate money to a specific country, and come in with a revised sheet telling Members they intend to send it someplace else.

(On request of Mr. OBEY and by unanimous consent, Mr. HEFLEY was allowed to proceed for 30 additional seconds.)

Mr. OBEY. Mr. Chairman, I simply say if Members want to take a look at an agency which has an incredible amount of slosh, take a look at the way any administration will deal with the foreign aid budget. That is where they ought to be focusing.

Mr. HEFLEY. I can understand that with the foreign operations bill because there are external factors that are playing a role, and we do not have any control over the external factors, but in our own legislative budget, we have control of how it is spent, it seems to me.

I think we ought to support the gentleman's amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania [Mr. SANTORUM].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SANTORUM. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 150, noes 276, not voting 5, as follows:

[Roll No. 132]

AYES—150

Allard	Clinger	Erdreich
Archer	Coble	Fawell
Army	Combust	Fields
Baker	Condit	Franks (CT)
Ballenger	Costello	Gallely
Bereuter	Cox (CA)	Gekas
Bilirakis	Crane	Geren
Boehner	Cunningham	Gilchrest
Broomfield	Dannemeyer	Gillmor
Browder	DeLay	Gingrich
Bruce	Dickinson	Goodling
Bunning	Doolittle	Goss
Burton	Dorman (CA)	Gradison
Callahan	Dreier	Grandy
Camp	Duncan	Green
Campbell (CA)	Edwards (OK)	Hall (TX)
Chandler	Emerson	Hancock

Hansen	McMillan (NC)	Schaefer
Hastert	Meyers	Schiff
Hefley	Michel	Schulze
Henry	Miller (OH)	Sensenbrenner
Herger	Miller (WA)	Sharp
Hobson	Molinari	Shaw
Holloway	Moorhead	Shays
Hopkins	Murphy	Shuster
Horn	Nichols	Smith (NJ)
Hunter	Nussle	Smith (OR)
Hutto	Oxley	Smith (TX)
Hyde	Packard	Snowe
Inhofe	Pallone	Solomon
Ireland	Parker	Spence
Jacobs	Patterson	Stearns
James	Paxon	Stump
Johnson (CT)	Payne (VA)	Sundquist
Johnson (TX)	Petri	Taylor (MS)
Kasich	Poshard	Taylor (NC)
Klug	Ramstad	Thomas (WY)
Kyl	Ravenel	Upton
Lagomarsino	Rhodes	Valentine
Leach	Ridge	Vander Jagt
Lewis (FL)	Riggs	Walker
Lightfoot	Rinaldo	Walsh
Livingston	Ritter	Weber
Luken	Roberts	Weldon
Machtley	Roemer	Wolf
McCandless	Rohrabacher	Wylie
McCollum	Ros-Lehtinen	Yatron
McCrery	Roth	Young (FL)
McEwen	Russo	Zeliff
McGrath	Santorum	Zimmer

NOES—276

Abercrombie	Dicks	Jones (GA)
Ackerman	Dingell	Jones (NC)
Alexander	Dixon	Jontz
Anderson	Donnelly	Kanjorski
Andrews (ME)	Dooley	Kaptur
Andrews (NJ)	Dorgan (ND)	Kennedy
Andrews (TX)	Downey	Kennelly
Anunzio	Durbin	Kildee
Anthony	Dwyer	Kiecicka
Applegate	Dymally	Kolbe
Aspin	Early	Kolter
Atkins	Eckart	Kopetski
AuCoin	Edwards (CA)	Kostmayer
Bacchus	Edwards (TX)	LaFalce
Barnard	Engel	Lancaster
Barrett	English	Lantos
Barton	Espy	LaRocco
Bateman	Evans	Laughlin
Beilenson	Fascell	Lehman (CA)
Bennett	Fazio	Lent
Bentley	Feighan	Levin (MI)
Berman	Fish	Levine (CA)
Bevill	Flake	Lewis (CA)
Bilbray	Foglietta	Lewis (GA)
Billey	Ford (MI)	Lipinski
Boehert	Frank (MA)	Lloyd
Bonior	Frost	Long
Borski	Gallo	Lowery (CA)
Boucher	Gaydos	Lowey (NY)
Boxer	Gejdenson	Manton
Brewster	Gephardt	Markey
Brooks	Gibbons	Marlenee
Brown	Gilman	Martin
Bryant	Glickman	Matsui
Bustamante	Gonzalez	Mavroules
Byron	Gordon	Mazzoli
Campbell (CO)	Gray	McCloskey
Cardin	Guarini	McCurdy
Carper	Gunderson	McDade
Carr	Hall (OH)	McDermott
Chapman	Hamilton	McHugh
Clay	Hammerschmidt	McMillen (MD)
Clement	Harris	McNulty
Coleman (MO)	Hatcher	Mfume
Coleman (TX)	Hayes (IL)	Miller (CA)
Collins (IL)	Hayes (LA)	Mineta
Collins (MI)	Hefner	Mink
Conyers	Hertel	Moakley
Cooper	Hoagland	Mollohan
Coughlin	Hochbrueckner	Montgomery
Cox (IL)	Horton	Moody
Coyne	Houghton	Moran
Cramer	Hoyer	Morella
Darden	Hubbard	Morrison
Davis	Huckaby	Mrázek
de la Garza	Hughes	Murtha
DeFazio	Jefferson	Myers
DeLauro	Jenkins	Nagle
Dellums	Johnson (SD)	Natcher
Derrick	Johnston	Neal (MA)

Neal (NC)	Rose	Swett
Nowak	Rostenkowski	Swift
Oakar	Roukema	Synar
Oberstar	Rowland	Tallon
Obey	Royal	Tanner
Olin	Sanders	Tauzin
Ortiz	Sangmeister	Thomas (CA)
Orton	Sarpalius	Thomas (GA)
Owens (NY)	Savage	Thornton
Owens (UT)	Sawyer	Torres
Panetta	Saxton	Torricelli
Payne (NJ)	Scheuer	Towns
Pease	Schroeder	Trafficant
Pelosi	Schumer	Traxler
Penny	Serrano	Unsold
Perkins	Sikorski	Vento
Peterson (FL)	Skaggs	Visclosky
Peterson (MN)	Skeen	Volkmer
Pickett	Skelton	Vucanovich
Pickle	Slattery	Washington
Porter	Slaughter (NY)	Waters
Price	Slaughter (VA)	Waxman
Pursell	Smith (FL)	Weiss
Quillen	Smith (IA)	Wheat
Rahall	Solarz	Whitten
Rangel	Spratt	Williams
Ray	Staggers	Wilson
Reed	Stallings	Wise
Regula	Stark	Wolpe
Richardson	Stenholm	Wyden
Roe	Stokes	Yates
Rogers	Studds	Young (AK)

NOT VOTING—5

Ford (TN)	Martinez	Sisisky
Lehman (FL)	Sabo	

□ 1408

Messrs. BATEMAN, EVANS, and MARTIN, and Mrs. ROUKEMA changed their vote from "aye" to "no."

Messrs. ZIMMER, PARKER, SHAYS, and OXLEY changed their vote from "no" to "aye."

So the amendments were rejected.

The result of the vote was announced as above recorded.

POINT OF ORDER

Mr. BORSKI. Mr. Chairman, I ask unanimous consent to make a point of order against section 105, notwithstanding the fact that it has not been reached in the reading.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The gentleman may make his point of order at this point.

Mr. BORSKI. Mr. Chairman, on behalf of the leadership of the Committee on Public Works and Transportation and on a bipartisan basis, I raise a point of order against section 105 of the bill because it is legislation in an appropriations bill and therefore in violation of clause 2 of rule XXI.

Section 105 would authorize and appropriate funds to the Architect of the Capitol to lease and occupy approximately 75,000 square feet of space in the Judiciary Office Building and to acquire and install furniture and furnishings for the leased space.

As such, this section speaks to issues which may run cross-purpose to the Judiciary Office Building Development Act of 1988 which was authored by the Committee on Public Works and Transportation. That law—specially section 3(a), (6)(a) and (b)—provides a specific process for allocating space in the Judiciary Building. Section 105 raises a

number of questions about that process.

In addition, Mr. Chairman, I would be remiss if I didn't mention that inclusion of this provision is also objectionable as a matter of process. This matter has not been considered by our committee, was included without our consultation, and can and should be handled through the normal legislative process. Circumventing that means that this issue escapes the scrutiny normally afforded other proposals.

Accordingly, Mr. Chairman, section 105 is legislation is an appropriations bill and violates clause 2 of rule XXI.

□ 1410

The CHAIRMAN. Does the gentleman from California wish to be heard?

Mr. FAZIO. Mr. Chairman, I would be inclined to concede the point. I think the gentleman from Pennsylvania [Mr. BORSKI] makes a worthy point within the rules. I simply would say, however, that this is the second time we have had a discussion about procedure with the Committee on Public Works and Transportation. We do not wish to intrude into their territory, but I do want to urge the committee to hold hearings on these subjects so we can begin the process of streamlining the legislative branch. Moving forward in this area would be to the benefit of all of us. We certainly have no desire to interfere with the work of the Committee on Public Works and Transportation, but it is a failure to hold hearings in the proper subcommittee that might be able to move beyond this impasse.

The CHAIRMAN (Mr. DONNELLY). For the reasons stated by the gentleman from Pennsylvania [Mr. BORSKI] the point of order is sustained. Section 105 is stricken from the bill.

Mr. PORTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to commend my subcommittee chairman, the gentleman from California [Mr. FAZIO], and my ranking member also, the gentleman from California [Mr. LEWIS], and the members of the committee for the fine job that they have done in bringing the bill together. I want to point out to the Members that this legislation contains some important environmental provisions that they ought to be aware of.

First, Mr. Chairman, we put in funding for the expansion of the office waste recycling program that is going forward in the House of Representatives, and we have also put in money for a comprehensive review of the lighting systems in the House, Senate, Capitol and the Library of Congress. The review will be used to determine a schedule for retrofitting all of the systems with efficient lighting technology and toward the goal of saving substantial amounts of money in that account.

Mr. Chairman, the bill also contains provisions regarding recycled paper, and we love to pat ourselves on the back and say, many of us, that we use recycled paper in our work in the Congress, but, as a matter of fact, most of the paper that is used here is not really recycled paper. It is not paper that contains post-consumer waste paper; that is, paper that has been used once and de-inked. It is, rather, paper that has been scraped up off the floor, never used before, and put into the process.

Mr. Chairman, the Government is the single largest user of paper in the world, using 2 percent of all the paper used in the United States, and there are many applications of paper that do not require highly reflective white paper, but paper that could contain post-consumer waste and may have a slightly gray hue to it. The Moore Business Forms Co., the largest purveyor of business forms in the world, has begun a process whereby it is using a great deal of post-consumer waste paper in its operations. It seems to me that the Government ought to take the lead as well, particularly in the use of forms within the Congress or forms within agencies like the Internal Revenue Service where we can stop the need to cut down virgin timber and create the same paper by using paper that has been truly recycled; that is, post-consumer waste paper.

Mr. Chairman, this would eventually, if we follow our good principles, create an entire new industry and make our society, our economy, a dynamic one. It is a fine provision for conservation, and the bill contains extensive language requesting the Government Printing Office to report to the Congress a list of printing jobs that can be printed on real recycled paper. It suggests innovative uses of recycled paper for such bulky items as IRS tax documents.

Mr. Chairman, I commend the members of the committee for including these environmentally sound provisions in the bill.

Mr. SAVAGE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will not take all the time. I just rise to set the record straight on when an objection was raised to appropriations without authorization with regard to the matters involved in the Architect of the Capitol. During that debate it was mentioned that the point wanted to be made that the Subcommittee on Public Buildings and Grounds had not held hearings and wanted to bring it to the attention of the subcommittee to do so expeditiously. Well, Mr. Chairman, I happen to be the chairman of that subcommittee, and I resent that comment because it is completely wrong. We have not been asked by the Architect of the Capitol to hold any such hearings, and this is not the first time this problem has arisen between our sub-

committee and the Architect of the Capitol. We have held hearings almost weekly since I became chairman this year on that subcommittee, trying to entertain all requests for hearings. We had no such requests. If someone has a complaint or a criticism, it is not with this subcommittee. It is with the Architect of the Capitol.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. SAVAGE. I yield to the gentleman from California.

Mr. FAZIO. Mr. Chairman, I would be more than happy to help enlighten the Architect of his responsibility to contact your subcommittee.

Mr. SAVAGE. Let me just say this. We held a hearing where we had the Architect present, and the gentleman does not have to enlighten him. We enlighten him in the public hearing. So, this was no accident on his part.

Mr. Chairman, I yield the balance of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

HOUSE LEADERSHIP OFFICES

For salaries and expenses, as authorized by law, \$5,781,000, including: Office of the Speaker, \$1,477,000, including \$25,000 for official expenses of the Speaker; Office of the Majority Floor Leader, \$1,127,000, including \$10,000 for official expenses of the Majority Leader; Office of the Minority Floor Leader, \$1,388,000, including \$10,000 for official expenses of the Minority Leader; Office of the Majority Whip, \$1,025,000, including \$5,000 for official expenses of the Majority Whip and not to exceed \$308,930, for the Chief Deputy Majority Whip; Office of the Minority Whip, \$764,000, including \$5,000 for official expenses of the Minority Whip and not to exceed \$93,520, for the Chief Deputy Minority Whip.

MEMBERS' CLERK HIRE

For staff employed by each Member in the discharge of his official and representative duties, \$218,500,000.

COMMITTEE EMPLOYEES

For professional and clerical employees of standing committees, including the Committee on Appropriations and the Committee on the Budget, \$67,900,000.

COMMITTEE ON THE BUDGET (STUDIES)

For salaries, expenses, and studies by the Committee on the Budget, and temporary personal services for such committee to be expended in accordance with sections 101(c), 606, 703, and 901(e) of the Congressional Budget Act of 1974, and to be available for reimbursement to agencies for services performed, \$409,000.

CONTINGENT EXPENSES OF THE HOUSE

STANDING COMMITTEES, SPECIAL AND SELECT

For salaries and expenses of standing committees, special and select, authorized by the House, \$57,900,000.

COMMITTEE ON HOUSE ADMINISTRATION

HOUSE INFORMATION SYSTEMS

For salaries, expenses and temporary personal services of House Information Systems, under the direction of the Committee on House Administration, \$20,025,000, of which \$8,615,000 is provided herein: *Provided*, That House Information Systems is authorized to receive reimbursement for services provided from Members and Officers of the House of Representatives and other Govern-

mental entities and such reimbursement shall be deposited in the Treasury for credit to this account.

ALLOWANCES AND EXPENSES

For allowances and expenses as authorized by House resolution or law, \$214,518,000, including: Official Expenses of Members, \$82,600,000; supplies, materials, administrative costs and Federal tort claims, \$19,116,000; net expenses of purchase, lease and maintenance of office equipment, \$4,427,000; furniture and furnishings, \$1,810,000; stenographic reporting of committee hearings, \$1,100,000; reemployed annuitants reimbursements, \$1,000,000; Government contributions to employees' life insurance fund, retirement funds, Social Security fund, Medicare fund, health benefits fund, and worker's and unemployment compensation, \$103,833,000; and miscellaneous items including, but not limited to, purchase, exchange, maintenance, repair and operation of House motor vehicles, interparliamentary receptions, and gratuities to heirs of deceased employees of the House, \$632,000.

Such amounts as are deemed necessary for the payment of allowances and expenses under this heading may be transferred among the various categories of allowances and expenses under this heading, upon the approval of the Committee on Appropriations of the House of Representatives.

COMMITTEE ON APPROPRIATIONS (STUDIES AND INVESTIGATIONS)

For salaries and expenses, studies and examinations of executive agencies, by the Committee on Appropriations, and temporary personal services for such committee, to be expended in accordance with section 202(b) of the Legislative Reorganization Act, 1946, and to be available for reimbursement to agencies for services performed, \$6,500,000.

OFFICIAL MAIL COSTS

For expenses necessary for official mail costs of the House of Representatives, as authorized by law, \$80,000,000.

AMENDMENT OFFERED BY MR. PENNY

Mr. PENNY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PENNY: Page 5, line 15, strike "\$80,000,000" and insert "\$59,000,000."

Mr. PENNY. Mr. Chairman, I will be brief. I offer this amendment together with the gentleman from Kansas [Mr. ROBERTS] and the gentleman from Michigan [Mr. UPTON] and the gentleman from Pennsylvania [Mr. SANTORUM]. The amendment will reduce the appropriation for official mail contained in the committee reported bill from \$80 million to \$59 million. This reduced level of funding, a reduction of \$21 million, in effect would freeze next year's funding at the current year level. With a surplus this year projected by the Franking Commission to be \$25 million, a freeze level of funding for mail costs should more than cover projected mail costs next year despite increased postage costs.

Mr. Chairman, the committee will argue that they are only meeting the projected costs, but no one has a crystal ball, so we have to go with what we know to be true now. We know that franking costs are coming down. We know a surplus will likely exist at the

end of this year. And we know Members will not mail as many pieces now as during the last election cycle.

Accordingly, Mr. Chairman, we should appropriate a smaller number. Enough said. I urge adoption of the amendment.

Mr. ROBERTS. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Minnesota [Mr. PENNY].

Mr. Chairman, I thank my colleague, the gentleman from Minnesota [Mr. PENNY] for introducing the amendment. I am a cosponsor. I am a member of the Committee on House Administration and the Commission on Congressional Mailing Standards, and this is really a proposal to reduce the fiscal 1992 funding level for congressional mail to better fit existing reform and current mail costs. So, I am joining the gentleman from Minnesota [Mr. PENNY], the gentleman from Pennsylvania [Mr. SANTORUM], and the gentleman from Michigan [Mr. UPTON] in opposition to the committee recommendation of \$80 million. I think it makes a lot of sense because this sum by many estimates, as was pointed out by the gentleman from Minnesota [Mr. PENNY], is far, far above the amount we really need, and, if adopted by the House, I would tell my colleagues that it does provide an opportunity to increase the mail Members may wish to send by, yes, reprogramming funds for various reasons.

□ 1420

We have already had a full debate in that regard. We do not need to go down that road again.

The gentleman from Minnesota [Mr. PENNY] pointed out that the Commission on Congressional Mailing Standards of the U.S. Postal Service says that of the \$59 million that is provided for official mail in fiscal year 1991, we are not going to use 42 percent of it; we are only going to use \$34 million, and \$25 million will be saved or not used.

If \$80 million is provided in fiscal year 1992, as proposed in this bill, it is going to far exceed the needed funding, and as I say again, it would create an opportunity for all parties interested in changing the current franking formula.

We have worked very hard for franking reform. We do not need this lollypop inducement, if you will, for us to go back on franking reform.

We have always argued that the frank is essential to communicate and respond to our constituents. Let me point out that in 1989, of the 262 million pieces of mail we sent from the House, only one-third or 87 million was sent in response to constituent inquiries. So the majority of mail sent from Congress was unsolicited—letters, newsletters, and targeted mass mailings.

Next year is an election year. In past years, everyone in this Congress knows

from wandering up and down the halls that we see pallet after pallet of unsolicited mail. We are making progress along those lines, and we do not need to encourage any Member to backslide or to change that progress.

I do not want to confuse my colleagues with this amendment. It does not reduce the possible mailings that can be done in fiscal year 1991 or fiscal year 1992. It is meant to prevent even further increases in the Members' official mail accounts or the reprogramming of the surplus funds.

Mr. UPTON. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Michigan.

Mr. UPTON. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I support this amendment offered by the gentleman from Kansas [Mr. ROBERTS], the gentleman from Minnesota [Mr. PENNY], the gentleman from Pennsylvania [Mr. SANTORUM], and myself to keep the fiscal year 1992 House mail expenses at the same level as last year.

This is a freeze, and with the projected surplus in the account this year, as the gentleman from Kansas mentioned, there should be more than enough funding to provide for next year's need, despite increased postage costs.

Franking costs are coming down. We have become more efficient as we have worked with the Committee on House Administration, and we know that Members will not mail as many pieces in 1992 as they did in 1990. If we honestly need more next year, we can address the situation then in a supplemental which we know comes once or twice every year.

With other efforts to reduce expenses in this bill, we must demonstrate to Federal agencies who are working to reduce their spending and to the American people that we share in the efforts to control Federal spending and we cannot ask others to do what we will not do ourselves.

Mr. ROBERTS. Mr. Chairman, I thank the gentleman from Michigan [Mr. UPTON] for his contribution.

Mr. LEWIS of California. Mr. Chairman, I move to strike the requisite number of words, and I rise reluctantly in opposition to the amendment.

The gentleman is addressing an area that is of great concern to me, and has been for a number of years. The House will remember that early on I was one of the Members who led the fight to reduce the numbers of postal patrons available in the House, those mailings that are dropped to every household in a Member's district. We at one time were allowed six, and eventually through one of my amendments those numbers dropped to three. That was the first major step in an attempt to address the way we handle mail around this place.

During the last Congress my leader, the gentleman from Illinois [Mr. MICHEL], appointed a Republican task force, and with the diligence of our good friend, Bill Frenzel, some major reforms were implemented regarding the mail.

I believe personally that the giant steps they made toward getting a handle on those costs ought to have some time to operate. In this session of Congress we are going through the first experience of dollar allocation to Members' offices to reflect a potential reduction in mail, and that in turn leaves a great deal of responsibility to each individual Member's office to try to control the cost of running their operation.

Mr. Chairman, because of the very recent changes and reforms we have made, I urge the Members at this point to vote no on this amendment.

Mr. CLAY. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the Penny amendment.

Last year, once and for all, I thought that we had settled the issue of House official mail costs. We passed legislation which limits the amount of money each Member can spend on mail. Those limits were reasonable and responsible. This appropriations bill simply provides the funds for Members to mail, if they choose, up to the legally authorized amount—an amount equal to three times the number of addresses in their districts times the current first class postage rate.

Frankly, this amendment is a bit of grandstanding, Mr. Chairman. The franking law entitles each Member to mail up to his or her legal limit. If a Member exceeds that limit, the law also provides an enforcement mechanism: The Postal Service is required to refuse to deliver any more franked mail for the Member who has exceeded his or her limit.

The Penny amendment simply cuts this year's appropriation. It will not hold down franked mail volume. Members can still mail up to their legal limit, and if the appropriation is insufficient, we will simply have to appropriate more money next year to reimburse the Postal Service.

Members have been very reasonable in using their individual franking allowances. The most recent quarterly report from the Postal Service shows that the House spent only \$7 million in the second quarter of this fiscal year. This is the quarter in which the franking reforms took effect. Under the franking reforms, the House spent \$10 million less than in the same quarter of the most recent non-election year, 1989. In an apples-to-apples comparison, the House spent \$10 million less under the franking reforms.

Mr. Chairman, under the leadership of the gentleman from California [Mr. FAZIO], chairman of this subcommittee,

the House has been very responsible concerning the use of the frank, and I say that because of the increase in postage from 25 to 29 cents, it is necessary for us to support this piece of legislation. So let us support the committee and the chairman and vote down the Penny amendment.

Mr. FAZIO. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think the arguments made by the gentleman from Missouri [Mr. CLAY] and my colleague, the gentleman from California [Mr. LEWIS], should be persuasive.

I would simply say, as the cosponsor with Mr. Frenzel of this reform effort, that it is really just being implemented at this time, and that this would be an unfortunate decision if we make it, because we have already reduced this item by a sizable amount, over \$13 million. I think we have done what we can about franking reform. This is predicated on the lowest outgoing mail volume in an election year in the last 9 years, and the House is on track.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. Yes, before I complete my remarks, I will yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, let me echo the comments of the gentleman with regard to the success we have had with franking reform. That is precisely why we are offering the amendment. I do not want to see an inducement to back away from those limits.

We have 120 days when we cannot mail anything other than a constituent response because of the election deadlines. We are not using 40 percent of the existing funds that are provided as of this year. We do not need the \$59 million. We may need the \$59 million for this year. We are only using \$34 million, and yet we have a figure in there of \$80 million.

If we have the figure of \$80 million, we know what the next step is going to be. Someone will say, "Well, now, let's change these franking reform rules. Maybe we need to mail a little more here in an election year." And the gentleman knows on those even-numbered years, with all of those mailings that have been stacked up in the folding room and the mailing room, that they cannot get them out and they are an invitation for someone to say that we are violating the ethics on the frank. We do not need to go back down that road.

Mr. Chairman, I say that \$59 million is enough for this year. We are not spending that, and \$59 million should be the franking level for next year.

□ 1430

Mr. FAZIO. Mr. Chairman, reclaiming my time, I think the point which I am making is that we ought to err on

the side of caution. We think we are making progress. I do not think we have an answer. I think we ought to let the system work for 1 year before we tinker with it. I will be the first one to take any savings in this area that I possibly can. The gentleman knows what a burden it places on the overall bill. It would be foolish to jump too quickly into making savings that we are not sure we know are going to exist.

Mr. SANTORUM. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I yield to the gentleman from Pennsylvania.

Mr. SANTORUM. Mr. Chairman, I hate to revisit an old issue, but we are increasing this by 35 percent. We are not using the bulk of the money right now. If we show that next year we end up not using all of this money too, to the tune of what we are doing this year, the same percentage, all that money would be eligible for reprogramming, is that correct?

Mr. FAZIO. Mr. Chairman, reclaiming my time, we will continue to ratchet down the funding in this bill every chance we get, and will, as soon as we understand the pattern that will exist in the new era when each Member controls their own mailing.

Mr. SANTORUM. If the gentleman will yield further, all that money would be eligible for reprogramming if we do not spend it.

Mr. FAZIO. Mr. Chairman, only if we can get an agreement from all the parties involved, including the gentleman from California [Mr. LEWIS], the ranking Republican member, and we have a purpose generally accepted by the body.

I rise in opposition to this amendment.

I had thought we had laid this franked mail matter to rest last year.

We enacted a serious and permanent reform in the use of franked mail. This was done on a bipartisan basis, and we now have an allowance for each Member, based upon a formula.

We now have incentives for Members to send their mail at the lowest rate possible in order to utilize that allowance effectively.

We are beginning to use automation more wisely to assist in counting and ZIP Code sorting. This will help us reduce our expenditures and help the Postal Service reduce their mail delivery costs.

We also have disclosure in the Clerk's Report so that all can see what we spend on our constituent mail.

But this amendment is misleading. We have an allowance. If the gentleman wants to change the allowance, let him work with the authorizing committee to change it.

By reducing the funding, he is merely trying to force us into a supplemental. It will not save money. We will be back where we started before the mail reform.

We will have shortfalls, supplementals, and protracted debate over our mail bill.

The \$80 million in the bill is a reduction of \$16 million under our mail baseline. It is a re-

duction of \$13.4 million under the budget. It is about \$15 million below the allowance formula, if Members, committees, and offices utilized all they are allowed. Actually, it is also a reduction of about \$12 million under 1991 when we had to augment the bill to pay for the 1990 shortfall.

So we are below everything in sight.

As a further indication that reform is working, the committee, in reducing the budget estimate by \$13.4 million, reduced the estimated piece count by 74 million pieces.

This will be the lowest election year piece count in the last 9 years.

Our mail cost trend line is down, when postal rates are held constant.

Our mail volume trend line is down.

But our incoming mail continues to rise at about 5.5 percent a year.

I don't think the House should reopen this issue, Mr. Chairman.

We do not need a knee-jerk amendment to practice fiscal prudence. Our reform was carefully thought out and crafted.

Let's give the reform a chance to work. By all accounts, it already is.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. PENNY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. UPTON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 198, noes 227, not voting 6, as follows:

[Roll No. 133]

AYES—198

Allard	Early	Jacobs
Andrews (TX)	Edwards (OK)	James
Archer	Emerson	Johnson (CT)
Army	English	Johnson (SD)
AuCoin	Erdreich	Johnson (TX)
Baker	Fawell	Johnston
Ballenger	Fields	Jones (GA)
Barrett	Frank (MA)	Jontz
Barton	Franks (CT)	Kasich
Bateman	Galleghy	Klug
Bennett	Gekas	Kolbe
Bentley	Geren	Kyl
Bereuter	Gilchrest	Lagomarsino
Bilirakis	Gingrich	Laughlin
Bliley	Glickman	Leach
Boehner	Goss	Lewis (FL)
Broomfield	Grady	Lightfoot
Browder	Grandy	Livingston
Bunning	Gunderson	Lloyd
Burton	Hall (TX)	Long
Byron	Hamilton	Lowery (CA)
Callahan	Hancock	Luken
Camp	Hansen	Machtley
Campbell (CA)	Harris	Marlenee
Campbell (CO)	Hastert	Martin
Chandler	Hayes (LA)	McCandless
Coble	Hefley	McCollum
Combest	Henry	McCrery
Condit	Herger	McDade
Coughlin	Hobson	McEwen
Cox (CA)	Holloway	McMillan (NC)
Crane	Hopkins	Meyers
Cunningham	Horn	Mfume
Dannemeyer de la Garza	Houghton	Michel
DeLay	Hubbard	Miller (OH)
Dickinson	Huckaby	Miller (WA)
Doolittle	Hughes	Molinari
Dorgan (ND)	Hunter	Montgomery
Dornan (CA)	Hutto	Moorhead
Dreier	Hyde	Morella
Duncan	Inhofe	Murphy
	Ireland	Nichols

Nowak	Roberts	Stearns
Nussle	Roemer	Stenholm
Orton	Rogers	Stump
Oxley	Rohrabacher	Sundquist
Packard	Ros-Lehtinen	Swett
Pallone	Roth	Tallion
Parker	Sanders	Tauzin
Patterson	Santorum	Taylor (MS)
Paxon	Sarpalius	Taylor (NC)
Payne (VA)	Saxton	Thomas (CA)
Penny	Schaefer	Thomas (WY)
Petri	Schulze	Upton
Porter	Sensenbrenner	Vander Jagt
Poshard	Sharp	Vucanovich
Pursell	Shaw	Walker
Ramstad	Shays	Walsh
Ravenel	Shuster	Weber
Ray	Slattery	Weldon
Regula	Smith (NJ)	Wolf
Rhodes	Smith (OR)	Wylie
Ridge	Smith (TX)	Yatron
Riggs	Snowe	Young (FL)
Rinaldo	Solomon	Zeliff
Ritter	Spence	Zimmer

NOES—227

Abercrombie	Foglietta	Moran
Ackerman	Ford (MI)	Morrison
Alexander	Ford (TN)	Mrazek
Anderson	Frost	Murtha
Andrews (ME)	Gallo	Myers
Andrews (NJ)	Gaydos	Nagle
Annunzio	Gejdenson	Natcher
Anthony	Gephardt	Neal (MA)
Applegate	Gibbons	Neal (NC)
Aspin	Gillmor	Oakar
Atkins	Gilman	Oberstar
Bacchus	Gonzalez	Obey
Barnard	Gordon	Olin
Beilenson	Gray	Ortiz
Berman	Green	Owens (NY)
Bevill	Guarini	Owens (UT)
Bilbray	Hall (OH)	Panetta
Boehliert	Hammerschmidt	Payne (NJ)
Bonior	Hatcher	Pease
Borski	Hayes (IL)	Pelosi
Boucher	Hefner	Perkins
Boxer	Hertel	Peterson (FL)
Brewster	Hoagland	Peterson (MN)
Brown	Hochbrueckner	Pickett
Bruce	Horton	Pickle
Bryant	Hoyer	Price
Bustamante	Jefferson	Quillen
Cardin	Jenkins	Rahall
Carper	Jones (NC)	Rangel
Carr	Kanjorski	Reed
Chapman	Kaptur	Richardson
Clay	Kennedy	Roe
Clement	Kennelly	Rose
Clinger	Kildee	Rostenkowski
Coleman (MO)	Kleczka	Roukema
Coleman (TX)	Kolter	Rowland
Collins (MI)	Kopetski	Roybal
Conyers	Kostmayer	Russo
Cooper	LaFalce	Sabo
Costello	Lancaster	Sangmeister
Cox (IL)	Lantos	Savage
Coyne	LaRocco	Sawyer
Cramer	Lehman (CA)	Scheuer
Darden	Lent	Schiff
Davis	Levin (MI)	Schroeder
DeFazio	Levine (CA)	Schumer
DeLauro	Lewis (CA)	Serrano
Dellums	Lewis (GA)	Sikorski
Derrick	Lipinski	Skaggs
Dicks	Lowe (NY)	Skeen
Dingell	Manton	Skelton
Dixon	Markey	Slaughter (NY)
Donnelly	Martinez	Slaughter (VA)
Dooley	Matsui	Smith (FL)
Downey	Mavroules	Smith (IA)
Durbin	Mazzoli	Solarz
Dwyer	McCloskey	Spratt
Dymally	McCurdy	Staggers
Eckart	McDermott	Stallings
Edwards (CA)	McGrath	Stark
Edwards (TX)	McHugh	Stokes
Engel	McMillen (MD)	Studds
Espy	McNulty	Swift
Evans	Miller (CA)	Synar
Fascell	Mineta	Tanner
Fazio	Mink	Thornton
Feighan	Moakley	Torres
Fish	Mollohan	Torricelli
Flake	Moody	Towns

Traffant	Washington	Wilson
Traxler	Waters	Wise
Unsold	Waxman	Wolpe
Valentine	Weiss	Wyden
Vento	Wheat	Yates
Visclosky	Whitten	Young (AK)
Volkmer	Williams	

NOT VOTING—6

Brooks	Goodling	Sisisky
Collins (IL)	Lehman (FL)	Thomas (GA)

□ 1451

Messrs. BUSTAMANTE, McMILLEN of Maryland, KOLTER, LENT, and SKEEN changed their vote from "aye" to "no."

Mr. SAXTON and Mr. ROEMER changed their vote from "no" to "aye." So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The Clerk will read. Mr. FAZIO. Mr. Chairman, I ask unanimous consent that the remainder of the bill, except for lines 22 and 23 on page 40, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The text of the remainder of the bill, through line 21 on page 40 is as follows:

SALARIES, OFFICERS AND EMPLOYEES

For compensation and expenses of officers and employees, as authorized by law, \$48,878,000, including: Office of the Clerk, including not to exceed \$1,000 for official representation and reception expenses, \$20,860,000; Office of the Sergeant at Arms, including not to exceed \$500 for official representation and reception expenses, \$1,288,000; Office of the Doorkeeper, including overtime, as authorized by law, \$10,013,000; Office of the Postmaster, \$4,377,000, including \$126,850 for employment of substitute messengers and extra services of regular employees when required at the salary rate of not to exceed \$19,805 per annum each; Office of the Chaplain, \$120,000; Office of the Parliamentarian, including the Parliamentarian and \$2,000 for preparing the Digest of Rules, \$946,000; for salaries and expenses of the Office of the Historian, \$361,000; for salaries and expenses of the Office of the Law Revision Counsel of the House, \$1,356,000; for salaries and expenses of the Office of the Legislative Counsel of the House, \$4,171,000; six minority employees, \$713,000; the House Democratic Steering Committee and Caucus, \$1,476,000; the House Republican Conference, \$1,476,000; and other authorized employees, \$1,721,000.

Such amounts as are deemed necessary for the payment of salaries of officers and employees under this heading may be transferred among the various offices and activities under this heading, upon the approval of the Committee on Appropriations of the House of Representatives.

ADMINISTRATIVE PROVISIONS

SEC. 101. Of the amounts appropriated for fiscal year 1992 for salaries and expenses of the House of Representatives, such amounts as may be necessary may be transferred among the headings "HOUSE LEADERSHIP OFFICES", "MEMBERS' CLERK HIRE", "COMMITTEE EMPLOYEES", "CONTINGENT EXPENSES OF THE HOUSE (STANDING COMMITTEES, SPECIAL AND SELECT)", "CONTINGENT EXPENSES OF THE HOUSE (HOUSE INFORMATION SYSTEMS)", "CON-

TINGENT EXPENSES OF THE HOUSE (ALLOWANCES AND EXPENSES)", "OFFICIAL MAIL COSTS", and "SALARIES, OFFICERS AND EMPLOYEES", upon approval of the Committee on Appropriations of the House of Representatives.

SEC. 102. Effective for the fiscal years beginning with fiscal year 1992, the annual rate of pay for the positions established for the Democratic caucus and the Republican conference by section 2 of House Resolution 413, 94th Congress, as enacted by section 201 of the Legislative Branch Appropriations Act, 1976 and the positions established by section 102(a)(1) and (2) of the Legislative Branch Appropriations Act, 1990 shall not exceed the annual rate of pay payable from time to time for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 103. The Clerk of the House under the direction of the Committee on House Administration, is authorized to receive payments of assessments for monthly equipment charges incurred by such organizations as are authorized by the Committee on House Administration. Receipts under this subsection shall be deposited into the Treasury for credit to the appropriate account under the appropriation for "Salaries and expenses" under the heading "Contingent expenses of the House", "Allowances and expenses".

JOINT ITEMS

For joint committees, as follows:

CONTINGENT EXPENSES OF THE SENATE
JOINT ECONOMIC COMMITTEE

For salaries and expenses of the Joint Economic Committee, \$4,020,000.

JOINT COMMITTEE ON PRINTING

For salaries and expenses of the Joint Committee on Printing, \$1,391,000.

CONTINGENT EXPENSES OF THE HOUSE

JOINT COMMITTEE ON TAXATION

For salaries and expenses of the Joint Committee on Taxation, \$5,759,000, to be disbursed by the Clerk of the House.

For other joint items, as follows:

OFFICE OF THE ATTENDING PHYSICIAN

For medical supplies, equipment, and contingent expenses of the emergency rooms, and for the Attending Physician and his assistants, including (1) an allowance of \$1,500 per month to the Attending Physician; (2) an allowance of \$1,000 per month to one Senior Medical Officer while on duty in the Attending Physician's office; (3) an allowance of \$500 per month each to two medical officers while on duty in the Attending Physician's office; (4) an allowance of \$500 per month each to two assistants and \$400 per month each to not to exceed nine assistants on the basis heretofore provided for such assistance; and (5) \$999,800 for reimbursement to the Department of the Navy for expenses incurred for staff and equipment assigned to the Office of the Attending Physician, such amount shall be advanced and credited to the applicable appropriation or appropriations from which such salaries, allowances, and other expenses are payable and shall be available for all the purposes thereof, \$1,509,000, to be disbursed by the Clerk of the House.

CAPITOL POLICE BOARD

CAPITOL POLICE

SALARIES

For the Capitol Police Board for salaries, including overtime, and Government contributions to employees' benefits funds, as authorized by law, of officers, members, and employees of the Capitol Police, \$63,343,000,

of which \$31,389,000 is appropriated to the Sergeant at Arms of the House of Representatives, to be disbursed by the Clerk of the House, and \$31,954,000 is appropriated to the Sergeant at Arms and Doorkeeper of the Senate, to be disbursed by the Secretary of the Senate: *Provided*, That of the amounts appropriated for fiscal year 1992 for salaries, including overtime, and Government contributions to employees' benefits under this heading, such amounts as may be necessary may be transferred between the Sergeant at Arms of the House of Representatives and the Sergeant at Arms and Doorkeeper of the Senate, upon approval of the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate.

GENERAL EXPENSES

For the Capitol Police Board for necessary expenses of the Capitol Police, including purchasing and supplying uniforms; the purchase, maintenance, and repair of police vehicles, including two-way police radio equipment; contingent expenses, including advance payment for travel for training, protective details, and tuition and registration, expenses associated with the implementation of the Capitol Police Employee Assistance Program, including but not limited to professional referrals, and expenses associated with the awards program not to exceed \$2,000, expenses associated with the relocation of instructor personnel to and from the Federal Law Enforcement Training Center as approved by the Chairman of the Capitol Police Board, and including \$85 per month for extra services performed for the Capitol Police Board by such member of the staff of the Sergeant at Arms of the Senate or the House as may be designated by the Chairman of the Board, \$2,029,000, to be disbursed by the Clerk of the House: *Provided*, That the funds used to maintain the petty cash fund referred to as "Petty Cash II" which is to provide for the prevention and detection of crime shall not exceed \$4,000: *Provided further*, That the funds used to maintain the petty cash fund referred to as "Petty Cash III" which is to provide for the advance of travel expenses attendant to protective assignments shall not exceed \$4,000: *Provided further*, That, notwithstanding any other provision of law, the cost involved in providing basic training for members of the Capitol Police at the Federal Law Enforcement Training Center for fiscal year 1992 shall be paid by the Secretary of the Treasury from funds available to the Treasury Department.

CAPITOL GUIDE SERVICE

For salaries and expenses of the Capitol Guide Service, \$1,603,000, to be disbursed by the Secretary of the Senate: *Provided*, That none of these funds shall be used to employ more than thirty-three individuals: *Provided further*, That the Capitol Guide Board is authorized, during emergencies, to employ not more than two additional individuals for not more than one hundred and twenty days each, and not more than ten additional individuals for not more than six months each, for the Capitol Guide Service.

SPECIAL SERVICES OFFICE

For salaries and expenses of the Special Services Office, \$292,000, to be disbursed by the Secretary of the Senate.

STATEMENTS OF APPROPRIATIONS

For the preparation, under the direction of the Committees on Appropriations of the Senate and House of Representatives, of the statements for the first session of the One Hundred Second Congress, showing appro-

priations made, indefinite appropriations, and contracts authorized, together with a chronological history of the regular appropriations bills as required by law, \$20,000, to be paid to the persons designated by the chairmen of such committees to supervise the work.

OFFICE OF TECHNOLOGY ASSESSMENT

SALARIES AND EXPENSES

For salaries and expenses necessary to carry out the provisions of the Technology Assessment Act of 1972 (Public Law 92-484), including official representation and reception expenses (not to exceed \$3,500 from the Trust Fund) to be expended on the certification of the Director of the Office of Technology Assessment, expenses incurred in administering an employee incentive awards program (not to exceed \$1,800), rental of space in the District of Columbia, and those necessary to carry out the duties of the Director of the Office of Technology Assessment under 42 U.S.C. 1395ww, and 42 U.S.C. 1395w-1, \$21,025,000: *Provided*, That none of the funds in this Act shall be available for salaries or expenses of any employee of the Office of Technology Assessment in excess of 143 staff employees: *Provided further*, That no part of this appropriation shall be available for assessments or activities not initiated and approved in accordance with section 3(d) of Public Law 92-484, except that funds shall be available for the assessment required by Public Law 96-151: *Provided further*, That none of the funds in this Act shall be available for salaries or expenses of employees of the Office of Technology Assessment in connection with any reimbursable study for which funds are provided from sources other than appropriations made under this Act, or be available for any other administrative expenses incurred by the Office of Technology Assessment in carrying out such a study, except that funds shall be available, and reimbursement may be accepted, for salaries or expenses of the Office of Technology Assessment in connection with facilitating completion of the work required by section 400DD(e)(1), and the report required by section 400DD(g)(2), of the Energy Policy and Conservation Act.

CONGRESSIONAL BUDGET OFFICE

SALARIES AND EXPENSES

For salaries and expenses necessary to carry out the provisions of the Congressional Budget Act of 1974 (Public Law 93-344), including not to exceed \$2,300 to be expended on the certification of the Director of the Congressional Budget Office in connection with official representation and reception expenses, \$22,372,000: *Provided*, That none of these funds shall be available for the purchase or hire of a passenger motor vehicle: *Provided further*, That none of the funds in this Act shall be available for salaries or expenses of any employee of the Congressional Budget Office in excess of 226 staff employees: *Provided further*, That any sale or lease of property, supplies, or services to the Congressional Budget Office shall be deemed to be a sale or lease of such property, supplies, or services to the Congress subject to section 903 of Public Law 98-63.

ARCHITECT OF THE CAPITOL

OFFICE OF THE ARCHITECT OF THE CAPITOL

SALARIES

For the Architect of the Capitol; the Assistant Architect of the Capitol; and other personal services; at rates of pay provided by law, \$7,858,000.

TRAVEL

Appropriations under the control of the Architect of the Capitol shall be available for expenses of travel on official business not to exceed in the aggregate under all funds the sum of \$50,000.

CONTINGENT EXPENSES

To enable the Architect of the Capitol to make surveys and studies, and to meet unforeseen expenses in connection with activities under his care, \$100,000, which shall remain available until expended.

CAPITOL BUILDINGS AND GROUNDS

CAPITOL BUILDINGS

For all necessary expenses for the maintenance, care and operation of the Capitol Building and electrical substations of the Senate and House Office Buildings, under the jurisdiction of the Architect of the Capitol, including furnishings and office equipment; not to exceed \$1,000 for official reception and representation expenses, to be expended as the Architect of the Capitol may approve; purchase or exchange, maintenance and operation of a passenger motor vehicle; for expenses of attendance, when specifically authorized by the Architect of the Capitol, at meetings or conventions in connection with subjects related to work under the Architect of the Capitol, \$21,990,000, of which \$3,405,000 shall remain available until expended: *Provided*, That of the funds to remain available until expended, \$2,000,000 shall be available for obligation without regard to section 3709 of the Revised Statutes, as amended.

CAPITOL GROUNDS

For all necessary expenses for care and improvement of grounds surrounding the Capitol, the Senate and House office buildings, and the Capitol Power Plant, \$4,150,000.

HOUSE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of the House office buildings, including the position of Superintendent of Garages as authorized by law, \$33,403,000, of which \$4,780,000 shall remain available until expended.

CAPITOL POWER PLANT

For all necessary expenses for the maintenance, care and operation of the Capitol Power Plant; for lighting, heating, power (including the purchase of electrical energy) and water and sewer services for the Capitol, Senate and House office buildings, Library of Congress buildings, and the grounds about the same, Botanic Garden, Senate garage, and for air conditioning refrigeration not supplied from plants in any of such buildings; for heating the Government Printing Office and Washington City Post Office and heating and chilled water for air conditioning for the Supreme Court Building, Union Station complex, Judiciary Office Building and the Folger Shakespeare Library, expenses for which shall be advanced or reimbursed upon request of the Architect of the Capitol and amounts so received shall be deposited into the Treasury to the credit of this appropriation, \$30,800,000: *Provided*, That not to exceed \$3,200,000 of the funds credited or to be reimbursed to this appropriation as herein provided shall be available for obligation during fiscal year 1992.

ADMINISTRATIVE PROVISIONS

SEC. 104. (a) Section 108(b)(1) of the Legislative Branch Appropriations Act, 1991 (40 U.S.C. 166b-3(b)(1)) is amended—

(1) in subparagraph (A), by striking "the rate payable" through the semicolon and inserting "90 percent of the maximum rate allowable for the Senior Executive Service;"

(2) in subparagraph (B), by striking "the rate payable" through the period and inserting "85 percent of the maximum rate allowable for the Senior Executive Service."; and

(3) by adding at the end, as a flush left sentence, the following:

"For purposes of the preceding sentence, 'the maximum rate allowable for the Senior Executive Service' means the highest rate of basic pay that may be set for the Senior Executive Service under section 5382(b) of title 5, United States Code."

(b) Section 108 of the Legislative Branch Appropriations Act, 1991 (40 U.S.C. 166b-3b) is amended by adding at the end the following:

"(c) Effective beginning with any pay period beginning on or after the date of enactment of the Legislative Branch Appropriations Act, 1992, the rate of basic pay for up to 8 positions under the jurisdiction of the Architect of the Capitol may be fixed at such rate as the Architect considers appropriate for each, not to exceed 135 percent of the minimum rate payable for grade GS-15 of the General Schedule."

SEC. 105. (a) Notwithstanding any other provision of law, the Architect of the Capitol with the approval of the Senate Committee on Rules and Administration and the House Office Building Commission is authorized to lease and occupy 75,000 square feet of space, more or less, in the Judiciary Office Building; *Provided*, That rental payments shall be paid from the appropriation "Architect of the Capitol, Capitol Buildings" upon vouchers approved by the Architect of the Capitol; *Provided further*, That nothing in this section shall be construed so as to obligate the Architect of the Capitol to enter into any such lease or to imply any obligation to enter into such lease.

(b) There is hereby authorized to be appropriated to the "Architect of the Capitol, Capitol Buildings" such sums as may be necessary to carry out the provisions of subsection (a).

(c) There is hereby authorized to be appropriated to the "Architect of the Capitol, Senate Office Buildings" such sums as may be necessary for the acquisition and installation of furniture and furnishings for the space to be leased pursuant to subsection (a).

(d) There is authorized to be appropriated to the Sergeant at Arms of the United States Senate such sums as may be necessary to provide for the planning and acquisition and installation of telecommunications equipment and services for the Architect of the Capitol necessitated incident to occupancy of space pursuant to subsection (a).

(e) The authority under this section shall continue until otherwise provided by law.

SEC. 106. The Legislative Branch Appropriations Act, 1989 is amended in the matter under "House Office Buildings", under the paragraph headed "Architect of the Capitol" (40 U.S.C. 175 note)—

(1) by striking "5 U.S.C. 5307(a)(1)(B)" and inserting "section 5306(a)(1)(B) of title 5, United States Code,"; and

(2) by striking "policy," and inserting "policy, and subject to any increase which may be allowed by the Committee on House Administration based on performance exceeding an acceptable level of competence over a 52-week period (except that no such performance-based increase shall affect the waiting period or effective date of any longevity step-increase or increase under such section 5306(a)(1)(B))."

LIBRARY OF CONGRESS
CONGRESSIONAL RESEARCH SERVICE
SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946, as amended by section 321 of the Legislative Reorganization Act of 1970 (2 U.S.C. 166) and to revise and extend the Annotated Constitution of the United States of America, \$55,725,000: *Provided*, That no part of this appropriation may be used to pay any salary or expense in connection with any publication, or preparation of material therefor (except the Digest of Public General Bills), to be issued by the Library of Congress unless such publication has obtained prior approval of either the Committee on House Administration or the Senate Committee on Rules and Administration; *Provided further*, That notwithstanding any other provisions of law, the compensation of the Director of the Congressional Research Service, Library of Congress, shall be at an annual rate which is equal to the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

GOVERNMENT PRINTING OFFICE

CONGRESSIONAL PRINTING AND BINDING

For authorized printing and binding for the Congress; for printing and binding for the Architect of the Capitol; expenses necessary for preparing the semimonthly and session index to the Congressional Record, as authorized by law (44 U.S.C. 902); printing and binding of Government publications authorized by law to be distributed to Members of Congress; and for printing, binding, and distribution of Government publications authorized by law to be distributed without charge to the recipient, \$89,941,000: *Provided*, That funds remaining from the unexpended balances from obligations made under prior year appropriations for this account shall be available for the purposes of the printing and binding account for the same fiscal year; *Provided further*, That this appropriation shall not be available for printing and binding part 2 of the annual report of the Secretary of Agriculture (known as the Yearbook of Agriculture) nor for copies of the permanent edition of the Congressional Record for individual Representatives, Resident Commissioners or Delegates authorized under 44 U.S.C. 906; *Provided further*, That, to the extent that funds remain from the unexpended balance of fiscal year 1984 funds obligated for the printing and binding costs of publications produced for the Bicentennial of the Congress, such remaining funds shall be available for the current year printing and binding cost of publications produced for the Bicentennial; *Provided further*, That this appropriation shall be available for the payment of obligations incurred under the appropriations for similar purposes for preceding fiscal years.

This title may be cited as the "Congressional Operations Appropriations Act, 1992".

TITLE II—OTHER AGENCIES

BOTANIC GARDEN

SALARIES AND EXPENSES

For all necessary expenses for the maintenance, care and operation of the Botanic Garden and the nurseries, buildings, grounds, and collections; purchase and exchange, maintenance, repair, and operation of a passenger motor vehicle; all under the direction of the Joint Committee on the Library, \$2,862,000.

LIBRARY OF CONGRESS
SALARIES AND EXPENSES

For necessary expenses of the Library of Congress, not otherwise provided for, including development and maintenance of the Union Catalogs; custody and custodial care of the Library buildings; special clothing; cleaning, laundering and repair of uniforms; preservation of motion pictures in the custody of the Library; operation and maintenance of the American Folklife Center in the Library; preparation and distribution of catalog cards and other publications of the Library; hire or purchase of one passenger motor vehicle; and expenses of the Library of Congress Trust Fund Board not properly chargeable to the income of any trust fund held by the Board, \$201,494,000, of which not more than \$7,300,000 shall be derived from collections credited to this appropriation during fiscal year 1992 under the Act of June 28, 1902, as amended (2 U.S.C. 150); *Provided*, That the total amount available for obligation shall be reduced by the amount by which collections are less than the \$7,300,000; *Provided further*, That of the total amount appropriated, \$7,636,000 is to remain available until expended for acquisition of books, periodicals, and newspapers, and all other materials including subscriptions for bibliographic services for the Library, including \$40,000 to be available solely for the purchase, when specifically approved by the Librarian, of special and unique materials for additions to the collections; *Provided further*, That, of the total amount appropriated, \$4,870,000 is to remain available until expended for the deacidification program.

COPYRIGHT OFFICE

SALARIES AND EXPENSES

For necessary expenses of the Copyright Office, including publication of the decisions of the United States courts involving copyrights, \$25,823,000, of which not more than \$14,000,000 shall be derived from collections credited to this appropriation during fiscal year 1992 under 17 U.S.C. 708(c), and not more than \$1,979,000 shall be derived from collections during fiscal year 1992 under 17 U.S.C. 111(d)(3), 116(c)(1), and 119(b)(2); *Provided*, That the total amount available for obligation shall be reduced by the amount by which collections are less than the \$15,979,000; *Provided further*, That \$100,000 of the amount appropriated is available for the maintenance of an "International Copyright Institute" in the Copyright Office of the Library of Congress for the purpose of training nationals of developing countries in intellectual property laws and policies.

BOOKS FOR THE BLIND AND PHYSICALLY HANDICAPPED

SALARIES AND EXPENSES

For salaries and expenses to carry out the provisions of the Act approved March 3, 1931, as amended (2 U.S.C. 135a), \$41,179,000, of which \$9,417,000 shall remain available until expended.

FURNITURE AND FURNISHINGS

For necessary expenses for the purchase and repair of furniture, furnishings, office and library equipment, \$3,235,000.

ADMINISTRATIVE PROVISIONS

SEC. 201. Appropriations in this Act available to the Library of Congress shall be available, in an amount not to exceed \$175,690, of which \$54,800 is for the Congressional Research Service, when specifically authorized by the Librarian, for expenses of attendance at meetings concerned with the function or activity for which the appropriation is made.

SEC. 202. (a) No part of the funds appropriated in this Act shall be used by the Library of Congress to administer any flexible or compressed work schedule which—

(1) applies to any manager or supervisor in a position the grade or level of which is equal to or higher than GS-15; and

(2) grants the manager or supervisor the right to not be at work for all or a portion of a workday because of time worked by the manager or supervisor on another workday.

(b) For purposes of this section, the term "manager or supervisor" means any management official or supervisor, as such terms are defined in section 7103(a) (10) and (11) of title 5, United States Code.

SEC. 203. Appropriated funds received by the Library of Congress from other Federal agencies to cover general and administrative overhead costs generated by performing reimbursable work for other agencies under the authority of 31 U.S.C. 1535 and 1536 shall not be used to employ more than 65 employees and may be expended or obligated—

(1) in the case of a reimbursement, only to such extent or in such amounts as are provided in appropriations Acts; or

(2) in the case of an advance payment, only—

(A) to pay for such general or administrative overhead costs as are attributable to the work performed for such agency; or

(B) to such extent or in such amounts as are provided in appropriations Acts, with respect to any purpose not allowable under subparagraph (A).

SEC. 204. Not to exceed \$5,000 of any funds appropriated to the Library of Congress may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for the Library of Congress incentive awards program.

SEC. 205. Not to exceed \$12,000 of funds appropriated to the Library of Congress may be expended, on the certification of the Librarian of Congress or his designee, in connection with official representation and reception expenses for the Overseas Field Offices.

ARCHITECT OF THE CAPITOL

LIBRARY BUILDINGS AND GROUNDS

STRUCTURAL AND MECHANICAL CARE

For all necessary expenses for the mechanical and structural maintenance, care and operation of the Library buildings and grounds, \$10,187,000, of which \$2,000,000 shall remain available until expended.

COPYRIGHT ROYALTY TRIBUNAL

SALARIES AND EXPENSES

For necessary expenses of the Copyright Royalty Tribunal, \$865,000, of which \$735,000 shall be derived by collections from the appropriation "Payments to Copyright Owners" for the reasonable costs incurred in proceedings involving distribution of royalty fees as provided by 17 U.S.C. 807.

GOVERNMENT PRINTING OFFICE

OFFICE OF SUPERINTENDENT OF DOCUMENTS

SALARIES AND EXPENSES

For expenses of the Office of Superintendent of Documents necessary to provide for the cataloging and indexing of Government publications and their distribution to the public, Members of Congress, other Government agencies, and designated depository and international exchange libraries as authorized by law, \$26,327,000: *Provided*, That travel expenses, including travel expenses of the Depository Library Council to the Public Printer, shall not exceed \$117,000.

GOVERNMENT PRINTING OFFICE REVOLVING FUND

The Government Printing Office is hereby authorized to make such expenditures, within the limits of funds available and in accord with the law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs and purposes set forth in the budget for the current fiscal year for the "Government Printing Office revolving fund": *Provided*, That not to exceed \$5,000 may be expended on the certification of the Public Printer in connection with official representation and reception expenses: *Provided further*, That during the current fiscal year the revolving fund shall be available for the hire of twelve passenger motor vehicles: *Provided further*, That expenditures in connection with travel expenses of the advisory councils to the Public Printer shall be deemed necessary to carry out the provisions of title 44, United States Code: *Provided further*, That the revolving fund shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for level V of the Executive Schedule (5 U.S.C. 5316): *Provided further*, That the revolving fund and the funds provided under the paragraph entitled "Office of Superintendent of Documents, Salaries and expenses" together may not be available for the full-time equivalent employment of more than 5,000 workyears: *Provided further*, That the revolving fund shall be available for expenses not to exceed \$500,000 for the development of plans and design of a multi-purpose facility: *Provided further*, That the revolving fund shall not be used to administer any flexible or compressed work schedule which applies to any manager or supervisor in a position the grade or level of which is equal to or higher than GS-15, nor to any employee involved in the in-house production of printing and binding: *Provided further*, That expenses for attendance at meetings shall not exceed \$95,000: *Provided further*, That the revolving fund shall be available for expenses not to exceed \$100,000 for a special study of GPO's personnel and compensation systems.

GENERAL ACCOUNTING OFFICE

SALARIES AND EXPENSES

For necessary expenses of the General Accounting Office, including not to exceed \$7,000 to be expended on the certification of the Comptroller General of the United States in connection with official representation and reception expenses; services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the rate for level IV of the Executive Schedule (5 U.S.C. 5315); hire of one passenger motor vehicle; advance payments in foreign countries in accordance with 31 U.S.C. 3324; benefits comparable to those payable under sections 901(5), 901(6) and 901(8) of the Foreign Service Act of 1980 (22 U.S.C. 4081(5), 4081(6) and 4081(8), respectively); and under regulations prescribed by the Comptroller General of the United States, rental of living quarters in foreign countries and travel benefits comparable with those which are now or hereafter may be granted single employees of the Agency for International Development, including single Foreign Service personnel assigned to A.I.D. projects, by the Administrator of the Agency for International Development—or his designee—under the authority of section 636(b) of the Foreign Assistance Act of 1961 (22 U.S.C.

2396(b)); \$440,879,000: *Provided*, That not more than \$6,213,000 of reimbursements received incident to the operation of the General Accounting Office Building shall be available for use in fiscal year 1992: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the Joint Financial Management Improvement Program (JFMIP) shall be available to finance an appropriate share of JFMIP costs as determined by the JFMIP, including but not limited to the salary of the Executive Director and secretarial support: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the National Intergovernmental Audit Forum or a Regional Intergovernmental Audit Forum shall be available to finance an appropriate share of Forum costs as determined by the Forum, including necessary travel expenses of non-Federal participants. Payments hereunder to either the Forum or the JFMIP may be credited as reimbursements to any appropriation from which costs involved are initially financed: *Provided further*, That to the extent that funds are otherwise available for obligation, agreements or contracts for the removal of asbestos, and renovation of the building and building systems (including the heating, ventilation and air conditioning system, electrical system and other major building systems) of the General Accounting Office Building may be made for periods not exceeding five years: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the American Consortium on International Public Administration (ACIPA) shall be available to finance an appropriate share of ACIPA costs as determined by the ACIPA, including any expenses attributable to membership of ACIPA in the International Institute of Administrative Sciences: *Provided further*, That, notwithstanding any other provision of law, \$1,800,000 of this appropriation shall be available for the planning, administering, receiving, sponsoring and such other expenses as the Comptroller General deems necessary to represent the United States as host of the 1992 triennial Congress of the International Organization of Supreme Audit Institutions (INTOSAI): *Provided further*, That the General Accounting Office is authorized to solicit and accept contributions to be held in trust, which shall be available without fiscal year limitation, not to exceed \$20,000, for any purpose related to the 1992 triennial Congress.

TITLE III—GENERAL PROVISIONS

SEC. 301. No part of the funds appropriated in this Act shall be used for the maintenance or care of private vehicles, except for emergency assistance and cleaning as may be provided under regulations relating to parking facilities for the House of Representatives issued by the Committee on House Administration and for the Senate issued by the Committee on Rules and Administration.

SEC. 302. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 303. Whenever any office or position not specifically established by the Legislative Pay Act of 1929 is appropriated for herein or whenever the rate of compensation or designation of any position appropriated for herein is different from that specifically established for such position by such Act, the rate of compensation and the designation of

the position, or either, appropriated for or provided herein, shall be the permanent law with respect thereto: *Provided*, That the provisions herein for the various items of official expenses of Members, officers, and committees of the Senate and House, and clerk hire for Senators and Members shall be the permanent law with respect thereto.

SEC. 304. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 305. (a) The Architect of the Capitol, in consultation with the heads of the agencies of the legislative branch, shall develop an overall plan for satisfying the telecommunications requirements of such agencies, using a common system architecture for maximum interconnection capability and engineering compatibility. The plan shall be subject to joint approval by the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate, and, upon approval, shall be communicated to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate. No part of any appropriation in this Act or any other Act shall be used for acquisition of any new or expanded telecommunications system for an agency of the legislative branch, unless, as determined by the Architect of the Capitol, the acquisition is in conformance with the plan, as approved.

(b) As used in this section—

(1) the term "agency of the legislative branch" means the Office of the Architect of the Capitol, the Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the Congressional Budget Office; and

(2) the term "telecommunications system" means an electronic system for voice, data, or image communication, including any associated cable and switching equipment.

SEC. 306. Section 3216(e)(2) of title 39, United States Code, is amended by striking "subsection (1) of this section" each place it appears and inserting "paragraph (1) of this subsection".

SEC. 307. Notwithstanding any other provision of law, and subject to approval by the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, and subject to enactment of authorizing legislation, amounts may be transferred from the appropriation "Library of Congress, Salaries and expenses" to the appropriation "Architect of the Capitol, Library buildings and grounds, Structural and mechanical care" for the purpose of rental, lease, or other agreement, of temporary storage and warehouse space for use by the Library of Congress during fiscal year 1992, and to incur incidental expenses in connection with such use.

SEC. 308. Section 311(d)(2)(A) of the Legislative Branch Appropriations Act, 1988 (2 U.S.C. 60a-2a), as amended by section 308 of the Legislative Branch Appropriations Act, 1991 (Public Law 101-520; 104 Stat. 2277), is amended by striking "5305" and inserting "5303".

SEC. 309. None of the funds appropriated in this Act shall be used to implement the provisions of Public Law 101-576.

SEC. 310. (a) The Clerk of the House of Representatives shall maintain and operate a child care center (to be known as the "House of Representatives Child Care Center") to furnish pre-school child care—

(1) for children of individuals whose pay is disbursed by the Clerk of the House of Representatives or the Sergeant at Arms of the House of Representatives and children of support personnel of the House of Representatives; and

(2) if places are available after admission of all children who are eligible under paragraph (1), for children of individuals whose pay is disbursed by the Secretary of the Senate and children of employees of agencies of the legislative branch.

(b)(1) There shall be an advisory board, the members of which shall serve without pay, for the purpose of providing advice to the Clerk on matters of policy relating to the administration and operation of the center (including the selection of the director of the center).

(2) The Speaker of the House of Representatives shall appoint 3 voting members of the board from each of the following categories:

(A) Individuals proposed by the parents association of the center.

(B) Individuals proposed by the director of the center.

(C) Members of the House of Representatives and spouses of Members, who express an interest in the center.

The director of the center shall serve as a member of the board, ex officio and without the right to vote.

(3)(A) Each voting member of the board referred to in paragraph (2) shall be appointed for a term of 3 years, except that, as designated at the time of appointment, of the members first appointed, one member from each category shall be appointed for a term of one year and one member from each category shall be appointed for a term of 2 years.

(B) In addition to the voting members referred to in paragraph (2), there shall be 2 additional voting members of the board, each to be appointed by the Speaker of the House of Representatives, from any category described in such paragraph, for a term of 2 years, beginning at the same time as the terms of the voting members first appointed under that paragraph. The member positions under the preceding sentence shall cease to exist at the end of the 2 year terms of such positions.

(4) Of the voting members of the board appointed by the Speaker under paragraph (2), 4 members shall be appointed on the recommendation of the majority leader of the House of Representatives, 4 members shall be appointed on the recommendation of the minority leader of the House of Representatives, and one member shall be appointed on the recommendation of the chairman and ranking minority party member of the Committee on House Administration, acting jointly. Of the 2 voting members of the board appointed by the Speaker under paragraph (3)(B), one member shall be appointed on the recommendation of the majority leader of the House of Representatives and one member shall be appointed on the recommendation of the minority leader of the House of Representatives.

(5) A vacancy on the board shall be filled in the manner in which the original appointment is made. Any member appointed to fill a vacancy occurring before the expiration of a term shall be appointed only for the remainder of that term. A member may serve after the expiration of a term until a successor is appointed.

(6) The chairman of the board shall be elected by the members of the board.

(c) In carrying out subsection (a), the Clerk is authorized—

(1) to collect fees for child care services;

(2) to accept such gifts of money and property as may be approved by the House Office Building Commission; and

(3) to employ a director and other employees, including temporary employees, for the center.

(d) There is established in the contingent fund of the House of Representatives an account which, subject to appropriation, shall be available for activities carried out under this section. The Clerk shall deposit in the account any amounts collected or received under subsection (c).

(e) As used in this section—

(1) the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(2) the term "agency of the legislative branch" means the Office of the Architect of the Capitol, the Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, and the Copyright Royalty Tribunal; and

(3) the term "support personnel" means, with respect to the House of Representatives, any employee of a credit union or of the Architect of the Capitol, whose principal duties are to support the functions of the House of Representatives.

(f) House Resolution 21, Ninety-Ninth Congress, agreed to December 11, 1985, enacted into permanent law by section 103 of the Legislative Branch Appropriations Act, 1987 (as incorporated by reference in section 101(j) of Public Law 99-500 and Public Law 99-591) (40 U.S.C. 184b-184f) is repealed.

The CHAIRMAN. Are there any points of order against that section of the bill?

POINT OF ORDER

Mr. HEFLEY. Mr. Chairman, I raise a point of order against section 310 on the ground that it violates clause 2(b) of rule XXI of the House of Representatives by changing existing law.

Section 310 of this bill would rewrite the law regarding the House Child Care Center. This provision was not considered in the Committee on House Administration which is the committee of jurisdiction. It is not the product of any introduced bill, and hearings have never been held in any committee.

The CHAIRMAN. Does the gentleman from California [Mr. FAZIO] wish to be heard on the point of order?

Mr. FAZIO. Mr. Chairman, I thought that the Chair had passed the point in the bill where this was appropriate to be offered. That is my understanding, that the gentleman has passed that point, and the gentleman no longer has the right to offer that.

The CHAIRMAN. The bill is open for amendment at any point. The Chair then queries whether there be any points of order. The Chair has requested whether there be any points of order against that section of the bill that was open, and that is when the gentleman arose and made his point of order.

Does the gentleman from California wish to speak on that point?

Mr. FAZIO. Not at the moment.

The CHAIRMAN (Mr. DONNELLY). Are there any other Members requesting to speak on the gentleman's point of order?

If not, the Chair is then prepared to rule. For the reasons stated by the gentleman from Colorado, the point of order is sustained. Section 310 is stricken from the bill. Are there any amendments to that section of the bill?

AMENDMENTS OFFERED BY MR. UPTON

Mr. UPTON. Mr. Chairman, I offer amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. UPTON: Page 8, line 8, strike "\$4,020,000" and insert "\$3,858,750".

Page 8, line 11, strike "\$1,391,000" and insert "\$1,332,450".

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. UPTON. Mr. Chairman, I have very carefully reviewed this appropriations bill and found that many accounts received significant increases. But most of them did not receive everything they asked for. In a time of incomprehensible, unbelievable \$300 billion deficits, we all limit our appetites—including Congress and its support agencies.

For this reason, I rise to reduce the increase in funding for the joint Committee on Printing and the Joint Economic Committee. Both received the entire increase they requested—somewhere between 9 and 10 percent over fiscal year 1991. I propose to limit the increase to 5 percent over fiscal year 1991.

Mr. Chairman, I am not acting out of some desire to single out these committees for unfair treatment. Other areas within Congress are learning to live with less. So must these. A 5-percent increase should be enough for them to continue their valuable activities. Even a 5-percent increase is greater than increases received by other accounts in this bill. Indeed, some accounts received significant cuts.

Mr. Chairman, we all recognize that sometimes requesting more than you really need is standard practice in government budgeting. In other cases, real increases above inflation are necessary. And perhaps these two committees could put the new money to a good end. But how can we agree that other important Federal programs must suffer to help reduce the deficit and not face the same music ourselves? This is not a time for significant real growth in noncritical Federal programs.

I fully realize we are talking about relatively small amounts of money and that this amendment will do little to

balance the budget. I am more concerned about the principle. I urge my colleagues to join me in voting for this amendment.

Mr. FAZIO. Mr. Chairman, I rise in opposition to the amendments.

I want to try to explain to the Members. First of all, the Joint Committee on Printing, for example, is at the baseline that the Congressional Budget Office calculated.

□ 1500

We did not augment or reduce their request because it was a small entity. The increase is \$122,000.

Let me explain how this can quickly pile up in a small personnel-intensive agency. Of that increase, \$42,000 is necessary for next year's cost as a result of the January 1, 1991, 4.1-percent COLA. We have to include \$35,000 which is the anticipated COLA for the same number of people, by the way, no change in the number of people working there, that will occur on January 1, 1992. Then on top of that, \$24,000 is for the increase in the benefits attributable to the increase in salaries because they are proportionate.

In addition, there is \$21,000 remaining, the actual amount of the discretionary increases to be used for staff changes and salary adjustments amounting to a mere 1.6 percent of last year's bill.

As I indicated earlier, and the chart in the lobby, I think, underscores this, these are personnel-intensive agencies. They are not doing any cap outlay. They are not doing any program that expends additional funds that can be redirected to pay their very limited staff resources. They are simply performing the same functions, but as the staff receives cost-of-living adjustments or benefit costs increase, the cost goes up.

I would like to compare that 9.6-percent increase with a number of increases that have been proposed by a variety of agencies in the executive branch. In the Executive Office of the President, for example, the Special Assistance to the President, a requested budget increase of 13.3 percent; the Office of Management and Budget, 10.5 percent; the Points of Light Foundation, a 50-percent increase; in the Department of Commerce, the General Administrative Office, 12.2-percent increase. In the Department of Interior, the Office of the Secretary, 20.3-percent increase; in the Department of Justice, General Administration, 30.4-percent increase; in the administration of foreign affairs at the Department of State, 9.6-percent increase; in the Department of Transportation, the Office of the Secretary, a 39.9-percent increase.

There are a variety of others in the executive branch, and I could go on. They are almost all well above the 9.6-percent increase that was asked for by

the Joint Committee on Printing. This is much ado about nothing. This is nothing that we should be concerned about because this is not an increase in the scope of this small joint committee. It is simply to compensate its people fairly.

Mr. OBEY. Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman, I would simply like to add to the comments made by the chairman of the subcommittee and make a couple of comments specifically about the Joint Economic Committee, because if there is one committee in the Congress that has been restrained in its budget requests, it has been that committee. I know of no other committee in the Congress about which it can be said that for 10 years in a row they have requested absolutely no staff increase. Ten years in a row. They finally did get a small increase of three people after I, when I became chairman in 1985, asked for an increase of five people, so that we could deal with some of the new problems that we are facing.

The committee, for instance, did not even have enough budget to have an agricultural economist on its committee, and I do not think that rural America ought to be ignored.

This year, for instance, there is a \$340,000 increase in the committee budget, and I would point out there is no increase for staff. There is no increase for contract budget. There is no increase for hearing activity. There is no increase for staff travel. There is no increase for any ancillary miscellaneous expenses. The increase of \$340,000 largely goes to provide for mandatory agency contributions and COLA adjustments, something which is perfectly appropriate, certainly essential, and something which the committee cannot avoid.

This is the committee of Congress, the only committee of Congress which deals with long-range economic problems facing the country. We have just seen a very large increase recommended by the President for the statistical basis for the Bureau of Labor Statistics. I fully support that. I think the executive branch needs that. However, I would suggest that the committee of the Congress charged with the responsibility for reviewing the accuracy of all those figures needs a stand pat, stay-in-place budget, which this budget is. There is absolutely no increase, in real terms. There is no real increase in this committee budget at all. These are very largely mandatory items beyond the control of the committee.

I would suggest that this committee, above all others, has been restrained in its requests, and certainly does not deserve the actions suggested by this amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Michigan [Mr. UPTON].

The question was taken; and on a division—demanded by Mr. UPTON—there were—ayes 8, noes 18.

So the amendments were rejected.

AMENDMENT OFFERED BY MR. ROBERTS

Mr. ROBERTS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROBERTS. Page 15, line 25, strike out "\$21,990,000" and insert in lieu thereof "\$20,990,000".

Mr. ROBERTS. Mr. Chairman, I am offering this amendment to strike \$1 million from the Architect of the Capitol building fund. The amendment, as has been indicated, reduces this fund from \$21,990,000 to \$20,990,000, and I am offering this amendment to respond to talk, to some rumors that have been apparently flurrying all throughout Capitol Hill as described in the report that does accompany H.R. 2506. These funds will be allegedly used, and I am quoting now, for a structural and space renovation project in the Cannon Building.

However, this vague description fails to properly or adequately detail the uses of these funds. We have heard talk, as a matter of fact I have been told by the leadership or certainly someone who is very close to the leadership as of this afternoon, that this appropriation would be used for the construction, will be used someday for the construction of a gym, a new gym, a new House gym in the Cannon House Office Building. In fact, the Architect of the Capitol and his attorney are continuing a study on the feasibility of constructing such a facility.

This is somewhat of a surprise to me in that last year's appropriation bill we had \$50,000 for a study to determine whether such a gym would be appropriate or could work, liability questions, et cetera, et cetera. It was struck in conference. Here we find the planning is still proceeding.

I am offering this amendment, since this provision was not struck by the full Committee on Appropriations or detailed by the subcommittee. The report in subcommittee hearings do not mention the ongoing study by the Architect, the need for the facility, or other alternatives that the House should consider.

Should Congress appropriate \$1 million in funding during these times of fiscal cutbacks? I do not think so. We have a great many current projects in existing House office buildings to complete. We cannot even get the escalator to work going from the Longworth down to the Longworth Garage. That piece of equipment, whatever it is, is 26 years old. We are trying to fix it. We took money out for elevator operations. We have people on top of people in our office suites. This space over there, and I went over and looked at it this morning, is the size of at least seven three-room suites. I am not really trying to criticize the merits of such

a proposal. However, the procedures chosen to appropriate this funding is wrong, and the priorities are wrong, and it should be exposed.

I am asking my colleagues to support my amendment to eliminate the \$1 million in the Architect's fund without accountability and discussion of the merits and use of these funds. They should not be approved by this body.

Mr. Chairman, I yield back the balance of my time.

□ 1510

Mr. FAZIO. Mr. Chairman, I rise in opposition to the amendment of the gentleman, referring to the leak in the Cannon Building.

This is in fact documented in the legislative branch hearings for fiscal year 1992. I will simply read what the Architect has outlined as to the importance of making this repair:

Funds in the amount of \$1 million are requested to complete work in the schedule to begin in fiscal year 1991 to repair leaks in the Cannon tunnel and to renovate the space that has been damaged by water leaks. For some time water has been leaking into the space at the end of the Capitol tunnel leading to the Cannon Building. There has been over time some kind of corrosion in the reinforcing steel and concrete structural members. The program is scheduled to be undertaken to repair these structural members as well as resolving the cause of the water leakage.

I will not go on. We did not specifically go into this project when the full committee considered the bill. I grant, and I am very glad we did not.

These funds are not for a staff gym. Some people have thought that might be a purpose that this would somehow further. The space has structural and water damage that needs repair. That is what the funds are for.

I regret we could not do all the things we know need to be done. I said in my introductory remarks that we cannot find all the funds that the Architect would like to have for maintenance and other projects. He asked us for I believe a \$49 million increase in his budget this year. We could not accommodate it.

We did, however, I say to the gentleman from Kansas [Mr. ROBERTS], provide funds for the escalator that is always broken down. The gentleman can see the funds are in here for that.

I do not think the gentleman wants to let this section of the Cannon Building become more structurally unsound. We have an obligation to protect and maintain our physical plant and our physical plant manager, the Architect of the Capitol, has said this is an important priority.

If at some point that space will be put to some use, the House Office Building Commission will decide. That Commission consists of the Speaker, the majority and the minority leaders.

In the meantime, we need to provide the funds to repair the damage and prevent further damage.

I will just simply indicate to the Member myself personally that I think it would be inappropriate for us to back into something that really does need a lot of thought and discussion before we proceed on it; so the gentleman has my assurance that if we, like every other federal agency by the way, decide to have some sort of gym facility for our employees, we are going to do it with everyone being aware of it and on board. It would be inappropriate for us to do otherwise.

Mr. ROBERTS. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, let me understand what the gentleman is saying, and I am fully aware of the structural problems.

I just went over to B-106 of the Cannon Building as of this morning. We reprogrammed funds to the tune of \$1.1 million. There is the reprogramming again, to make the necessary structural repairs and stop the water leaks.

I have a letter that was sent to the gentleman by the Architect of the Capitol going into the \$200,000 for the Longworth project, \$800,000 for the Cannon project, and the reprogramming of these funds to fix the structural damage.

Now, I was just told by Mr. Raines of the Architect's office that that project can be completed with the reprogrammed funds, and we are asking for another million dollars.

What I want assurance about is the extra \$1 million. I do not want any penny of it to be used for refurbishing, modernizing or equipping this space without the subcommittee and the full committee going into the intended purpose specifically, not the Building Commission. Once it is to the Building Commission, it has passed the floor of this House. It has passed the subcommittee and it has passed the full committee; so that extra \$1 million that we are going to use, I want to make sure that it is used for a proper purpose, as opposed to an "all-of-a-sudden gym that is discovered."

Mr. FAZIO. Well, Mr. Chairman, I want to assure the gentleman that will be the case.

Normally we do not take any action unless the Building Commission has acted first. That is our authorizing entity. So it has not passed us or gone to the House floor when it goes to the Commission. It is before us and we have to take action only when they have gone forward with an approval.

Mr. ROBERTS. Mr. Chairman, will the gentleman continue to yield on one point?

Mr. FAZIO. Yes, I am happy to yield to the gentleman from Kansas.

Mr. ROBERTS. Mr. Chairman, I have the work sheet that the Architect has prepared in regard to the structural damage. I am not an expert. I do not know if it is going to take another \$1 million to fix what is structurally wrong over there, but I also know in ways that I can describe to the gentleman privately that this space is being reserved for a gymnasium. Before we go down that road, it seems to me if we are going to be spending funds, that we ought to have assurance from the gentleman, which he has given me now, that no funds will be expended for this purpose unless first taken up by the subcommittee, the full committee and the Building Commission without a full debate. Is that correct?

Mr. FAZIO. That is correct.

Mr. ROBERTS. Mr. Chairman, I withdraw my amendment.

The CHAIRMAN. Without objection, the amendment offered by the gentleman from Kansas [Mr. ROBERTS] is withdrawn.

There was no objection.

AMENDMENT OFFERED BY MR. HEFLEY

Mr. HEFLEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HEFLEY: On page 40, insert after line 21 the following new title:

Title IV: Notwithstanding any other provision of this Act, each amount appropriated or otherwise made available by this act that is not required to be appropriated or otherwise made available by a provision of law is reduced by 1.4 percent.

Mr. HEFLEY. Mr. Chairman, this is a simple amendment. It reduces the budget authority in this bill by 1.4 percent. This translates into outlays savings for the fiscal year 1992 of \$21.4 million, or a total increase over last year's spending level of 2.4 percent.

Its goal is to hold spending to a 2.4 percent increase over last year's spending level.

Why would we want to hold it at 2.4 percent? Well, I think it was stated on the floor here just the other day by the gentleman from Pennsylvania [Mr. WALKER] that Congress can achieve a balanced budget without cutting Federal spending by holding our spending increases at or below 2.4 percent over the next 4 years. This amendment will do that for the House of Representatives.

Is the amendment necessary? This bill is already \$288 million under the President's own request. But we know that the "President's Request" is in name only in this particular item on the budget. The President never actually requested any such amount. Every year the House Clerk sends the OMB an inflated estimate of House expenses for the upcoming year, and every year the OMB, as required by law, returns those inflated estimates to the House as the so-called "President's Request."

Congress passed a law which prohibits the President from amending the request made by the House Clerk.

The legislation is under its budget limits. It only offers a small 3.7 percent spending increase, so why do we need this amendment?

Nearly every bill we passed last year fell within its budget allocations, and we have a deficit of over \$350 billion. With the economy still in recession, this deficit could rise to new record levels. In the face of these record shortfalls, it is not enough to oppose new spending caps by hiding behind this year's budget allocations. We need to do more.

Last year the House of Representatives defeated a balanced budget amendment by only seven votes. During that debate, opponents to the amendment argued that Members of Congress did not need a mandate to balance the budget, they needed courage to make the tough choices. This may be one of the tough choices.

Now, I know that when we have legislation for the veterans done here, there is a great constituency out there pressuring us for more money. When we have health legislation, there is a constituency out there that says we have got to have more. When we have legislation for seniors, there is a constituency demanding more. Even for foreign aid, there is a constituency out there asking for it; but Mr. Chairman, there is no constituency demanding that Congress spend more on itself. There is no pressure on us to spend more for the operation of Congress.

We can very easily make this very modest 1.4-percent cut here and we will be on the road to a balanced budget, at least so far as this aspect of our budget is concerned.

Mr. LEWIS of California. Mr. Chairman, I rise in reluctant opposition to the across-the-board cut amendment proposed here by my colleague.

Mr. Chairman, I rise to resist this amendment for the following specific reasons:

During the deliberations of the subcommittee this year, the legislative branch made every effort to be as tight as they could in every category of this bill. The 1991 enacted legislative branch appropriations bill was \$1.740 billion for the legislative branch of the House. The 1992 request was for \$2.093 billion. The 1992 recommended amount was only \$1.805 billion. Compared to the 1991 fiscal year, the increase reflects for the entire body and its supportive agencies, \$65 million of increase.

□ 1520

The request itself would have been as much as \$288 million. The percentage of increase reflects approximately 3.7 percent. This cut would cut the House back to far below any inflation rate that I believe it could have a serious

impact on the operation of the personnel of the House.

For that reason, while I am empathetic to the gentleman's view, I rise to resist the amendment.

Mr. FAZIO. Mr. Chairman, I move to strike the requisite number of words, and I rise to echo the words of my friend, the gentleman from California [Mr. LEWIS], in opposition.

The amendment is really similar to the one that was offered the other day by the gentleman from California [Mr. DANNEMEYER], I believe. A similar amendment was offered on the energy and water bill, the same approach, to restrict outlays by the same percentage, I believe.

At that time 92 Members voted in favor and 320 voted against. That bill was a 4-percent increase. This bill is a 3.7-percent increase above the fiscal year 1991 bill.

I want to point out we are well within our 602(b) target. We are within 8/10ths of 1 percent of our baseline. We are below the 4 percent that OMB estimates the rate of inflation will be. We are \$30 million below where we would need to be just to pay the legislative branch staff COLA's and benefits. In other words, we have added that money and then cut other programs in order not to increase our spending by what it takes just to pay our staff.

We are well below the 10.5-percent increase requested by OMB for its own expenses. We are below the 13.1 percent for special assistance to the President, or the 50 percent for the Points of Light Foundation or the 9 percent that the Office of White House Policy Development has requested, or the anywhere from 8.6 percent to 39.9 percent requested in major executive department salaries and expense accounts.

In other words, the legislative branch bill, as usual, is much tighter than that of the same kinds of personnel-intensive agencies in the executive branch.

This amendment is not aimed at a profligate budget increase. I think it is just picking on what we all know to be a relatively easy whipping boy.

If it takes courage to vote against spending in the legislative branch, I need a new definition of courage in my dictionary. It is the easiest bill to cut, and I think you will see a very different vote on this reduction than you saw on the energy and water bill, for one reason alone, and that is: some Members simply are afraid to stand up and vote for this institution. I am sure a majority will, however, and I look forward to seeing that on the voting board shortly.

Mr. HEFLEY. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I yield to the gentleman from Colorado.

Mr. HEFLEY. I thank the gentleman for yielding.

Mr. Chairman, you know, in the energy and water bill, there were constituencies out there demanding more spending. There is not that here. But if there is ever a place that we could set the example, it is in this bill.

No, you have not—

Mr. FAZIO. If the gentleman will let me reclaim my time, did the gentleman hear me tick off these percentage increases that the executive branch agencies that are very analogous to what we do here have asked for? How far below that we are?

That is setting an example, that is exactly what I meant by that.

Mr. HEFLEY. If the gentleman will yield again.

Mr. FAZIO. I yield again to the gentleman.

Mr. HEFLEY. I thank the gentleman. In the last 10 years we have increased the legislative budget by 83 percent. I am not sure, in a time of great deficits, that is something to be tremendously proud about.

Mr. FAZIO. I do not know where the gentleman gets that information. All I can tell you is that the increases in our budget on an annual basis have been far below that in the executive branch. We are somewhere in the neighborhood of a 5.5 percent average over the last 10 years. Here it is: Since 1978 the legislative appropriation has grown at an average annual rate of 5.6 percent. The executive budget has grown at an annual rate of 8.3 percent. The CPI has grown at an annual rate of 5.6. We are right on it.

That means that the legislative branch has just about stayed even in real terms while the rest of the Federal budget has grown at an average annual rate of 48 percent higher than the CPI or the legislative budget. That is the example that the gentleman asked us to set, and we set it every year.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado [Mr. HEFLEY].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. HEFLEY. Mr. Chairman, I demand a recorded vote and, pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 134]

- Abercrombie
- Ackerman
- Alexander
- Allard
- Anderson
- Andrews (ME)
- Andrews (NJ)
- Andrews (TX)
- Anunzio
- Anthony
- Applegate
- Armey
- Aspin
- Atkins
- AuCoin
- Bacchus
- Baker
- Balenger
- Barnard
- Barrett
- Barton
- Bateman
- Beilenson
- Bennett
- Bentley
- Bereuter
- Berman
- Bevill
- Bilbray
- Bilirakis
- Bliley
- Boehlert
- Boehner
- Boniior
- Borski
- Boucher
- Boxer
- Brewster
- Brooks
- Broomfield
- Browder
- Brown
- Bruce
- Bryant
- Bunning
- Burton
- Bustamante
- Byron
- Callahan
- Camp
- Campbell (CA)
- Campbell (CO)
- Cardin
- Carper
- Carr
- Chandler
- Chapman
- Clay
- Clement
- Clinger
- Coble
- Coleman (MO)
- Coleman (TX)
- Collins (MI)
- Combest
- Condit
- Cooper
- Costello
- Coughlin
- Cox (CA)
- Cox (IL)
- Coyne
- Cramer
- Crane
- Cunningham
- Dannemeyer
- Darden
- Davis
- de la Garza
- DeFazio
- DeLauro
- DeLay
- Dellums
- Derrick
- Dickinson
- Dicks
- Dingell
- Dixon
- Donnelly
- Dooley
- Doolittle
- Dorgan (ND)
- Dornan (CA)
- Downey
- Dreier
- Duncan
- Durbin
- Dwyer
- Early
- Eckart
- Edwards (CA)
- Edwards (OK)
- Edwards (TX)
- Emerson
- Engel
- English
- Erdreich
- Espy
- Evans
- Fascell
- Fawell
- Fazio
- Feighan
- Fields
- Fish
- Flake
- Foglietta
- Ford (MI)
- Ford (TN)
- Franks (CT)
- Gallely
- Gallo
- Gaydos
- Gejdenson
- Gekas
- Gephardt
- Geren
- Gilchrist
- Gillmor
- Gilman
- Gingrich
- Glickman
- Gonzalez
- Goodling
- Gordon
- Goss
- Gradison
- Grandy
- Green
- Guarini
- Gunderson
- Hall (OH)
- Hall (TX)
- Hamilton
- Hammerschmidt
- Hancock
- Hansen
- Harris
- Hastert
- Hatcher
- Hayes (L)
- Hayes (LA)
- Hefley
- Hefner
- Henry
- Herger
- Hertel
- Hoagland
- Hobson
- Hochbrueckner
- Holloway
- Hopkins
- Horn
- Horton
- Houghton
- Hoyer
- Hubbard
- Huckaby
- Hughes
- Hunter
- Hutto
- Hyde
- Inhofe
- Ireland
- Jacobs
- James
- Jefferson
- Jenkins
- Johnson (CT)
- Johnson (SD)
- Johnson (TX)
- Johnston
- Jones (GA)
- Jones (NC)
- Jontz
- Kanjorski
- Kaptur
- Kasich
- Kennedy
- Kennelly
- Kildee
- Klecza
- Klug
- Kolbe
- Kolter
- Kopetski
- Kostmayer
- Kyl
- LaFalce
- Lagomarsino
- Lantos
- LaRocco
- Laughlin
- Leach
- Lehman (CA)
- Lent
- Levin (MI)
- Levine (CA)
- Lewis (CA)
- Lewis (FL)
- Lewis (GA)
- Lightfoot
- Lipinski
- Livingston
- Lloyd
- Long
- Lowery (CA)
- Lowey (NY)
- Luken
- Machtley
- Manton
- Markey
- Marlenee
- Martin
- Martinez
- Matsui
- Mavroules
- Mazzoli
- McCandless
- McCluskey
- McCollum
- McCrery
- McCurdy
- McDade
- McDermott
- McEwen
- McGrath
- McHugh
- McMillan (NC)
- McMillen (MD)
- McNulty
- Meyers
- Mfume
- Michel
- Miller (CA)
- Miller (OH)
- Miller (WA)
- Mineta
- Mink
- Moakley
- Molinar
- Mollohan
- Montgomery
- Moody
- Moorhead
- Moran
- Morella
- Morrison
- Mrazek
- Murphy
- Murtha
- Myers
- Nagle
- Natcher
- Neal (MA)
- Neal (NC)
- Nichols
- Nowak
- Nussle
- Oakar
- Oberstar
- Obey
- Olin
- Ortiz
- Orton
- Owens (NY)
- Owens (UT)
- Oxley
- Packard
- Pallone
- Panetta
- Parker
- Patterson
- Paxon
- Payne (NJ)
- Payne (VA)
- Pease
- Pelosi
- Penny
- Perkins
- Peterson (FL)
- Peterson (MN)
- Petri
- Pickett
- Pickle
- Porter
- Poshard
- Price
- Pursell
- Quillen
- Rahall
- Ramstad
- Rangel
- Ravenel
- Ray
- Reed
- Regula
- Rhodes
- Richardson
- Ridge
- Riggs
- Rinaldo
- Ritter
- Roberts
- Roe
- Roemer
- Rohrabacher
- Ros-Lehtinen
- Rose
- Rostenkowski
- Roth
- Roukema
- Rowland
- Roybal
- Russo
- Sabo
- Sanders
- Sangmeister
- Santorum
- Sarpalius
- Savage
- Sawyer
- Saxton
- Schaefer
- Scheuer
- Schiff
- Schroeder
- Schulze
- Schumer
- Sensenbrenner
- Serrano
- Sharp
- Shaw
- Shays
- Shuster
- Sikorski
- Skaggs
- Skeen
- Skelton
- Slattery
- Slaughter (NY)
- Slaughter (VA)
- Smith (FL)
- Smith (IA)
- Smith (NJ)
- Smith (OR)
- Smith (TX)
- Snowe
- Solarz
- Solomon
- Spence
- Spratt
- Staggers
- Stallings
- Stark
- Stearns
- Stenholm
- Stokes
- Studds
- Stump
- Sundquist
- Swett
- Swift
- Synar
- Tallon
- Tanner
- Tauzin
- Taylor (MS)
- Taylor (NC)
- Thomas (CA)
- Thomas (WY)
- Thornton
- Torres
- Torricelli
- Towns
- Trafficant
- Traxler
- Unsoeld
- Upton
- Valentine
- Vander Jagt
- Vento
- Visclosky
- Volkmer
- Vucanovich
- Walker
- Walsh
- Washington
- Waters
- Waxman
- Weber
- Weiss
- Weldon
- Wheat
- Whitten
- Williams
- Wilson
- Wise
- Wolf
- Wolpe
- Wyden
- Wylie
- Yates
- Yatron
- Young (AK)
- Young (FL)
- Zeliff
- Zimmer

□ 1545

The CHAIRMAN. Four hundred nineteen Members have answered to their names, a quorum is present, and the Committee will resume its business.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Colorado [Mr. HEFLEY] for a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair will remind the Members that this is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 171, noes 255, not voting 5, as follows:

[Roll No. 135]

AYES—171

- Allard
- Archer
- Armey
- Baker
- Balenger
- Barrett
- Barton
- Bateman
- Bennett
- Bentley
- Bereuter
- Bilirakis
- Bliley
- Boehlert
- Duncan
- Broomfield
- Bunning
- Burton
- Byron
- Camp
- Campbell (CA)
- Chandler
- Clinger
- Coble
- Coleman (MO)
- Combest
- Condit
- Cooper
- Cox (CA)
- Crane
- Cunningham
- Dannemeyer
- DeLay
- Dickinson
- Doolittle
- Dornan (CA)
- Dreier
- Duncan
- Eckart
- Edwards (OK)
- Emerson
- Erdreich
- Fawell
- Fields
- Franks (CT)
- Gallely
- Gekas
- Geren
- Gilchrist
- Gilman
- Gingrich
- Glickman
- Goodling
- Goss
- Gradison
- Grandy
- Hall (TX)
- Hamilton
- Hammerschmidt
- Hancock
- Hansen
- Hastert
- Hefley
- Henry
- Herger
- Hobson
- Holloway
- Hopkins
- Houghton

Hubbard
Hunter
Hutto
Inhofe
Ireland
Jacobs
James
Johnson (CT)
Johnson (TX)
Kasich
Klug
Kolbe
Kyl
Lagomarsino
Laughlin
Leach
Lewis (FL)
Lloyd
Long
Luken
Machtley
Marienec
Martin
McCandless
McCollum
McCreery
McDade
McEwen
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinarl

Montgomery
Moorhead
Myers
Neal (NC)
Nichols
Nussle
Oxley
Packard
Pallone
Parker
Patterson
Paxon
Petri
Pickett
Porter
Poshard
Pursell
Ramstad
Ravenel
Regula
Rhodes
Ridge
Riggs
Ritter
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Santorum
Sarpalius
Schaefer
Schiff
Schroeder

Schulze
Sensenbrenner
Sharp
Shaw
Shays
Shuster
Slattery
Slaughter (VA)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stenholm
Stump
Sundquist
Swett
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (WY)
Upton
Vander Jagt
Volkmer
Walker
Walsh
Weber
Weldon
Wolf
Wylie
Zeliff
Zimmer

NOES—255

Abercrombie
Ackerman
Alexander
Anderson
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Bacchus
Barnard
Beilenson
Berman
Bevill
Bilbray
Bonior
Borski
Boucher
Boxer
Brewster
Brooks
Browder
Brown
Bruce
Bryant
Bustamante
Campbell (CO)
Cardin
Carper
Carr
Chapman
Clay
Clement
Coleman (TX)
Collins (MI)
Conyers
Costello
Coughlin
Cox (IL)
Coyne
Cramer
Darden
Davis
de la Garza
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dooley
Dorgan (ND)
Downey

Durbin
Dwyer
Dymally
Early
Edwards (CA)
Edwards (TX)
Engel
English
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Gallo
Gaydos
Gejdenson
Gephardt
Gibbons
Gillmor
Gonzalez
Gordon
Gray
Green
Guarini
Gunderson
Hall (OH)
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hoagland
Hochbrueckner
Horn
Horton
Hoyer
Huckaby
Hughes
Hyde
Jefferson
Jenkins
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee

Klecza
Kolter
Kopetski
Kostmayer
LaFalce
Lancaster
Lantos
LaRocco
Lehman (CA)
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lowery (CA)
Lowey (NY)
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDermott
McGrath
McHugh
McMillen (MD)
McNulty
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Moody
Moran
Morella
Morrison
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal (MA)
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Orton
Owens (NY)
Owens (UT)
Panetta
Payne (NJ)

Payne (VA)
Pease
Pelosi
Penny
Perkins
Peterson (FL)
Peterson (MN)
Pickle
Price
Quillen
Rahall
Rangel
Ray
Reed
Richardson
Rinaldo
Roe
Roemer
Rose
Rostenkowski
Roukema
Rowland
Roybal
Russo
Sabo
Sanders

Sangmeister
Savage
Sawyer
Saxton
Scheuer
Schumer
Serrano
Sikorski
Skaggs
Skeen
Skelton
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Spratt
Staggers
Stallings
Stark
Stokes
Studds
Swift
Synar
Tallon
Tanner

Thornton
Torres
Torricelli
Towns
Traficant
Traxler
Unsoeld
Valentine
Vento
Visclosky
Vucanovich
Washington
Waters
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron
Young (AK)
Young (FL)

NOT VOTING—5

Callahan
Collins (IL)

Lehman (FL)
Sisisky

Thomas (GA)

□ 1553

Mrs. ROUKEMA changed her vote from "aye" to "no."

Mr. WALKER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Cox of California: On Page 31, Line 5 Strike "\$440,879,000" and insert "\$333,333,000"

Mr. COX of California. Mr. Chairman, I rise as the Republican chair of the congressional Grace caucus, which, as most Members know, because so many are members, is dedicated to limiting and weeding out fraud and waste and abuse throughout the Federal Government, and, yes, in the Congress.

The purpose of my amendment is to limit the General Accounting Office to one-third of \$1 billion annually. Many Members may not have known that the General Accounting Office has a budget so large that it is even as big as one-third of a billion dollars each year. But this part of our congressional staff is this year asking for \$440 million.

Mr. Chairman, the General Accounting Office was created in 1921 as the investigative arm of Congress, to audit Government spending. It has evolved into a sprawling organization with approximately 5,000 employees, which produces thousands of reports. In fact, over 3,000 reports since 1986 have been produced.

It has been growing like Topsy for years, and no one has ever said anything about it. As we will learn later, the General Accounting Office has so many employees, it actually loans them to the Congress.

Today, instead of limiting congressional spending, the GAO itself is a

major source of deficit spending. Its budget, if H.R. 2506 passes without amendment, will be \$440 million, nearly one-half of a billion dollars, or \$4 for every taxpayer in America, just for that one part of our congressional staff.

What is more, instead of acting as a watchdog for wasteful congressional spending, GAO has actually assisted in the process, serving as a virtual arm of the Congress.

In a recent judicial decision, the Supreme Court found that the Comptroller General and the GAO are controlled by the Congress. That is why, of course, the agency rarely investigates Congress, even though many people say there is at least as much mismanagement and misconduct on Capitol Hill as in any Federal agency.

Mr. Chairman, I will quote the New York Times: "Asked if he ever considered doing a comprehensive audit of the Congress, the Comptroller General said in an interview, 'I would love to do it, but in my 15th year.'" In other words, after he is gone.

Mr. Chairman, it now costs over \$2 billion a year to run the Congress. There are only 535 of us. In fiscal year 1990 it cost \$2,263,000,000 to operate the Congress.

We are often told that we cannot cut congressional spending because it comprises entitlements. Our legislative staff are not entitlements. They are not uncontrollable programs. We ought to make sure they do not become such.

Mr. Chairman, the GAO does some good work for Congress, as an adjunct staff for the Congress. But, with good management, we can run it for under one-third of a billion dollars.

□ 1600

Our annual deficit is now slated to exceed \$400 billion. If we care about it, let us show that we are willing to vote yes for fiscal restraint in the Congress.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from California.

Mr. FAZIO. Mr. Chairman, I just want to clear up one point. The actual cost of operating the Congress under title I of the bill is \$1.1, not this \$2.1 billion. This is for the House and our direct support agencies like the Architect of the Capitol, the Congressional Research Service, like the Congressional Budget Office, and for congressional printing. The House itself is about \$700 million. The Senate cost will be added when the bill gets to over there, another \$500 million.

Mr. COX of California. Reclaiming my time, that is where the staff explosion in Congress has occurred, with the Office of Technology Assessment, with the Congressional Budget Office, with the General Accounting Office. What Congress has done over the last several decades is create a shadow executive

branch. It is redundant. It is wasteful, and it is time for us to cut spending. It always hurts to cut spending. We have got to make cuts in these discretionary programs.

Mr. FAZIO. The Congress has had almost a level work force for the last 12 years. The explosion, if one could call it that, occurred in the early 1970's. It has not taken place at all during the 1980's.

Mr. COX of California. Does the gentleman deny that there are approximately 5,000 staff positions at the General Accounting Office?

Mr. FAZIO. No, I think that is wonderful exactly as it should be.

Mr. COX of California. That is exactly right.

Mr. Chairman, I yield back the balance of my time.

Mr. SYNAR. Mr. Chairman, I rise in opposition to the amendment.

I could not think in my history of 13 years that I have been in the U.S. Congress of a more misdirected amendment than this amendment. Of all the agencies that we have in the Federal Government that has served this Congress, this body and this Government well, it is the General Accounting Office. It is the single agency which serves the investigating arm of this institution in order that we can accomplish the responsibility directed to us and us alone by the Constitution to make sure that Government works correctly.

The 5,000-plus men and women who serve us in the General Accounting Office have literally saved us billions of dollars through fraud, abuse, and waste. It is probably one of the most important functions which we have to ensure the American public that their taxpayer dollars are being used efficiently and effectively.

This amendment is in many ways very mean-spirited because what they are saying through this amendment is they do not like the work that the General Accounting Office has been doing in routing out the fraud and abuse and waste of the management of this administration over the last 13 years.

What is a crime is the fact that many times these General Accounting Office reports and investigations have been done in a bipartisan fashion. They have been done through subcommittee work and committee work which serves this institution and this country well. It would be a crime to cut the General Accounting Office because it would indeed then take away the best tools we have to ensure that we are using taxpayers' money efficiently.

I rise in strong opposition of this, and I direct my colleagues to the point that the billions of dollars which the General Accounting Office will save us this year will be more than made up by the cost of the agency.

Mr. Chairman, I yield back the balance of my time.

Mr. LEWIS of California. Mr. Chairman, I move to strike the last word.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. I yield to the gentleman from Arizona.

Mr. KYL. Mr. Chairman, I rise in support of the Cox amendment. Surely the General Accounting Office can get by on one third of a billion dollars. How do we know this? Well, for one thing, they have got so much money that they have got extra employees. This year they have brought apparently 172 extra employees. How do we know that? Because something called detailees, loaners from the GAO to the congressional committees, people, staff people have been loaned to the committees of the Congress. That is a 23-percent increase over last year. And they had a 21-percent increase over the year before.

In other words, to the point the gentleman from California was making earlier, the increase in the detailees has been substantially over the last 3 or 4 years. It has not been flat.

And since we just got through debating the civil rights bill, where we were talking about trying to have a fairness for minorities, and of course those of us in the minority over here are a little sensitive to that, when it comes to staff around here, let us look to some of the committees to see where these detailees have gone.

In my committee, the Government Operations Committee, there were 27 detailees in 1990. And what does the staff ratio look like as a result of these detailees? Ninety-three percent for the majority, 7 percent for the minority. That is pretty fair, is it not, with a majority/minority ratio in the Congress of approximately 60 to 40.

Let us look at the Judiciary Committee. It is the same percentage, 93 percent to 7 percent. And let us look at the Energy and Commerce Committee, 91 percent to 9 percent. And a large part of this is due to the fact that these detailees from the General Accounting Office have gone over to the staffs of these committees.

In the case of Energy and Commerce, 33 detailees. As I said, 27 to the Government Operations Committee. And when we talk about bipartisan, let us ask about bipartisan. Of the requests of the GAO for opinions, a very conservative estimate is a 4-to-1 ratio. It is probably closer to a 5-to-1 ratio request of Democrat Members to Republican Member requests for work done by GAO, accepted by the GAO, resulting in reports.

The point, Mr. Chairman, is this. The General Accounting Office has enough money to be loaning all of these extra employees to the committees which already have a ratio which far exceeds that that is appropriate in terms of the majority and the minority. If there is a

place to save money clearly it can be saved in this area.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. Reclaiming my time, I yield to the gentleman from California.

Mr. FAZIO. I just want to point out at one point during the year, maybe 50 or 60 people would be detailed from GAO. The 172 is the number of people who at any time, maybe even a week, over a period of a year, would be detailed. But no more than 50 or 60 at any time. And no more than 10 people have ever been detailed for more than a year.

Mr. LEWIS of California. Reclaiming my time, we are going to have an amendment to discuss in great detail the detailees. Having said that, I would like to mention to my colleague, the gentleman from Oklahoma [Mr. SYNAR], that his comments were not only interesting but that they are part and parcel of the frustration that many Members are feeling on this side of the aisle regarding GAO.

That agency was begun initially to provide bipartisan, nonpartisan work for the Congress. The way staffing has developed over time, just the reverse has taken place. More and more there is frustration on our side of the aisle with work and reports and detailees and personnel who are operating with a partisan beat.

Indeed, it is undermining the confidence of this side of the aisle in their work. Unless we change that pattern, we are going to have more of this kind of dialog. I urge my colleagues who so highly regard the work of the GAO to recognize that this lack of confidence is a fact of life over here. It is not something that people are just kidding about.

Over time our Members have become more and more frustrated with the kind of product they are seeing coming out of what was once an independent agency designed to serve all of us equally. Today many of us believe it is something less than equal.

Mr. SYNAR. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. I yield to the gentleman from Oklahoma.

Mr. SYNAR. I think the gentleman from California needs to get one subject committee chairman from Government Operations to come up here and make that case, because in the Government Operations Committee, which is the committee of jurisdiction which really does the oversight for all the other agencies of Government, most of those are done in a bipartisan fashion. The gentleman from New York [Mr. HORTON] and the gentleman from Texas [Mr. BROOKS], and now the gentleman from Michigan [Mr. CONYERS] have worked in a bipartisan fashion. The gentleman from Pennsylvania [Mr. CLINGER] and I have.

The CHAIRMAN. The time of the gentleman from California [Mr. LEWIS] is expired.

(On request of Mr. SYNAR and by unanimous consent, Mr. LEWIS of California was allowed to proceed for 2 additional minutes.)

Mr. SYNAR. Mr. Chairman, if the gentleman will continue to yield, those colleagues from his side of the aisle who work with Government Operations, I would like them to come forward during this debate and say they have been dissatisfied because they have never said that to me as a subcommittee chairman, nor any of the other subcommittee chairmen on Government Operations, that they have felt that we have abused or used to our own purpose the Government accounting agency officials. I would be very interested to hear one of them come forward in this debate and tell us that they think they have been abused.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. I yield to the gentleman from Arizona.

Mr. KYL. As a member of the Government Operations Committee, since the time I came to the Congress, let me just respond to that by telling a story. I think all the members of the committee will remember this. When the committee had its official photograph taken earlier this year and all the Republicans lined up on one side and the Democrats on the other side and the Republicans' staff members on their side, and the Democrat staff members were called in. And all of us broke out in laughter because, of course, the line of committee staff people on the Democratic side, including the detailees from the General Accounting Office, were so numerous that they circled all the way around to the point that the photographer could not get them all in the photograph. And they had to bunch up two or three deep.

□ 1610

They had to bunch up two or three deep, and I think we all recognize the fact that there is an imbalance, and let us not deny that fact.

I think the gentleman from California had the point. There is great frustration on our side. It does need to be bipartisan. It does need to be fair. Right now it is out of balance. Part of the reason is because of the detailees that have gone over to the majority side.

Mr. GINGRICH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to support the amendment offered by the gentleman from California [Mr. COX], and I do so in part to send a signal to the Comptroller General.

The General Accounting Office used to be prestigious and reliable. I would argue that, having watched it for the last 2 or 3 years, it ought to be audited.

It is uncoordinated, it is ideological, it is increasingly sloppy in its behavior. On some occasions its reports are technically incompetent. In other cases they are politically motivated.

Let me suggest that every Member of the House should be aware, and let me suggest two examples of what concern us in terms of the direction the General Accounting Office is going in.

First, there have been a series of letters between the gentleman from Illinois [Mr. MICHEL] and the Comptroller General about the fact that a partisan Democrat for partisan reasons asked for an inquiry into October 1980, in a way in which no Republican was ever involved. There was no effort to establish a bipartisan fair standard for the report. There was no effort to involve anybody on our side of the aisle about what was inherently and unquestionably a political question.

If the GAO is going to become a branch of the Democratic National Committee, they ought to go out and raise money privately. But it is outrageous that they would accept a partisan request about a partisan topic and engage in an investigation without anybody, starting with the gentleman from Illinois [Mr. MICHEL], being asked about it.

Let me give the second example, which was in the paper yesterday. The General Accounting Office on its own has decided that it will decide the value structure of American health care. It decides it will endorse Canadian health care. It does say in the fine print, "Oh, by the way, you will not have new technology, you will have to wait 6 months to 3 years, you will not get a whole set of services, you will not be allowed to privatize any behavior even like on the British model," but you have got to get to the fine print.

It is not the business of a technical accounting agency to decide on values questions, and the General Accounting Office has to understand that we will move to cut its spending if it does not correct its behavior and become genuinely bipartisan; if it does not drop its ideological bias, we will recommend to the administration for next year's budget to dramatically cut its spending.

We are not going to have a partisan, ideological, pro-Government agency engaging in sloppy behavior on its own terms and then masquerading as though it is nonpartisan.

I hope the Comptroller General will take note of this.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. GINGRICH. I am happy to yield to the gentleman from California.

Mr. FAZIO. Mr. Chairman, I understand the gentleman's concern, and I think there are issues that really need to be discussed with the Comptroller General.

I just wanted to make two points. First of all, I do not want anyone to forget that this Comptroller General was appointed by President Reagan, and this is a Republican appointee for a 15-year term. He has no ability to succeed himself, and he is not influenced, therefore, because of the method by which he is selected and appointed. This is a very unique position in the Federal structure.

Second, the GAO's budget does not go through any rigorous review by the executive branch. We simply receive the GAO budget, and we make the decision, so it is appropriate that we discuss it here today.

I do think that there is more support here than anger and opposition, but if the gentleman has concerns that may or may not be legitimate that are based on partisan leanings one way or the other, I think these do need to be directly taken up with the Comptroller General.

Mr. GINGRICH. Let me ask the distinguished chairman: When is the last time the GAO was audited by an outside agency?

Mr. FAZIO. I really do not know.

Mr. GINGRICH. When was the last time GAO had any kind of outside management report on the way in which it is run and whether or not it is efficient?

Mr. FAZIO. I am told that the investigative staff of the Committee on Appropriations has looked at the GAO, and that is not too long ago. In fact, I would urge the gentleman to look at that report, because it may well be far more critical than some of the Members on the gentleman's side seem to think.

Mr. GINGRICH. With all deference to the distinguished staff of the Committee on Appropriations, I think it would be interesting to consider a totally independent audit of the GAO, to then have somebody who is in private business tell us how efficiently and effectively it is being run.

Mr. FAZIO. It is now being run, of course, by a man who was in private business as a senior partner with one of the leading accounting firms in the country.

Let me reiterate my opposition to this amendment. This amendment could not be more misdirected.

The General Accounting Office may be, next to Congress itself, the best watchdog the American taxpayer has in minding the store.

They locate the fraud, waste, and abuse in Government. These are not partisan issues, Mr. Chairman.

If we eliminate the funds for this agency, or drastically reduce their budget, we will lose one of the most effective programs in the Government.

Let me cite a few examples. In 1990, the GAO found measurable financial savings of \$15 billion. Those are real

dollars this agency has helped the Federal Treasury save.

They issued 921 reports to Congress in 1990; 54 to Federal agencies; and issued 3,500 legal opinions.

If we impair this agency, competition in Government procurement goes with it because the GAO legal staff has a major role in the Competition in Contracting Program.

This agency does several major financial audits a year. They audited the Air Force 2 years ago and uncovered major problems. They did one at the Exim bank that revealed major bookkeeping shortcomings.

They are currently doing vital work in many areas, including assessing Federal liability in the savings and loan industry; an assessment of health care costs; and the future military force structure in a rapidly changing international environment.

Mr. Chairman, these are not partisan issues. We need GAO—A junk yard dog so to speak. They earn their keep many times over.

Reject this amendment.

The CHAIRMAN. The time of the gentleman from Georgia [Mr. GINGRICH] has expired.

(By unanimous consent, Mr. GINGRICH was allowed to proceed for 2 additional minutes.)

Mr. GINGRICH. Mr. Chairman, let me make this point, because I think the gentleman from California made a very good ploy. The fact is that any one man put in charge of 5,000 career bureaucrats, within a very short time, tends to become a captive of the system. The fact is that the overwhelming pressure on GAO is a partisan pressure, and the fact is that we on this side of the aisle are unequivocally not comfortable with the product we are getting, and I strongly urge a yes vote for the amendment offered by the gentleman from California [Mr. COX].

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. GINGRICH. I am happy to yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, I wanted to quote from Hobart Rowen in the Washington Post who indicated in an article that was published recently that Mr. Bowsher may be the one job selection that President Reagan and surely President Bush wishes they had back. That may tell a little bit about where the politics of all this lie.

Mr. SMITH of Florida. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the gentleman from Georgia has obviously cut right through to the gravamen of this amendment, and that is that they do not like people being able to look into the administration, because that is what the GAO does, how the administration runs. It is designed to help the Congress help run the country. That is what it does.

Now, even though it has a Republican appointee as the head of it and even though this is a man who has a 15-year term appointed by a Republican President, they do not want it. They do not like it.

So instead of coming to the committee, to the subcommittee when the hearings were held or the markup was held to talk about the issue of cutting the budget, they come to the floor and ask for cutting \$107 million from an agency that most of the people in this institution, both Republicans and Democrats alike, have acknowledged performs a very valuable service.

One of the gentlemen on the other side said that,

We do not like the way the detailees are apportioned, and we do not like the way staffs are apportioned. Why, there was as much as, at one time, or totally, 172, 172 detailees to the Congress, and so we are going to cut \$107 million.

If you give them an average salary of \$30,000, 172 detailees, if you wanted to cut them for that reason only, is \$5,160,000, so in their attempt to sustain their argument that they are being mistreated, the Republicans want to cut the GAO 22 times larger than they would have to if they wanted to cut only the disputed positions of those whom they claim are abusing what they are supposed to be doing.

Let me tell the membership of this body that that GAO organization saves the United States of America and its taxpayers billions of dollars a year. When I first came here 9 years ago, I found that in south Florida where HMO's had been given the right by Federal law to enter into the business of providing Medicare services to Medicare beneficiaries and that the U.S. Social Security System would pay for that, we began to find an enormous amount of fraud and abuse.

We asked for a GAO investigation in south Florida. That GAO investigation, after approximately 1 year, found practices that they estimated had already cost the U.S. taxpayers close to one-half a billion dollars during that preceding year, and could have cost on an exponential basis, if not dealt with, billions, billions of dollars.

This was done on a bipartisan basis. The gentleman from Florida [Mr. SHAW], the gentleman from Florida [Mr. LEWIS], the gentleman from Florida [Mr. FASCELL], Congressman Pepper, myself, the gentleman from Florida [Mr. LEHMAN] all joined in asking for this, and the whole of the United States benefited, not only from being able to weed out the fraud and abuse but by upgrading the quality of Medicare which was being delivered by these federally licensed HMO providers of Medicare coverage to Medicare beneficiaries.

□ 1620

That is what this organization, this agency does. If there is a problem in any way, this is certainly not the way to fix the problem, an across-the-board, blind cut, with no regard for the value the agency has. If we cut \$107 million now, we will be looking for billions more to pay for what the GAO could not do to save the taxpayers of this country a great deal of money.

I tell Members something, folks. If that is not counterproductive, we will never do anything here.

Mr. LEWIS of California. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Florida. I yield to the gentleman from California.

Mr. LEWIS of California. Mr. Chairman, I want to say to my colleague that it is the first time I had a chance to have an exchange regarding the work of our subcommittee, and it has been a pleasure to work with the gentleman.

I would mention to my colleague, while the gentleman and I agree upon the thoughts that an agency like GAO should be available to take a look at the administration and the work they do.

(By unanimous consent, Mr. SMITH of Florida was allowed to proceed for 1 additional minute.)

Mr. SMITH of Florida. I yield to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Chairman, I hope, as we work together, and I would take a careful look at the thought that that agency that we created, designed to look at the administration and represent our interests as well, has come to the point where there are 5,000 investigators, probably enough, I would say. From there, they are investigating at the discretion and direction of a highly partisan Congress, the gentleman might agree, as a practical fact of life. Members on this side of the aisle are now concerned that there is such a bias that their ability to have confidence in the work of that agency is in serious question. The gentleman would not want to change this?

Mr. SMITH of Florida. Reclaiming my time, does the gentleman believe that that agency deserves to have positions which would be 20 times the amount of the detailees that the gentleman talked about before, cut out of its budget as a result of your arguments? Does the gentleman truly believe that?

(By unanimous consent, Mr. SMITH of Florida was allowed to proceed for 1 additional minute.)

Mr. SMITH of Florida. Does the gentleman from California believe we should cut the GAO \$107 million?

Mr. LEWIS of California. If the gentleman will yield, the gentleman from Florida knows well that I worked very intently to cut various aspects of this budget, including this one.

My point is that this recommended cut of 25 percent of their personnel is a reflection of tremendous frustration over here that is not a healthy circumstance for this agency.

Mr. SMITH of Florida. I understand the reason for which it was offered, but I am asking the gentleman if he agrees and is going to vote yes to cut 25 percent?

Mr. LEWIS of California. The gentleman from Florida and I will talk about that.

Mr. SMITH of Florida. I see. I think the gentleman answered the question.

Mr. DINGELL. Mr. Chairman, I rise in opposition to the amendment. Mr. Chairman, this is a penny-wise, pound-foolish partisan amendment. It totally lacks merit. Its function is to cut by 25 percent the budget of an agency which saved for the Federal taxpayer a measurable and measured \$15 billion.

Now perhaps the gentleman wants to go back to his home State and say that he cut an agency of that sort by 25 percent, and as a result perhaps there will be 25 percent less in the savings for the taxpayer of that \$15 billion. The General Accounting Office, I will say for the benefit of the author of the amendment, and the rest of my colleagues unfamiliar with it, is the auditing arm of the Congress. It is a nonpartisan agency, headed by an appointee of the President. That President who appointed the current Comptroller General was Ronald Reagan. He appointed, a Republican, for a 15-year term, who may not succeed himself.

Now, let Members look at what the GAO does. It audits on its own as it is chartered to do by the Congress, to find out whether there is waste, fraud, abuse, in the executive branch, or whether there is a failure to carry out the letter, spirit, or intent of the law. As I said, it has saved the taxpayers in the last year \$15 billion.

Now, I have seen this kind of amendment come before us in the past. On one occasion I saw an amendment to cut the number of customs employees. The offeror wanted to cut them by a hundred. The interesting thing about that was that every customs employee brings in about \$18 for every dollar that we pay for them. In another instance, I remember from that side of the aisle, came a massive cut in the number of Internal Revenue Service agents. We saved about \$2 million. The result, however, in terms of losses to the taxpayer, were that the Federal Government lost about \$20 billion in revenue.

That is the kind of thinking that underlies this amendment. We are throwing the baby out with the bath water; we are burning down the barn to cook the pig. We are not supporting good government, if you offer or support an amendment of this kind.

Now, what does the General Accounting Office do for the Congress of the

United States and the general public? One, they perform audits on request by any Member or any group of Members. Those audits relate to performance of government agencies, or whether policies are being carried out. They also result in findings of where there is waste, fraud and abuse in terms of the behavior of the Federal Government and the waste in Federal moneys.

Now, it is useful, I think, to see what GAO detailees have done in terms of serving the Congress and the people of the United States. Every single committee under the law has the right to call upon the GAO to have detailees assigned to it, to carry out specific functions and performances. Almost every single committee in this Congress in 1990 has called upon the General Accounting Office to carry out that particular performance. They are listed at the end of the following letter:

COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, May 29, 1991.

HON. JAMIE L. WHITTEN,
Chairman, Committee on Appropriations, House
of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We understand that during consideration by your Committee of the legislative appropriations bill for fiscal year 1992 an amendment may be offered which reportedly would require all House Committees to pay or reimburse the General Accounting Office (GAO) for all or part of the cost of GAO personnel assigned to congressional committees and subcommittees in fiscal year 1993 and thereafter. We strongly urge that your Committee reject such an amendment.

As you know, the Committee on Appropriations and many legislative Committees periodically arrange (pursuant to 31 U.S.C. 731) for the assignment of GAO personnel to the Committees and their Subcommittees for various purposes. This is natural because the GAO is an arm of the Congress. It was established to, among other things, support Congress.

This practice was authorized as long ago as 1970 as part of the Legislative Reorganization Act. These GAO personnel, who are nonpartisan, have expertise and skills that are very helpful to the Committees in their work, including oversight and investigation functions mandated by the House Rules. The Senate Committees also utilize GAO personnel on detail.

The GAO's supplement to its annual report (copy enclosed) provides a detailed account of these assignments to each House and Senate Committee. The report shows that the Committees and Subcommittees vary from year to year to the extent of such use of GAO personnel. These assignments are sometimes very brief, lasting anywhere from a few days to a few months, depending on the need. All assignments have a specified term not to exceed one year, although GAO employee may be assigned to a subcommittee for a certain period and then to the full Committee for another term. Both majority and minority Members of committees and subcommittees benefit from these assignments.

The GAO's annual report, which is public, shows the travel and salary costs for each GAO assignee in the House and Senate, costs which are covered by the annual appropriation for GAO. For fiscal year 1990 the total of all associated costs for 172 skilled and dedicated GAO people detailed to the House and

Senate was a little more than \$5.2 million. That is only about \$30,000 per person. GAO provides this information pursuant to 31 U.S.C. 719 and presumably in partial justification of its own budget each year. If the Committees and Subcommittees hired consultants or more staff in lieu of these detailees, the costs would be far larger and the benefits for the taxpayer probably not as great.

We understand that Congressman Jerry Lewis and others want all of the Committees to pay or reimburse the GAO for these costs beginning in fiscal year 1993. Presumably, this would mean a comparable cut in the GAO appropriation which could harm that agency. Apparently this would require the Committees to determine in advance how many GAO personnel would be needed in a fiscal year and to seek such personnel, based not on experience and skills, but rather on their salaries in order to ensure that the Committee did not exceed the additional appropriated sums which would be needed to cover their costs. The Committees are not always sure of their needs at the beginning of each fiscal year. Any mistakes in estimates, or an appropriation that falls short of those estimates, could reduce the use of GAO personnel and thus curtail oversight, investigations, and other activities which significantly benefit the House, the Congress, and the taxpayers. In short, this amendment could result in limiting congressional oversight. We do not think that is in the public interest.

We point out that these GAO personnel have helped ferret-out millions of dollars of waste and fraud, such as the recent investigations of unauthorized charges by universities for such items as statues, travel, yachts, and entertainment. Simply put, detailing GAO personnel to Committees saves taxpayer dollars far beyond the actual cost of the GAO personnel.

We urge you to reject this amendment.

With best wishes.

Sincerely,

John D. Dingell, Chairman, Committee
on Energy and Commerce.

Henry B. Gonzalez, Chairman, Committee
on Banking, Finance and Urban Affairs.

Walter B. Jones, Chairman, Committee
on Merchant Marine and Fisheries.

George E. Brown, Chairman, Committee
on Science, Space, and Technology.

Charlie Rose, Chairman, Committee on
House Administration.

George Miller, Chairman, Committee on
Interior and Insular Affairs.

Dante B. Fascell, Chairman, Committee
on Foreign Affairs.

John Conyers, Jr., Chairman, Committee
on Government Operations.

G.V. Montgomery, Chairman, Committee
on Veterans' Affairs.

William D. Ford, Chairman, Committee
on Education and Labor.

Dan Rostenkowski, Chairman, Committee
on Ways and Means.

Jack Brooks, Chairman, Committee on
the Judiciary.

William Clay, Chairman, Committee on
Post Office and Civil Service.

E de la Garza, Chairman, Committee on
Agriculture.

Robert A. Roe, Chairman, Committee on
Public Works and Transportation.

Leon E. Panetta, Chairman, Committee
on the Budget.

Les Aspin, Chairman, Committee on
Armed Services.

HOUSE COMMITTEES THAT UTILIZED GENERAL ACCOUNTING OFFICE DETAILEES IN FISCAL YEAR 1990 PURSUANT TO 31 U.S.C. 731

Committee on Armed Services.
Committee on Ways and Means.
Committee on the Judiciary.
Committee on Appropriations.
Committee on Energy and Commerce.
Committee on Veterans' Affairs
Committee on Standards of Official Conduct.
Committee on Agriculture.
Committee on Banking, Finance and Urban Affairs.
Committee on the Budget.
Committee on Foreign Affairs.
Committee on Government Operations.
Committee on House Administration.
Committee on Post Office and Civil Service.
Committee on Science, Space, and Technology.

What has been the result? I will not describe what has happened with regard to other committees, but I will tell Members what has happened as a result of the work that has been done by the General Accounting Office for the Committee on Energy and Commerce.

First of all, hundreds of millions of dollars each year in waste, fraud, abuse, and overpayments has been curtailed with regard to defense contractors. Other committees have done the same kind of work. Just this year, better than \$1 billion of waste, fraud, and abuse and overpayments and overcharges by universities of higher learning in connection with billing for overhead charges was saved. Other examples follow:

MAJOR INVESTIGATIONS DURING 101ST CONGRESS USING GAO DETAILEES

A. HEALTH

1. Blood Supply Safety.—exposed substantial problems and led to the recent beginning of complete overhaul of Red Cross blood banking system and tougher FDA enforcement.
2. Food Imports.—exposed major loopholes and led to improved FDA enforcement efforts.
3. Medical Devices.—exposed lax FDA monitoring and enforcement.
4. Government supported research.—exposed substantial abuses and led to extensive changes, both voluntary and involuntary, in university indirect cost charging practices as well as the expected recovery of millions of dollars.
5. Bottled Water.—exposed significant gaps in regulation.

B. ENVIRONMENT

1. EPA Inspector General.—exposed management and auditing problems.
2. Superfund and RCRA oversight—ongoing review of critical programs.

C. SECURITIES AND FINANCE

1. Insurance Company Insolvencies.—exposed wrongdoing and state regulatory inadequacies.
2. Insider Trading.—variety of investigations, including Drexel.
3. Northrop.—exposed procurement abuses.
4. Merged Surplus and "M" Accounts.—exposed "slush funds" involving billions of dollars and led to corrective legislation.

D. COMMERCE

1. Substandard Fasteners.—exposed use of tens of millions of counterfeit/substandard fasteners and led to corrective legislation as well as enforcement actions that have resulted in payments of over \$20 million.

Now, perhaps some believe these are not meritorious. If Members think they are not, I urge those Members to vote with the author of the amendment. If Members think this kind of expenditure of the public moneys, and this kind of service to the Congress is of value, I urge those Members to reject this amendment out of hand.

There appear to be some curious games going on on the other side of the aisle, and I do not know quite what they are; but I want my colleagues over there who are serious about good government to listen. They complain about detailees and budgets. I want to first address the question of the budget of the Republican side of the aisle on the Committee on Energy and Commerce.

(By unanimous consent Mr. DINGELL was allowed to proceed for 5 additional minutes.)

Mr. DINGELL. There is no Democratic staff on the Committee on Energy and Commerce. There is a committee staff, and there is a minority staff. The minority staff is a special staff that works only for the minority, and the minority in our committee got every nickel and every staff member they requested from the House Administration Committee. I presented it to the Administration Committee and they got every nickel and every staff member they wanted. There is no partisanship on that matter.

The Republicans are kept fully informed on our committee with regard to the hearings and so forth that are engaged in by the Subcommittee on Oversight and Investigations which I chair.

As I pointed out, billions of dollars have been saved, and audits of things like the safety of the blood supply, audits of things like misbehaviors at colleges, universities, and by defense contractors, audits of important questions like rail safety where tons and tons of trainloads and carloads of hazardous substances are being carried around this country have been carried out by the General Accounting Office and by detailees. The minority on our committee participated in those actions. More recently, the General Accounting Offices has been looking into serious misbehavior in the security industry.

If my colleagues do not believe me, call Mr. Broyhill, who used to be our ranking minority Member, or call our current Republican minority leader, the gentleman from New York [Mr. LENT], the ranking minority member on the subcommittee, and ask whether there is any partisanship, or whether there are games played with detailees or with the staff of the committee.

I think it is time we recognize that we Members have some duty in this place to see to it that this Congress has the resources that it needs to serve the public interests, to do the things that need to be done, and to curb the excesses in the government downtown and outside of the government.

□ 1630

The only way we are going to be able to do that is to see to it that we have an adequate level of staff to catch wrongdoing, misuse, and misbehavior.

I hear constant complaints about waste, fraud, and abuse, about the fact that the budget is not balanced. Most of it comes from that side of the aisle. I want those people over there who constantly complain and carp about such matters to take a look and see how we use the GAO to curb and to cut back on the kind of waste, fraud and abuse, about which they are complaining, and through that effort to help balance the budget.

If you are serious about saving money, then I urge you to vote against this amendment. For good and all, this kind of nonsense and trivia should be buried so it does not continue to waste the time of the House, so that we can concentrate on more important and serious matters instead of nonsense like this.

Mr. LEWIS of California. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. Yes, I yield to the gentleman from California.

Mr. LEWIS of California. Mr. Chairman, I appreciate the gentleman yielding.

I say to the gentleman from Michigan [Mr. DINGELL], I am sure the gentleman knows that I am as concerned as the gentleman is to make certain—

Mr. DINGELL. The gentleman is not showing it very well today.

Mr. LEWIS of California. To make sure that we have facilities to make sure we review that work that the administration is doing, and I know that my chairman would never involve himself in partisan considerations.

All I was suggesting is that there are people on this side of the aisle who see a pattern developing in the GAO that raises serious questions about partisan leanings.

Mr. DINGELL. There are old ladies in this society who find a man under the bed or think there is a man under the bed every night. Some of them I think are actively hoping so.

Mr. LEWIS of California. I do not know about the chairman, but we do not have any old ladies over here like that.

Mr. DINGELL. Mr. Chairman, this is an offensive amendment and should be rejected overwhelmingly.

Mr. ARMEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I am a little confused about this debate and I would like to ask perhaps the chairman of the committee some questions.

We have in the GAO how much total personnel employed?

Mr. FAZIO. Mr. Chairman, if the gentleman will yield, there is a limit of 5,062 staff years, which has been reduced by 38 positions in this bill.

Mr. ARMEY. It is 5,062

Mr. FAZIO. Yes.

Mr. ARMEY. And a certain number of these personnel in the GAO are assigned to work for Members of Congress, or on the staffs?

Mr. FAZIO. A relatively small percentage, in fact as I said earlier, maybe 50 to 60 at any time are detailed to the Hill.

Mr. ARMEY. Detailed to the Hill, how many did the gentleman say?

Mr. FAZIO. At any one time, 50 to 60. Over a year, I believe the gentleman from Arizona [Mr. KYL] said 172. They may be here for a brief period, some for a longer period. Very few are here longer than a year. There are currently I believe about 11 who have been allowed to stay longer than a year.

Mr. ARMEY. The chairman is very generous with his explanation.

Mr. FAZIO. I tried to be helpful to the gentleman from Texas.

Mr. ARMEY. Are they detailed to individual Members, like could I have one detailed to me?

Mr. FAZIO. I think you have to be the chairman of a committee or a ranking member. That request goes forward to the GAO and they are assigned to the committee, not to any given individual Member. One of these days if things go the gentleman's way, he may be in a position to have someone detailed.

Mr. ARMEY. If I am a ranking member of a committee, I contact the head of the GAO and ask for somebody to be detailed to me?

Mr. FAZIO. No. First of all, you have to be a chairman or a member of a committee, with the support of the chairman. You then can get a GAO staff person assigned to the committee, not to any individual Member, for the purpose of helping on a specific study or assignment.

Mr. ARMEY. So that you have to be a committee chairman to arrange for somebody to be detailed to work for—

Mr. FAZIO. For the committee.

Mr. ARMEY. So that the Republican chairman or Democrat chairman, I mean, like if I were the Republican chairman of a committee, I could have people detailed to me?

Mr. FAZIO. No. You could have a person detailed to the committee to work on a designated project that is within the purview of the committee's work.

Mr. ARMEY. The point is that the only person who can make an arrangement for such a thing to occur is a Democrat committee chairman.

Mr. FAZIO. Well, I think ranking members on most committees have a good working cooperative relationship with the chairman and the request is usually totally nonpartisan.

Mr. LEWIS of California. Mr. Chairman, if the gentleman will yield, the answer is yes.

Mr. FAZIO. Mr. Chairman, if the gentleman will yield further, I would think that many of them would be jointly requested.

Mr. ARMEY. Mr. Chairman, in my short tenure here in Congress, there are two words that I have come to totally distrust. The two words are "nonpartisan" and "bipartisan," and yes, I say to the gentleman from Michigan [Mr. DINGELL], this is a partisan amendment and I support it on that basis. It is a partisan concern. The concern is that the GAO, like other agencies, such as the Joint Tax Committee staff and the Congressional Budget Office, work first and foremost and most enthusiastically for the Democrat majority of this body and only intermittently and unenthusiastically on behalf of nonpartisan or bipartisan or Republican concerns; but that is not my concern.

My concern is this. If you take the official reports of official agencies of the Federal Government, such as the GAO, such as the Joint Tax Committee, such as the Congressional Budget Office, they become part of the public's data base by which they understand the operation and functioning of the Government, of the economy and of the Government in the economy, and the relationships in-between. If we do not have scientific accuracy, if we do not have good data bases, if we do not have sound methodological approaches to generating these government reports, we misinform the Nation and that, my friends and colleagues, I believe is serious business.

The universities that we are so concerned about with waste, fraud, and abuse at the universities, we have been concerned and I applaud Chairman DINGELL for the work he has done there. I am very proud of the work he has done there in his committee.

But if the Government of the United States through the malfeasance of its own agencies are giving the American universities fraudulent data base, then we ultimately are to blame.

I would say that the gentleman from California is to be admired for raising the question, because it gets to the heart of the matter. Is this Government committed enough to accuracy in the reports that we make that we are willing to in fact be nonpartisan. I do not think that is the case.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the GAO falls within the jurisdiction of the Government Operations Committee, and as its chairman I would like to make it clear that we have announced that there would be oversight hearings in the GAO and that from approximately 6 months ago, we have sought to find any Member who wished to come forward in an oversight hearing on the GAO, including all the members of the Government Operations Committee, and I wish to report to you that up until this moment the number that had come forward was zero.

I would be happy to entertain any of the new found concerns about an agency that I feel must be defended in terms of its scrupulous fairness in attempting to bring to us the answers to investigative matters without which our staffs could not operate. These are technical matters and I would just like to review a couple that have come to our attention.

Several GAO investigators were assigned to our committee to help uncover the serious risks associated with adapting embedded computer systems with the multi-million dollar weapons systems in the Navy Seawolf attack submarine. As a result of our work, the House Armed Service Committee and the Defense Appropriations Subcommittee substantially reduced the funding for the Seawolf by \$2 billion.

□ 1640

The chairman of the Committee on Energy and Commerce is absolutely correct, the savings of GAO in bipartisan efforts to reduce waste, fraud, and abuse amount to \$14.5 billion, nearly \$15 billion.

Now, what we want to make clear is that in our committee, and I can only speak for the Committee on Government Operations, we have a completely fair operating system with reference to any requests for detailees. We have enjoyed a very good relationship. I might say the gentleman from Arizona [Mr. KYL], who serves with great distinction on the Committee on Government Operations, is fully aware of the processes that we use.

The gentleman from Pennsylvania [Mr. WALKER], former member of the Committee on Government Operations, I think call all join in making it clear that under no circumstances has any Member on the Republican side who has made a request ever been refused a detailee. The gravamen of my case against a reduction is that we will be cutting the best staff that we have, sometimes even as competent as many of our own staff members.

My necessity to request assistance is because of the technical nature of some

of the assignments that come to our committee, and it is in that spirit, ladies and gentlemen, that I urge that this amendment be rejected.

I can tell you that the ranking members of the Committee on Government Operations, the minority member, has cooperated with me, my predecessor, the gentleman from Texas, JACK BROOKS, now chairing the Committee on the Judiciary; in all my years on Government Operations we have enjoyed this kind of relationship that has led to no Member to have asked to participate in the oversight hearings that we would be holding.

I trust that out of this discussion there may be Members who will wish to come before the committee, and they will certainly be invited to do so.

Mr. HORTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think most of you know I serve as the ranking member of the Committee on Government Operations, and from the day that I came to the Congress, practically, my first assignment was on the Committee on Government Operations. For some years I have served as the ranking Republican. I have worked very closely, for my 29 years in the Congress, worked very closely with the Comptroller General, particularly Mr. Bowser, and before him Elmer Staats.

I want to say, and I hope that we can kind of calm down the tone of the debate here a little bit, I think there is a legitimate concern by my colleagues on the Republican side with regard to some of the assignments that have been made with regard to people from the GAO and from other administrative agencies.

I think that it is important for us to have a better handle than we have had in the past with regard to these assignees to the various committees.

The chairman, the gentleman from Michigan, [Mr. CONYERS] and I have worked it out pretty carefully as far as our committee is concerned.

I am aware, and my staff is aware, who those assignees are. We work very closely with them.

In the 29 years I have been on the Committee on Government Operations we have tried to operate without regard to partisanship but from an objective standpoint for the good of the Government. Our job in the Committee on Government Operations is to check on efficiency and economy and to check on waste, fraud, and abuse. I have often said that we have two responsibilities in the Congress: One is to legislate, and the other is to oversight.

We are basically the oversight committee.

The General Accounting Office, over those 29 years that I have been there, has given us outstanding professional service, and I think that we ought to

recognize the debate that is going on here is not aimed at any of these professional people who work in the General Accounting Office. Time after time after time these reports have come in, they have been excellent reports, reports that we can rely on after indepth investigation, indepth recommendations. I personally think that these reports have been very excellent.

I think what we need to do is to understand that there is a problem with regard to these detailees, and hopefully we can work that out to the satisfaction of everybody. Maybe as a result of this discussion that we are having here, we can have a more effective General Accounting Office. It is one of the important tools that we have in the oversight function.

The General Accounting Office, the inspectors general, the chief financial officers that we have just put in, the Paperwork Reduction amendments, the OIRA we have in the OMB are all tools for us to have a better handle on oversight. Let us not throw the baby out with the bathwater as a result of what we are trying to do here.

Let me point out what would happen if this amendment goes through, and I hope it does not go through, but I understand the motivation that has brought this amendment to the floor. The General Accounting office, as a I understand it, and I checked with them this afternoon, they requested approximately \$490 million for this next budget, and that was cut by this committee by approximately \$50 million, which brought them to a level of \$440 million.

I have been informed that if this amendment goes through, it would reduce travel to data collection points and regions to the point where it would almost have to be stopped; the professional staff of 4,000 would have to be cut by approximately 1,000. I do not think we want that.

The congressional requests would be delayed a minimum of 8 to 10 months before they could be even started. And many of us—and I have asked for those reports, and I have gotten them. I realize that as the ranking member of the Committee on Government Operations, I could get that. I remember they spent a whole year checking and giving me a report on what we did at the borders with regard to fresh fruits and vegetables coming into this country. That was the first time anybody had ever looked at that.

They did look at it, gave us a report, which is a bible and which has brought out a lot of information with regard to that subject.

There would be serious disruptions in computer acquisition and data analysis.

The CHAIRMAN. The time of the gentleman from New York [Mr. HORTON] has expired.

(By unanimous consent Mr. HORTON was allowed to proceed for 3 additional minutes.)

Mr. HORTON. I would not be surprised that right now the General Accounting Office is operating under a hiring freeze.

So I think this amendment would create some very serious problems, and I hope that it does not move forward.

I do think, in the affirmative, I do think what we need to do is sit down and talk about this subject.

The chairman has indicated he wants to have some hearings, and I think that is an excellent thing to do, and I would certainly join with him and the members who have been talking here today on the Committee on Government Operations, and they will have an opportunity to get answers to their questions from the General Accounting Office.

I think the chairman's suggestion which the gentleman from Michigan, [Mr. CONYERS] has made with regard to having hearings on the General Accounting Office is good. We have done that in the past, we have looked it over in the past. We have had those kinds of hearings. I think that would be helpful.

But I do think that it is important for us in our discussions here to recognize there are professional people that we have to respect and we have to thank and we have to applaud for the tremendous job that they have done over the years.

Now, I agree that there is this problem of detailees, but I think that too can be worked out.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Ohio.

Mr. KASICH. I thank the gentleman for yielding.

Mr. Chairman, when I came as a freshman, I would ask the GAO to do some studies on some things that they were about the only ones who would have done anything for me as a freshman Member. I have some problems with some of the studies that they have done, but overall I have very high regard for the GAO. I think they have done excellent work. I think a lot of what the chairman, the gentleman from Michigan [Mr. DINGELL] said about the GAO is true. I guess my concern is that there is, speaking to Chairman DINGELL and to the gentleman from California [Mr. FAZIO] there is deep concern here that it is just skewed the wrong way and that Republicans ought to have a bigger shot at how the staff gets divided up.

Now, I am prepared to vote against this amendment if there is some assurance that we can start to look at it and fix this so that there is some greater equity.

From the chairman's Mr. DINGELL's remarks it was one that the system appears to be fine, "Don't mess with it."

I think that there is a legitimate issue here about how people get detailed. I am prepared to vote against the amendment if there is some sense that we are going to get this equity.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I thank the gentleman for yielding.

Mr. Chairman, the gentleman has raised questions that I think deserve consideration and they deserve a fair and respectable answer, and I want to try to give it to him.

□ 1650

First of all, the detailees that come to our committee are not detailed to me. They are detailed to the committee or to the subcommittees, and they function to do specific tasks for those committees and subcommittees. We have never had a request from our Republican colleagues either to use resources of the committee or to use the resource of the detailees on particular tasks.

I do want to lay to rest one question. My Republican colleagues on the Committee on Energy and Commerce have received every single staff member and every single nickel that they requested. I make that a matter of pride. I make it a matter of personal pride that I try to see to it that my Republican colleagues on our committee have the resources, both money and people, of which they have need so that they may carry out their responsibilities as a minority. I want my Republican colleagues to be thoroughly informed so they can come to the best possible position because I believe that is the best way our committee can legislate and present to this House a good work product.

Mr. Chairman, I work very closely with both the gentleman from New York [Mr. LENT], the ranking minority member of the committee, and the gentleman from Virginia [Mr. BLILEY] with regard to the business in the subcommittee. I fully intend to continue that, and I will tell my colleagues this: That never in the years which I have been chairman of this committee has there ever been a complaint from my Republican colleagues about the way I—

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, this is in regard to Chairman DINGELL. There is no one in the House that raises cane more effectively than he does, and I say—That means you have to take on some people out there who aren't going to appreciate what you're trying to do. I felt myself in that position from time to time. I do not think, though, that I should have to go to a committee

chairman to get his approval. What if the committee chairman does not agree with me, and I happen to be right? We do not want ever to have a committee chairman in the position to deny a request to somebody because that Republican wants to be more aggressive than Democrats.

Mr. Chairman, I have shared that concern of mine with the gentleman from Michigan [Mr. DINGELL].

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentleman from Ohio [Mr. KASICH] because he raises two points that I would like to elaborate on.

First of all, Mr. Chairman, the ranking minority member of the committee also shares in the disposition of detailees, and I think that applies to all the committees across the Congress.

Second, I think the gentleman raises a good point, that we are trying to improve a situation with GAO and not to cripple the excellent effort that they have done.

I am hopeful that, if I reiterate the commitment of the Committee on Government Operations to hold the hearings, the oversight hearings that would take into consideration all of these matters and invite any of the Members here in this discussion that would like to join it, I would like to ask the author of the amendment to consider withdrawing the amendment until we at least have had such hearings, and I would hope that that would be taken in good faith.

Mr. HORTON. Mr. Chairman, I would like to add one other thing, and that is this:

I was concerned 2 or 3 years ago about this detailee situation. The leadership on my side knows this. The gentleman from Michigan [Mr. CONYERS] knows, and others know. I was the first one to bring up this subject because up until that time no one had ever kept track of or asked anything with regard to the detailees.

(By unanimous consent, Mr. HORTON was allowed to proceed for 2 additional minutes.)

Mr. HORTON. So, I think that there is a legitimate concern here. I think we can work it out, and I am sure that, as a result of these hearings, we can.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, I think it is very important that this issue get worked out, and I will tell my colleagues why: Because there are a number of my colleagues on the Republican side who have viewed the GAO increasingly as putting forth politically charged reports. The one thing about the GAO that made it effective is that,

when the reports came out, they were viewed as unbiased and without a partisan slant.

So, we can get this thing fixed. Maybe we can take some of the recurring charges of partisanship out of the debate because the GAO, I think, offers great help to the taxpayers and to the people on both sides of the aisle. But clearly it has got to get fixed.

Mr. HORTON. Mr. Chairman, I appreciate the gentleman from Ohio [Mr. KASICH] for his contribution.

Mr. WALKER. Mr. Chairman, I move to strike the last work.

Mr. Chairman, one gets the impression that someone may have kicked over a sandbox that some people have been laying in for some time here, and the fact is that there are legitimate concerns about GAO which I think are raised by this amendment.

When I joined the Committee on Government Operations some years ago, the GAO was in fact considered an independent, nonpartisan agency. I have got to tell the gentlemen who have billed it as such today that the impression on our side is that it is less than that today, and I find that tragic, and I will tell my colleagues the reason why we regard it as less than that.

First of all, Mr. Chairman, there are the numbers of detailees, and that has been roundly discussed here, but some of the people who have risen to speak so loudly in favor of the GAO in fact have dozens of detailees from those agencies working on their committees, and at least our impression on our side is that the minority does not even share in knowing that those detailees are there, let alone in the allocation of them.

Second, the real concern I have is that there has been a drift away from the GAO doing reports that it regards as being important to GAO doing reports the Democratic committee chairmen think are important, and I will give my colleagues some numbers on that. I cannot be exactly specific, but there is at least one newspaper investigation going on at the GAO at the present time, which has found a rather startling statistic, and that is that something better than 75 percent of all the reports done by GAO in 1980 were done self-initiated. In other words, GAO initiated them. Today, right now, 10 years later, some 75 percent or more are done at the insistence of Democratic committee chairmen in the Congress.

Mr. Chairman, that is a complete reversal in a 10-year period that I think is one of the things that disturbs us.

The gentleman from Michigan [Mr. DINGELL] said a little bit ago that his committee always allows all cooperation with the GAO. Let me give him a specific example. Recently one of his subcommittees did an investigation of the space station. The minority attempted to find out what was going on

in that GAO investigation. The minority was told specifically that it was being done for the committee's subcommittee chairmen, and the minority was not permitted to see it. In fact, Admiral Truly was asked to come up to testify. We tried to get a copy of the report so he would at least know what he was testifying on. We were told specifically that the chairman had that report and was not going to give it to anybody, that it was being done for the chairman, and the minority would not be granted access to it.

Mr. Chairman, I say that does not sound to me as though it is a non-partisan kind of thing. It sounds to me as if it is being done very specifically for a specific person, and in this case it was a political purpose.

Mr. CONYERS. Mr. Chairman, will the gentleman yield for a response?

Mr. WALKER. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, we have a rule that, I think, is Congress-wide that no reports are released until the hearing at which they are contemplated would occur, and for that reason we never let any reports out prior to the date of the hearing.

Mr. WALKER. Mr. Chairman, I will tell the gentleman from Michigan [Mr. CONYERS] that it goes further than that. When Admiral Truly asked to view the report, as reports are usually done at the agency, in other words, when they are doing a report, they are to review them, he was told specifically: No, the subcommittee chairman has said this was not to be reviewed with the agency, so there was not even that courtesy extended.

In this particular case, sure we do not release them publicly. The fact is this one leaked the day before. Now since only the committee chairmen, or subcommittee chairmen in this case, had access to it, one has to guess that it was leaked out of that venue, but I do not know that to be the case. What I do know is that, when the minority was asking for access to it, not to leak it, but simply to have the data, the minority was denied access to it.

Now I am telling my colleagues that that is where we get the impression that some of these things are being done on a partisan basis rather than on a nonpartisan, independent kind of an investigation.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Michigan.

Mr. CONYERS. The gentleman has served with great distinction on the Committee on Government Operations himself, knows that personally I have reviewed these matters as carefully as I can, not only in my subcommittee, but with all the subcommittees in the Committee on Government Operations. I have never had any complaint lodged in my memory, not only in the Com-

mittee on Government Operations, but from any Member in the Congress, and that is why I say to the gentleman in the well that the hearings will be the more appropriate place to really develop this. I cannot develop it on this hearsay.

Mr. WALKER. Mr. Chairman, I thank the gentleman from Michigan [Mr. CONYERS]. He just had a complaint lodged, and it is a very specific complaint, and I would ask the gentleman to look into it.

Mr. CONYERS. I would be happy to do so.

Mr. JACOBS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I believe it is accurate to say that in the years I have served in the Congress I have very rarely ever voted against an amendment to reduce the legislative appropriations. I shall cast my constituents' vote in opposition to this amendment to reduce the legislative appropriations.

□ 1700

Those who were here at the time can tell us that I was the only Member of the U.S. House of Representatives who voted against an appropriation to give the beloved John McCormack special office space in Boston when he retired. I loved him, but my duty was to the taxpayers, and I had to do something that was actually obnoxious to me. If they had passed the hat, I would have put some money in it, but I did not think the taxpayers should be required to do that.

They say that now and then a person's thinking will be messed up by facts, and when we have our thinking messed up, we do not like facts. But to impugn the reputation of the finest agency in the Federal Government, the U.S. General Accounting Office, is going way, way too far. There are so few things today, so few public institutions in which we can have faith. I personally requested investigations by the GAO which disproved my original suspicion. I messed up my thinking with facts. In court they call that filing a motion to amend the facts.

Mr. Chairman, I think that passing this amendment would be as grievous a mistake, perhaps even a more grievous mistake than the horrible mistake that was made in the 1980's by reducing the auditors' activities among the S&L's in the United States.

Mr. Chairman, I hope that this amendment, therefore, will be rejected.

Mr. SANDERS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I will be brief. I am not a Republican and I am not a Democrat. I am the only Independent in the House, so I am not going to get involved in the partisan aspects of the discussion, but this is what I do want to say: I do not claim expertise on the

GAO, but I find it interesting that this discussion surfaces 2 days after the GAO published what I believe to be one of the most important reports this Congress has ever seen, and that is a comparison of the Canadian health care system to the American health care system. I think that what we are hearing today is an attempt to shoot the messenger because some people do not like the message that the GAO faithfully brought forth.

What did the GAO report say that is so odious to some people? They said that in Canada all people receive comprehensive health care without out-of-pocket expense. By God, is that not terrible?

They said that in Canada they are able to control health care inflation better than we are in the United States. Oh, that is terrible.

And they said that in Canada they have a lower infant mortality rate than we do, and they said that in Canada people live longer than our people do.

This report also said—and this is very terrible—that the American people should not be allowed to get this information, that despite all the advances of the Canadian system, they are spending 30 percent less per capita on health care than we are, and if we moved toward a single payer, with the Canadian style health care system, we could save \$67 billion a year. Now, is that not a terrible thing to learn?

So my suggestion is that if there are people who do not like the concept of national health care or a single payer system, let us debate that issue, but let us not shoot the messenger for bringing forth an important message.

Mr. BOEHNER. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Ohio.

Mr. BOEHNER. Mr. Chairman, I thank the gentleman for yielding.

The point, though, in the GAO study was not a comparison of the two systems and the relative merits of the two systems but only the fact that under the Canadian system we could save possibly \$67 billion in administrative costs, and that goes to the point that the gentleman from Texas was bringing up earlier. They are comparing only administrative costs. We are putting a record out there for the American people, and part of the data base of information out there is inaccurate, because we are only presenting a very small part of a very large issue.

That is the point the gentleman from Texas was making, and the point here is that we are not talking about saving \$67 billion in that system; we are only looking at administrative costs.

Another point I bring up is the point we had in agriculture where on the Export Guarantee Program we had some Members politically motivated who do not want to give credits to the Soviets.

Mr. SANDERS. Mr. Chairman, if I can get my time back, I would simply say in response that the gentleman is right, that the GAO suggested we could save \$67 billion in administrative costs. The gentleman is aware, I am sure, that there are many medical economists who will argue that that is a conservative number, that in fact if we move toward a single payer system, we could save over \$100 billion.

Mrs. JOHNSON of Connecticut. Mr. Chairman, will the gentleman yield?

Mr. SANDERS. I am happy to yield to the gentlewoman from Connecticut.

Mrs. JOHNSON of Connecticut. Mr. Chairman, I think it is terribly important, since that is a perfect example in a sense of the damage the GAO is capable of doing by examining too narrow a portion of a point, to remind the body as well as those listening that the reason administrative costs are different in Canada than they are in the United States is because the systems are very different and they reimburse many, many fewer specialists than we do in America. And that has consequences for both access and quality.

Mr. SANDERS. Mr. Chairman, I would simply say that we are presented in this body with a national health care system. I do not want to get into that debate right now. That is a good debate to get into, but let us not criticize the GAO because they stimulated this debate.

Mr. SOLOMON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we are hoping to wrap this up soon. Just before I yield to the gentleman from California [Mr. Cox], the sponsor of this amendment, let me say that in past years there were two fiscal conservatives, Everett Dirksen and H.R. Gross, who served in this House and who were noted for their fiscal restraint. They must be smiling in their graves. I heard earlier some Member stand up and say that the GAO must be saving us tens of millions of dollars. Then I heard one Member—I think it was the gentleman from Florida, Mr. LARRY SMITH—stand up and say, "No, that is wrong; they are saving us \$15 billion." Then I heard my friend, the gentleman from Michigan, Mr. JOHN DINGELL, stand up and say, "No, they are saving us hundreds of millions of dollars—no, I mean hundreds of billions of dollars."

Let me just tell the Members something. We talk about hospital care, and right now in the veterans' health care facilities across this country, in every one of our districts, there is right now a shortfall. American veterans are going without medical care services. Medical care alone in the VA hospital care system is short \$154 million. In addition to that, VA medical research is short \$33 million. Major construction in our VA hospitals in all of our districts is short \$68 million. The National

Cemetery System for our dying veterans is short \$11 million. And the procurement of medical equipment in VA hospitals in our districts is short \$80 million.

Mr. Chairman, if this amendment saves \$177 million, I think it is money well saved.

Mr. Chairman, I now yield to the gentleman from California [Mr. Cox].

The CHAIRMAN. The Chair would ask that the gentleman from New York remain on his feet while he yields to the gentleman from California.

Mr. COX of California. Mr. Chairman, I thank the gentleman from New York for yielding.

More than anyone else, I am anxious to wrap this up, because while I listened to the debate and I enjoyed it and the rhetoric was outstanding, I noted that we got very far off the track. This is my amendment, and let me tell the Members why I brought it here. It has nothing to do with most of the reasons I heard advanced. It certainly is not meant to impugn anyone's integrity in the General Accounting Office, which I think is doing a great job in a number of respects.

The purpose of my amendment is to get at our very serious problem of runaway deficit spending. The purpose of my amendment is to say that if you believe the General Accounting Office is doing a great job, if you believe we need this adjunct congressional staff now running over 4,000 people, let us fund it at an amount not to exceed one-third of a billion dollars.

□ 1710

Frankly, I am comfortable going back to California and telling my constituents that we can fund this one part of our congressional staff at one-third of a billion dollars. That is what this is all about.

Now, I heard a couple of things during debate that I think we ought to get clear. First, that the Comptroller General is appointed by a Republican President. All this political stuff is off the wall, because President Reagan appointed this person.

Well, President Reagan appointed this person under legislation established by Congress, from a list of people presented to him by the Congress. Even though I did not raise any political issues in my own remarks introducing this cost-cutting amendment, I will say that it is the New York Times that we can rely upon. We do not have to rely upon Republicans or Democrats to tell us whether there is politics involved.

The New York Times quoted Harry S. Havens, 1 of the 11 Assistant Comptroller Generals, who acknowledged, "Close ties between the GAO and Congressional committees which often use the agency's research for partisan political ends, could pose significant

risks to credibility for the watchdog agency."

It is tough to cut spending around here, but our deficit next year is going to run, we are told, over \$400 billion. I do not want to cut spending on Medicare, I do not want to cut it on food stamps, cancer research, nor veterans. None of you does either. But we can cut our own staff, and that is what we are talking about here. Let us limit it to one-third of a billion dollars. I think that is plenty enough.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. Cox].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 130, noes 294, not voting 7, as follows:

[Roll No. 136]

AYES—130

Allard	Grandy	Pursell
Archer	Gunderson	Quillen
Army	Hancock	Ramstad
Baker	Hansen	Regula
Barrett	Hastert	Rhodes
Barton	Hefley	Riggs
Bennett	Henry	Rinaldo
Bentley	Hergert	Roberts
Bereuter	Holloway	Rogers
Bilirakis	Hopkins	Rohrabacher
Boehner	Houghton	Ros-Lehtinen
Broomfield	Hunter	Roukema
Bunning	Hyde	Santorum
Burton	Inhofe	Saxton
Callahan	James	Schiff
Camp	Johnson (CT)	Schulze
Campbell (CA)	Johnson (TX)	Sensenbrenner
Campbell (CO)	Klug	Shaw
Chandler	Kolbe	Shuster
Coble	Kyl	Skeen
Coleman (MO)	Lagomarsino	Slaughter (VA)
Combest	Leach	Smith (NJ)
Cox (CA)	Lightfoot	Smith (OR)
Crane	Livingston	Smith (TX)
Cunningham	Lowery (CA)	Solomon
Dannemeyer	Machtley	Spence
DeLay	Marlenee	Stearns
Dickinson	Martin	Stump
Doolittle	McCandless	Sundquist
Dornan (CA)	McCollum	Taylor (NC)
Dreier	McCrery	Thomas (CA)
Duncan	McEwen	Thomas (WY)
Edwards (OK)	McGrath	Upton
Emerson	Miller (OH)	Vander Jagt
Fawell	Miller (WA)	Vucanovich
Franks (CT)	Molinar	Walker
Galleghy	Moorhead	Walsh
Gekas	Myers	Weber
Gilchrest	Nichols	Weldon
Gillmor	Nussle	Wylie
Gingrich	Packard	Zeliff
Goodling	Paxon	Zimmer
Goss	Petri	
Gradison	Porter	

NOES—294

Abercrombie	AuCoin	Borski
Ackerman	Bacchus	Boucher
Alexander	Ballenger	Boxer
Anderson	Barnard	Brewster
Andrews (ME)	Bateman	Brooks
Andrews (NJ)	Beilenson	Browder
Andrews (TX)	Berman	Brown
Annunzio	Bevill	Bruce
Anthony	Bilbray	Bryant
Applegate	Billey	Bustamante
Aspin	Boehert	Byron
Atkins	Bonior	Cardin

Carper	Jefferson	Perkins
Carr	Jenkins	Peterson (FL)
Chapman	Johnson (SD)	Peterson (MN)
Clay	Johnston	Pickett
Clement	Jones (GA)	Pickle
Clinger	Jones (NC)	Poshard
Coleman (TX)	Jontz	Price
Collins (MI)	Kanjorski	Rahall
Condit	Kaptur	Rangel
Conyers	Kasich	Ravenel
Cooper	Kennedy	Ray
Costello	Kennelly	Reed
Coughlin	Kildee	Richardson
Cox (IL)	Klecza	Ridge
Coyne	Kolter	Ritter
Cramer	Kopetski	Roe
Darden	Kostmayer	Roemer
Davis	LaFalce	Rose
de la Garza	Lancaster	Rostenkowski
DeFazio	Lantos	Roth
DeLauro	LaRocco	Rowland
Dellums	Laughlin	Roybal
Derrick	Lehman (CA)	Russo
Dicks	Lent	Sabo
Dingell	Levin (MI)	Sanders
Dixon	Levine (CA)	Sangmeister
Donnelly	Lewis (CA)	Sarpallus
Dooley	Lewis (FL)	Savage
Dorgan (ND)	Lewis (GA)	Sawyer
Downey	Lipinski	Schaefer
Durbin	Lloyd	Scheuer
Dwyer	Long	Schroeder
Dymally	Lowe (NY)	Schumer
Early	Luken	Serrano
Eckart	Manton	Sharp
Edwards (CA)	Markey	Shays
Edwards (TX)	Martinez	Sikorski
Engel	Mavroules	Skaggs
English	Mazzoli	Skelton
Erdreich	McCloskey	Slattery
Espy	McCurdy	Slaughter (NY)
Evans	McDade	Smith (FL)
Fascell	McDermott	Smith (IA)
Fazio	McHugh	Snowe
Feighan	McMillan (NC)	Solarz
Fields	McMillen (MD)	Spratt
Fish	McNulty	Staggers
Flake	Meyers	Stallings
Foglietta	Mfume	Stark
Ford (MI)	Michel	Stenholm
Frank (MA)	Miller (CA)	Stokes
Frost	Mineta	Studds
Gallo	Mink	Sweet
Gaydos	Moakley	Swift
Gejdenson	Mollohan	Synar
Geren	Montgomery	Tallon
Gibbons	Moody	Tanner
Gilman	Moran	Tauzin
Glickman	Morella	Taylor (MS)
Gonzalez	Morrison	Thornton
Gordon	Mrazek	Torres
Gray	Murphy	Torricelli
Green	Murtha	Towns
Guarini	Nagle	Traficant
Hall (OH)	Natcher	Traxler
Hall (TX)	Neal (MA)	Unsoeld
Hamilton	Neal (NC)	Valentine
Hammerschmidt	Nowak	Vento
Harris	Oakar	Viscosky
Hatcher	Oberstar	Volkmer
Hayes (IL)	Obey	Washington
Hayes (LA)	Olin	Waters
Hefner	Ortiz	Waxman
Hertel	Orton	Weiss
Hoagland	Owens (NY)	Wheat
Hobson	Owens (UT)	Whitten
Hochbrueckner	Oxley	Williams
Horn	Pallone	Wilson
Horton	Panetta	Wise
Hoyer	Parker	Wolf
Hubbard	Patterson	Wolpe
Huckaby	Payne (NJ)	Wyden
Hughes	Payne (VA)	Yates
Hutto	Pease	Yatron
Ireland	Pelosi	Young (AK)
Jacobs	Penny	Young (FL)

NOT VOTING—7

Collins (IL)	Lehman (FL)	Thomas (GA)
Ford (TN)	Matsui	
Gephardt	Sisisky	

□ 1729

Mr. MOODY changed his vote from "aye" to "no".

Mr. PORTER changed his vote from "no" to "aye".

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. SOLOMON

Mr. SOLOMON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SOLOMON: Page 40, after line 21, insert the following new section:

"SEC. 313. (a) Each House of Congress, and each other entity within the legislative branch, shall establish and implement a random controlled substances testing program for employees and officers, whether appointed or otherwise, within their respective bodies.

(b) For the purpose of this section, the term "controlled substance" has the meaning given such term by section 102 of the Controlled Substances Act.

Mr. FAZIO. Mr. Chairman, I reserve a point of order against the gentleman's amendment.

The CHAIRMAN. The gentleman from California [Mr. FAZIO] reserves a point of order.

Mr. SOLOMON. Mr. Chairman, I will be very brief. We are ending this bill very shortly, and I do not want to take up much time.

But let me just say that I would not be offering an amendment to an appropriations bill under ordinary circumstances. Because I am the ranking Republican on the Committee on Rules. I try very hard to obey the rules of the House. I urge all Member to do so.

But the truth is there is no authorization bill out there right now for the legislative branch. This bill is the only opportunity that I have. You all know that I have been offering amendments on bills for every department and agency and bureau of the Federal Government which would require random drug testing of Federal employees. It is only fair to them that we treat ourselves and our staff the same as we would hope to treat them. That is why I offer the amendment today.

Mr. Chairman, I do not mean to impugn the character or the integrity of any Member of this House or any Member of the legislative branch. Nor do I believe that any Member of this House does use illegal drugs, nor do I believe their staffs do. However, we do know that we have a terrible problem in the country, and we know that there is rampant drug use throughout America by many of our citizens.

Unfortunately, 75 percent of all the illegal drug use that takes place in the country today is used by casual drug users, usually those coming from the middle-class or from the upper-middle-class. That means that many people just like you and I, as Members of Congress from that same echelon, and many people on your staffs come from that same middle- or upper-middle-class constituency.

Therefore, I offer the amendment in hopes that we could set the example for not only the other Federal employees but for the private sector as well that we want to stop casual drug use in America. Let's lick this terrible problem that is facing us.

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I am happy to yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would rise in support of the gentleman's amendment if it is made in order.

I have introduced legislation, H.R. 17, that would require random drug testing of Members of Congress. It does not relate to the staff drug testing that is also in the amendment offered by the gentleman from New York.

My legislation has been referred to the Committee on House Administration on January 3, which was the first day that we could introduce legislation. There has been no hearing yet set on the legislation, and to my knowledge they are not planning any hearings. So this may be the only opportunity to get an amendment considered, and I personally think, as Members of Congress, we should set an example for the rest of the country.

We have a serious drug problem. We should be in the forefront of trying to help solve that problem, and the amendment offered by the gentleman from New York would certainly give us credibility in our efforts to get the rest of the country to help fight and win the war against drugs.

Mr. SOLOMON. Mr. Chairman, before yielding back the balance of my time, let me just say that I introduced a bill to try to get this amendment on the floor in the 101st Congress. It was pending before the Committee on House Administration for those years. I have now introduced it in this Congress. It is H.R. 2420.

Even though a point of order lies against the amendment, I would hope that the gentleman would allow a vote on this measure just to show the American people we are as sincere as they are in trying to do something about this terrible problem.

POINT OF ORDER

The CHAIRMAN. Does the gentleman from California [Mr. FAZIO] wish to be heard on his reservation of a point of order?

Mr. FAZIO. Mr. Chairman, I would simply say that the House does feel very deeply about the problem of drug abuse. We have a policy which has been promulgated by our Speaker, put into effect on October 2, 1990. I will place that in the RECORD:

U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, October 2, 1990.

DEAR COLLEAGUE: Substance abuse is a serious problem affecting many Americans

throughout our Nation. The House of Representatives, as a governmental institution employing several thousand individuals, is committed to providing our employees, and those we serve, with a drug-free workplace. This statement is intended to articulate the policy designed to meet that goal.

The unauthorized possession, use, or distribution of controlled substances in the offices of the House of Representatives is violative of applicable laws. Furthermore, if such violations occur in the offices of the House of Representatives, it does not reflect creditably on the House of Representatives. Each employing authority in the House shall take appropriate action which may include termination or other properly available employment action, when such use, possession, or distribution occurs, depending upon the specific facts and circumstances of any such instance. It is fundamental to the employer-employee relationship that any policy concerning remedies with respect to possession or use of controlled substances in the workplace be administered in a humanitarian fashion. Therefore, in the administration of this drug-free workplace policy, remedial measures, such as counselling and rehabilitation, as well as the full range of properly available employment actions, may be and should be considered. With respect to counselling and rehabilitative services the Employee Assistance Program which is being established under the auspices of the Clerk of the House will provide one internally available resource for such services.

This policy is designed to ensure that workplaces in the House of Representatives be, in a manner consistent with law, free from the illegal use, possession, or distribution of controlled substances (as defined by the Controlled Substances Act) by the Members, officers, and employees of the House of Representatives.

Sincerely,

THOMAS S. FOLEY,
Speaker.

But at this point, I cannot accept the authorization language on this appropriation bill.

Mr. Chairman, I make a point of order against the amendment, because it proposes to change existing law and constitutes legislation in an appropriation bill and, therefore, violated clause 2 of rule XXI.

Mr. SOLOMON. Mr. Chairman, as I said before, I recognized that a point of order legitimately lies against the amendment, and rather than appeal to the Chair on something I know is correct, why, I am going to accept the ruling of the Chair.

The CHAIRMAN (Mr. DONNELLY). The Chair will rule that, for the reason stated by the gentleman from California [Mr. FAZIO], the point of order is sustained.

AMENDMENT OFFERED BY MR. LEWIS OF CALIFORNIA

Mr. LEWIS of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEWIS of California: Page 33, line 2, insert after "Congress" the following: "Provided further, That none of the funds appropriated in this Act may be used for any assignment or detail of an officer or employee of the General Accounting Office to a committee of the House of Representatives for a period in ex-

cess of the period permitted under section 734 of title 31, United States Code".

Mr. FAZIO. Mr. Chairman, I reserve a point of order against the amendment offered by the gentleman from California [Mr. LEWIS].

The CHAIRMAN. The gentleman from California [Mr. FAZIO] reserves a point of order.

Mr. LEWIS of California. Mr. Chairman and my colleagues, the dialogue that I expected we might have on this amendment has largely taken place when we discussed detailees during debates on the earlier amendment cutting the appropriation to the GAO. Nonetheless, I think it is important that we highlight and bring to the attention of the Members a problem that is very significant in terms of the pattern and the fashion that detailees from GAO are used within our committees in the House.

The chart that I have before me makes a very significant point, and while it addresses only four committees in the House, it makes the point that Members on our side of the aisle are attempting to make. There is a pattern in the House of staffing within GAO that is becoming of great concern to those of us who have supported that agency because its purpose is to provide unbiased analysis of the work of the administration, reflecting the interests and concerns of Members on both sides of the aisle.

Currently we have in the House a circumstance that is very disconcerting to this Member, that is, that there is an imbalance within our committee system in terms of staffing ratios that distinctly impact in a negative fashion the ability of the minority to be heard in the committee process.

To illustrate the point, in the Committee on Energy and Commerce, a committee we discussed earlier, there are 33 GAO detailees this year. Of the Energy and Commerce total investigative staffs, the majority has 92 staffers, the minority 13, a pattern of 88 percent of the staff going to the majority. You then add to that ratio the impact of detailees, and the staff ratios become 91 percent of the staff for the majority and 9 percent for the minority.

If the Members will peruse this chart, they can see the pattern continues, and it is creating a very significant pattern.

GAO DETAILEES IN 1990

Committee	Number of detailees	Investigative staff		Staff ratio		Staff ratio with detailees	
		Number majority	Number minority	Percent majority	Percent minority	Percent majority	Percent minority
Energy and Commerce	33	92	13	88	12	91	9
Government Operations	27	51	6	89	11	93	7
Banking	17	69	11	86	14	89	11
Judiciary	8	43	4	91	9	93	7

Source: Supplement to the Comptroller General's 1990 Annual Report 1990 Committee Budget Requests.

□ 1740

My own Members are very concerned that the GAO detailees that are coming to our committee, at the direction of the chairman, rarely in the employ of a ranking member. Those detailees in some cases carry on professional work with a bias.

It is very important for Members to know that this growing pattern is the reason for the slant of the debate today from our side of the aisle—a growing concern where GAO details would take the important work of the House.

These detailees are professionals who, under the existing law, can work on a specific project for a committee up to a year. The law literally says they cannot extend beyond 1 year, but the fact is that going through the Committee on House Administration, a chairman often extends those detailees beyond a year or two, and those are the people that my amendment specifically concerns. To have a detailee of very intense professional background, serving a year in one of our committees or subcommittees, and then automatically to be available to the same committee, the same subcommittee, or another subcommittee of that full committee, for a second or a third year, creates, to say the least, a very difficult circumstance for the minority.

My amendment today essentially says that no funds will be expended for such detailees.

It has been suggested by some that the reason that the minority has relatively few detailees assigned to them is because we do not ask for them. The fact is, the chairmen of the committees ask for them on behalf of other people. The reality is that the minority finds itself in a circumstance where if they were to ask for such employees they do not have the space to put them in. So as a practical fact of life, the majority continues to dominate.

It is that concern that I am here to bring to the attention of the House, and I urge Members to support my amendment to eliminate this practice, which is part of the pattern of the way the committees are being staffed in the House.

The CHAIRMAN. Does the gentleman from California [Mr. FAZIO] wish to continue his reservation?

Mr. FAZIO. Mr. Chairman, I do not need to be heard on the reservation. I will move at some point, but I want to allow the gentleman from North Carolina [Mr. ROSE] and the gentleman from California [Mr. THOMAS], who wish to comment on this, to be heard before I offer my point of order. However, I would like to continue my reservation.

Mr. MICHEL. Mr. Chairman, I move to strike the last word.

I intend to support the gentleman from California [Mr. LEWIS]. I voted against the last amendment because I know the value of the General Ac-

counting Office. I was one of those, in my leadership role, responsible for Mr. Boucher's appointment in the first place. He is a good personal friend of mine, and one who I served for many years on the Committee on Appropriations. That was natural to utilize to a great extent, the great work that is done by the General Accounting Office in supplying the Committee on Appropriations which I serve, the kind of documentation and voluminous reports over a long period of time.

Therefore, I know the value, and I just caught a few of the words of the gentleman from North Carolina in the earlier dialog that took place. He is eminently correct, but I think what is happening here, there has been a pattern that has evolved here that ought to be corrected. I am a leader on our side. I have a certain measure of power, certainly nothing that compares to the power of the Speaker. There is nothing wrong with that disparity, either. Each of the committee chairmen wield a great deal of power in this body; ranking members, a fraction of what power is. I would like to think all Members who have any measure of power to wield, that we would be fair and would not abuse that power.

I think the thing that rankles this Member, in the past there has been a pattern evolving here where one tends to get the feeling that these GAO people, and it is an arm of the people, are the handmaidens of just certain people, and all the information is privy only to that one individual, and ought to be disseminated either to the ranking member as a minority member or other members of the committee. I think that is unfair, and I am not altogether sure it is a good practice around here.

Therefore, all I am asking, and the distinguished gentleman from Michigan and I have had a conversation several times about it over a period of time, because he utilizes the GAO to a great extent. We have tremendous debates in this House on funding of committees and who gets how much staff and how much investigating staff, and the wide disparity between what Members on the majority side and what the minority gets on our side, so what we are raising, this was not raised because of the doggone report on the Canadian Health Plan, this is something that has been going on for quite sometime, and has nothing to do with the good work that GAO does. However, the process and the procedure in this House by which we utilize those people, that is what we are getting at here. I think there has to be some correction made, because otherwise we are going to continue to raise the question.

Now, the distinguished gentleman talks about the billions of dollars that are saved, and I agree with that. May be a little bit magnified, but when, for example, the last flap we had over investigating, what happened in the Oc-

tober surprise back in 1980 had nothing to do with dollars and cents. So I asked the Comptroller General in a letter dated May 20, I guess it was, how did this all come about, who authorized it? Who asked for it? When was it done? Well, it so happens I get a reply back that said they undertook the inquiry at the request of the chairman of the Committee on Government Operations, I guess at that time back in July 1990. I asked, what happened to the report? Well, we will put that all in the RECORD. The point being, it was not shared with any Member other than simply the chairman.

Now, I happen to think that in a matter of that concern that the ranking member of the Committee on Government Operations would certainly be entitled to at least ask, "Hey, what did you-all find out? Are we entitled to that?" They are an arm of the Congress, not an arm of one individual or one committee chairman. We would like to think we have a shared role in the responsibility of running this House in an orderly fashion. That is what our gritch is. It is not what the GAO does, or the number of employees they have doing whatever they do. They are good people and pursue their work. However, let Members face it, as an arm of the Congress, when they are asked by a man of influence in this body, they are going to have to respond.

My view, and my only point that I am trying to underscore, it seems to me that it ought to be done more on a bipartisan basis. Quite frankly, there are plenty of staff people on a partisan basis that can do it if it has to be done, playing it close to the belt or the vest, where they would be sure that the information were held only to the one side of the aisle or the other. Let Members face it, in some of our committees, we have minority staff, it is true. During my long tenure on the Committee on Appropriations I never thought in terms of a partisan staff. Shucks, we never had a point about it because we all worked in a very bipartisan way.

The other legislative committees admittedly tend to get minority/majority, and that is part of the process. All we are trying to underscore here, and I appreciate the gentleman from California raising the issue one more time, gentleman, it has been thoroughly aired and debated early on, I think, but we wanted to make the point abundantly clear what the real core and substance of our complaint was.

Mr. ROSE. Mr. Chairman, I move to strike the last word, and I will be very brief.

I would like to engage my colleague from California [Mr. THOMAS], the ranking member on the Committee on House Administration for just a few brief words. I have heard and listened with great interest to everything that has been said here. I understand the

concerns that have been expressed and the explanations that have been given. The law states that the detailees from the General Accounting Office, before they can be authorized, must have the approval of the Committee on House Administration.

In other words, our committee is responsible for authorizing these positions. I want to pledge to the gentleman from California [Mr. LEWIS] and to Members of his side of the aisle that our committee will endeavor in the future to take a very close look at this process to see that the detailees are fairly authorized, and that some of the concerns the gentleman expressed, are looked into and met.

□ 1750

Mr. THOMAS of California. Mr. Chairman, will the gentleman yield?

Mr. ROSE. I yield to the gentleman from California.

Mr. THOMAS of California. Mr. Chairman, as folks know, the Accounts Subcommittee of the House Administration Committee determines the investigative committee funding. Over the last several years, Republicans, as the leader indicated, have been concerned about the question of reasonable fairness in ratios.

In addition to that, although it is not under the jurisdiction of House Administration, there has been a concern about space. Everybody is concerned about space. We are concerned about a fair share allocation of space.

As the chairman correctly indicated, the underlying statute says that no one can have a detailee, and we have been focusing on the GAO here, but of course the Government Printing Office and a number of other agencies provide detailees as well; but no committee can have a detailee without written permission of House Administration.

It seems to me that if the gentleman from North Carolina, the chairman of the committee, is willing to work with the ranking member from California, we can set up a procedure somewhat akin to the investigative budget procedure in which the minority can be assured of some input on the decision on detailees. If that is what the gentleman is indicating, I think we can resolve the problem from our side of the aisle through the underlying statute portion of House Administration signing off.

Mr. ROSE. Mr. Chairman, I think the House knows and the gentleman from California knows that we have worked very hard this year at cooperation and making this place work smoothly and better.

I endorse the procedure that the gentleman has outlined in his comments and we will work together to see that this no longer becomes a problem to anybody.

Mr. LEWIS of California. Mr. Chairman, will the gentleman yield?

Mr. ROSE. I am happy to yield to the gentleman from California.

Mr. LEWIS of California. Mr. Chairman, as the gentleman knows, this Member is very concerned about the pattern that has begun to develop relative to the detailees and their assignment in the House.

Between the years 1987 and 1990, the time that we have been able to get this information about numbers of detailees, starting in 1987 detailees in numbers of 119 have risen through 1990 to the number of 172, with a pattern of increase at levels of 17, 20, and 23 percent.

Having said that, those detailees carry on responsibilities in committees that very much appear to be developing a partisan slant.

It is my concern that both sides of the aisle have a chance to sign off on those kinds of assignments initially, and if that is what the gentleman is telling me that he is willing to do, then that changes the picture, at least for the short term considerably.

Mr. ROSE. Mr. Chairman, I am telling the gentleman that the gentleman from California [Mr. THOMAS] and I will agree on a system that will see that this is not a problem for the gentleman's side of the aisle, that will allow the work of the detailees to go forward, but just with the usual kind of way in which the gentleman from California [Mr. THOMAS] and I work together, I think the gentleman's concerns will be met.

Mr. Chairman, I yield to the gentleman from Kansas [Mr. ROBERTS], a member of my committee.

Mr. ROBERTS. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise in support of the Lewis amendment.

Mr. Chairman, I rise in support of Congressman JERRY LEWIS's amendment to better control the use of Government Accounting Office detailees in the House.

During fiscal year 1990, the Congress utilized the talents and skills of 130 GAO detailees. This service cost the GAO \$5.3 million—in fiscal year 1990.

While I wish not to directly criticize the work these detailees provide—it is undoubtedly beneficial—I share my colleagues concern with their growing use in the House without cost accountability.

As explained by Congressman LEWIS, GAO detailees are brought to the House at the request of committees. They are responsible to investigate and retrieve information for the benefit of the committee. They play the role of committee staff with expertise in certain areas. Why shouldn't committee be expected to pay for their services?

The Lewis amendment is willing to allow committees to request and work GAO detailees for up to 1 year without having to pay their salaries—a generous compromise. It is offered to place financial burden-sharing on committee budgets and prevent abuse of the current system.

The Lewis amendment does not forbid, prevent, or hinder the use of GAO detailees. It corrects inequities and returns the system back to the intent of the law.

I urge my colleagues to support this amendment.

Mr. THOMAS of California. Mr. Chairman, if the gentleman will yield further, based upon this colloquy, is the gentleman interested in pursuing his amendment?

Mr. LEWIS of California. Mr. Chairman, will either of these gentleman yield?

Mr. ROSE. Mr. Chairman, I am happy to yield to the gentleman from California.

Mr. LEWIS of California. Mr. Chairman, assuming that I understand our understanding, recognizing that we will be watching very closely in the near term, with that understanding I will withdraw my amendment.

Mr. ROSE. Mr. Chairman, I thank the gentleman. We will work together.

Mr. PORTER. Mr. Chairman, I want to commend my subcommittee chairman, the gentleman from California [Mr. FAZIO], and my ranking member also, the gentleman from California [Mr. LEWIS], and members of the committee for the fine job that they have done in bringing the bill together. I want to point out to the Members that this legislation contains some important environmental provisions that they ought to be aware of.

First, Mr. Chairman, we put in funding for the expansion of the office waste recycling program that is going forward in the House of Representatives, and we have also put in money for a comprehensive review of the lighting systems in the House, Senate, Capitol, and the Library of Congress. The review will be used to determine a schedule for retrofitting all of the systems with efficient lighting technology and work toward the goal of saving substantial amounts of money in that account.

Mr. Chairman, the bill also contains provisions regarding recycled paper, and we love to pat ourselves on the back and say that we use recycled paper in our work in the Congress. As a matter of fact, however, most of the paper that is used here is not really recycled paper. It is not paper that contains postconsumer waste paper: That is paper that has been used once and removed from the waste stream to be recycled.

Mr. Chairman, the Federal Government is the single largest user of paper in the world, using over 2 percent of all the paper used in the United States. There are many applications of paper that do not require highly reflective white paper, but paper that could contain postconsumer waste and may have a slightly gray hue to it. The Moore Business Forms Co., the largest purveyor of business forms in the world, has begun a process whereby it is using a great deal of postconsumer waste paper in its operations. It seems to me that the Government ought to take the lead as well, particularly in the use of forms within the Congress or forms within agencies like the Internal Revenue Service where we can stop the need to cut down virgin timber and create the same paper by using paper that has been truly recycled; that is, postconsumer waste paper.

Mr. Chairman, this would eventually, if we follow our good principles, create an entire new industry and make our society, our econ-

omy, a more dynamic one. It is a fine provision for conservation, and the bill contains extensive language requesting the Government Printing Office to report to the Congress a list of printing jobs that can be printed on real recycled paper. It suggests innovative uses of recycled paper for such bulky items as IRS tax documents.

Mr. Chairman, I commend the members of the committee for including these environmentally sound provisions in the bill.

The CHAIRMAN. Without objection, the amendment offered by the gentleman from California [Mr. LEWIS] is withdrawn.

There was no objection.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

This Act may be cited as the "Legislative Branch Appropriations Act, 1992".

Mr. FAZIO. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with the recommendation that the bill do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. DONNELLY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2506) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1992, and for other purposes, had directed him to report the bill back to the House with the recommendation that the bill do pass.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 308, nays 110, not voting 13, as follows:

[Roll No. 137]

YEAS—308

Abercrombie	Andrews (TX)	AuCoin
Ackerman	Annunzio	Bacchus
Alexander	Anthony	Baker
Anderson	Applegate	Barnard
Andrews (ME)	Aspin	Bateman
Andrews (NJ)	Atkins	Bellenson

Bennett Hefner Owens (UT)
 Bentley Hertel Oxley
 Berman Hoagland Panetta
 Bilbray Hochbrueckner Parker
 Billey Horn Patterson
 Boehlert Horton Payne (NJ)
 Bonior Houghton Payne (VA)
 Borski Hoyer Pease
 Boucher Hubbard Pelosi
 Boxer Huckaby Penny
 Brewster Hughes Perkins
 Brooks Hutto Peterson (FL)
 Browder Hyde Peterson (MN)
 Brown Jefferson Pickett
 Bruce Jenkins Pickle
 Bryant Johnson (SD) Porter
 Bustamante Johnson (TX) Poshard
 Campbell (CO) Johnston Price
 Cardin Jones (GA) Quillen
 Carper Jones (NC) Rahall
 Carr Jontz Rangel
 Chandler Kanjorski Ray
 Chapman Kaptur Reed
 Clay Kennedy Regula
 Clement Kennelly Richardson
 Clinger Kildee Ridge
 Coleman (MO) Kliczka Rinaldo
 Coleman (TX) Kolter Roe
 Collins (MI) Kopetski Roemer
 Condit Kostmayer Rogers
 Conyers LaFalce Ros-Lehtinen
 Cooper Lancaster Rose
 Costello Lantos Rostenkowski
 Coughlin LaRocco Roukema
 Cox (IL) Laughlin Rowland
 Coyne Lehman (CA) Roybal
 Cramer Lent Russo
 Cunningham Levin (MI) Sabo
 Darden Levine (CA) Sanders
 Davis Lewis (CA) Sangmeister
 de la Garza Lewis (GA) Savage
 DeFazio Lipinski Sawyer
 DeLauro Livingston Scheuer
 Dellums Lloyd Schiff
 Derrick Long Schroeder
 Dickinson Lowery (CA) Schulze
 Dicks Lowey (NY) Schumer
 Dingell Luken Serrano
 Dixon Machtley Sikorski
 Donnelly Manton Skaggs
 Dooley Markey Skeen
 Doolittle Marlenee Skelton
 Dorgan (ND) Martin Slaughter (NY)
 Downey Martinez Smith (FL)
 Durbin Mavroules Smith (IA)
 Dwyer Mazzoli Smith (NJ)
 Dymally McCloskey Solarz
 Early McCrery Spratt
 Eckart McCurdy Staggars
 Edwards (CA) McDade Stallings
 Edwards (TX) McDermott Stark
 Engel McGrath Stenholm
 English McHugh Stokes
 Espy McMillan (NC) Studds
 Evans McMillen (MD) Swett
 Fascell McNulty Swift
 Fazio Mfume Synar
 Feighan Michel Tallon
 Flake Miller (CA) Tanner
 Foglietta Miller (OH) Tauzin
 Ford (MI) Mineta Taylor (MS)
 Frank (MA) Mink Thomas (CA)
 Frost Moakley Thornton
 Gallo Mollohan Torres
 Gaydos Montgomery Towns
 Gejdenson Moody Traficant
 Geren Moran Traxler
 Gibbons Morella Unsoeld
 Gillmor Morrison Valentine
 Gilman Mrazek Vento
 Gonzalez Murphy Visclosky
 Goodling Murtha Volkmer
 Gordon Myers Vucanovich
 Gray Nagle Walsh
 Green Natcher Washington
 Guarini Neal (MA) Waters
 Gunderson Neal (NC) Waxman
 Hall (OH) Nowak Weiss
 Hall (TX) Oakar Wheat
 Hamilton Oberstar Whitten
 Harris Obey Williams
 Hastert Olin Wilson
 Hatcher Ortiz Wise
 Hayes (IL) Orton Wolf
 Hayes (LA) Owens (NY)

Wolpe Yates
 Wyden Yatron
 Allard Hammerschmidt
 Archer Hancock Ramstad
 Arney Hansen Ravelle
 Ballenger Hefley Rhodes
 Barrett Henry Riggs
 Barton Herger Ritter
 Bereuter Hobson Roberts
 Billrakis Holloway Rohrabacher
 Boehner Hopkins Roth
 Broomfield Hunter Santorum
 Bunning Inhofe Sarpalius
 Burton Ireland Saxton
 Callahan Jacobs Schaefer
 Camp James Sensenbrenner
 Campbell (CA) Johnson (CT) Shaw
 Coble Kasich Shays
 Combest Klug Shuster
 Cox (CA) Kolbe Slatery
 Crane Kyl Slaughter (VA)
 Dannemeyer Lagomarsino Smith (OR)
 DeLay Leach Smith (TX)
 Dornan (CA) Lewis (FL) Snowe
 Dreier Lightfoot Solomon
 Duncan McCandless Spence
 Edwards (OK) McCollum Stearns
 Emerson McEwen Stump
 Erdreich Meyers Sundquist
 Fawell Miller (WA) Taylor (NC)
 Fields Molinari Thomas (WY)
 Franks (CT) Moorhead Upton
 Gallegly Nichols Vander Jagt
 Gekas Nussle Walker
 Gilchrest Packard Weber
 Glickman Pallone Weldon
 Goss Paxon Wylie
 Gradison Petri Zeliff
 Grandy Pursell Zimmer

NAYS—110

NOT VOTING—13

□ 1815

Mr. DORNAN of California changed his vote from "yea" to "nay."
 So the bill was passed.
 The result of the vote was announced as above recorded.
 A motion to reconsider was laid on the table.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER DURING CONSIDERATION OF H.R. 2521, DEPARTMENT OF DEFENSE APPROPRIATION BILL FOR FISCAL YEAR 1992

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 102-98) on the resolution (H. Res. 165) waiving certain points of order during consideration of the bill (H.R. 2521) making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes, which was referred

to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER DURING CONSIDERATION OF H.R. 2519, DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT APPROPRIATION BILL, FISCAL YEAR 1992

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 102-99) on the resolution (H. Res. 166) waiving certain points of order during consideration of the bill (H.R. 2519) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PEDIATRIC AIDS AWARENESS WEEK

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 91) designating June 10 through 16, 1991, as "Pediatric AIDS Awareness Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. ORTON). Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I take this time to yield to our colleague, the gentleman from New York [Mr. SERRANO], the chief sponsor of this joint resolution.

Mr. SERRANO. Mr. Speaker, I am very proud and pleased to have introduced the first resolution ever specifically directed to the alarming and increasing number of fatal cases of AIDS among our children.

House Joint Resolution 91 focuses attention on a tragic development affecting our most precious possession, the Nation's children.

The April 1991 statistics reported to the centers for disease control reveal 3,028 cases of pediatric AIDS resulting in 1,581 deaths. The alarming rate at which pediatric AIDS cases are being diagnosed indicates that by the end of 1992, the number of children infected with human immunodeficiency virus [HIV] will have doubled.

The highest numbers of pediatric AIDS cases as reported by the CDC in metropolitan cities include: New York 779 cases, Miami 171, Newark, 146, San Juan 111, Los Angeles 94, Washington 73, Boston 57, Philadelphia 56, Chicago

55, Baltimore 53, Houston 51, Atlanta 30, New Haven 28 and Detroit 25.

Mr. Speaker, my congressional district in the South Bronx is home to a large number of the economically and socially disadvantaged of New York City and the Nation. Is it the poorest district in the Nation, and it is bearing much of the brunt of the AIDS assault. Bronx newborns have the highest incidence of HIV seropositivity in New York City. As of March 1991 the New York City AIDS surveillance reported 189 pediatric cases in the Bronx. That is 27 percent of the total for all of New York City. The Bronx alone has 10 percent of the entire Nation's pediatric AIDS cases.

Ninety-one percent of all pediatric AIDS cases in New York City are African-American or Latino and from my district, the figure is 94 percent. New York City has 26 percent of national total reported pediatric AIDS cases. The tragic statistic that AIDS is the leading cause of death of children ages 1 to 4 in New York City is an indication of the dimension of the problem.

Mr. Speaker, these figures are alarming, but what is really frightening is that, for every child born or diagnosed with the AIDS virus disease there is another who is also infected, and a father, who also carries the disease.

□ 1820

Unprecedented numbers of newborn are at risk of abandonment as the maternal drug use continues to escalate. According to CDC statistics for April 1991 84 percent of pediatric AIDS cases reported resulted from mothers with HIV or at risk of HIV and intravenous drug use.

Mr. Speaker, House Joint Resolution 91 enjoys the strong bipartisan support of 220 Members of Congress and several national organizations each of which merits commendation here. They are Sunburst National AIDS project; the National Association of Children's Hospitals and related institutions; the Pediatric AIDS Foundation; Hostos AIDS task force; the National Puerto Rican Coalition; the National Black Child Development Institute; Child Welfare League; the National Coalition of Hispanic Health and Human Services Organization; the AIDS Interfaith Network; the National Minority AIDS Council; National Parents Council on AIDS; the Pediatric AIDS coalition; Northern Lights Alternative, New York.

Mr. Speaker, I would like very much to thank the members of the committee for giving me this opportunity to put forth this message, a message which I hope will alert our Nation and alert this House to the fact that this is a very serious problem. When we think of AIDS in this society, we think of older people. We do not think of children. Yet the children who day after day suffer in this society, now find

themselves with something new to have to deal with.

Mr. Speaker, children who are born afflicted with AIDS are not wanted in this society. Children who are born suffering from AIDS are not being taken care of by parents who are also ill. Children who born with AIDS are looked upon as individuals with no rights in this society.

Mr. Speaker, I realize, having presented this as my first resolution, that resolutions like these simply call attention to matters. But it is my hope that the attention we call will make us think, think and realize, that the children have to be given an opportunity to grow up, and that we need to do whatever we can to help these little people in our society who have no one to defend them.

Mr. Speaker, my district is the poorest district in the Nation. On top of all the homelessness problems and the education problems and crime problems, we now find ourselves with children that no one really wants to deal with. I hope that this resolution will give us the opportunity to dedicate more of our efforts to helping the children.

Mr. Speaker, I urge Members to join me next week in raising awareness of HIV-infected children.

Mr. RIDGE. Mr. Speaker, I thank the gentleman from New York [Mr. SERRANO] for his sponsorship of this very important resolution.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. ORTON). Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 91

Whereas more than 157,525 individuals in the United States have been diagnosed with acquired immunodeficiency syndrome (commonly known as AIDS) and 98,530 have died from the disease;

Whereas the Public Health Service has estimated that there will be 365,000 cases of AIDS by the end of 1992 and that there are currently between 1,000,000 to 1,500,000 persons in the United States infected with the human immunodeficiency virus (commonly known as HIV) which causes AIDS;

Whereas heterosexual AIDS is not a myth as evidenced by the fact that the proportion of females with AIDS continues to rise, as does the number of pediatric AIDS cases of children infected perinatally;

Whereas pediatric AIDS refers to AIDS patients under the age of 13 at the time of being diagnosed with the disease;

Whereas the Centers for Disease Control has reported 2,734 cases of pediatric AIDS resulting in 1,423 deaths as of November 1990;

Whereas approximately 75 percent of teenagers in the United States have had sexual intercourse by the age of 19;

Whereas among the 25,000,000 adolescents between the ages of 13 and 19 there are subgroups who either have intercourse at an earlier age or whose patterns of sexual be-

havior put them at risk of becoming infected with HIV;

Whereas HIV-infected women can transmit the virus to their infants during pregnancy or at birth;

Whereas more than 80 percent of children with AIDS have a parent with, or at risk for, HIV infection;

Whereas 27 percent of reported pediatric AIDS cases in the United States have occurred in New York City and 74 percent of those are related to drug use by a parent or unprotected sexual activity;

Whereas 70 percent of women who are HIV-infected and 78 percent of children with pediatric AIDS are African-American or Latino, many of whom have experienced social and economic discrimination;

Whereas there have been 157 cases of pediatric AIDS reported to the Centers for Disease Control in Miami, Florida; 123 cases in Newark, New Jersey; 106 cases in San Juan, Puerto Rico; 90 cases in Los Angeles, California; 64 cases in Washington, District of Columbia; 53 cases in West Palm Beach, Florida; 53 cases in Philadelphia, Pennsylvania; 51 cases in Boston, Massachusetts; 50 cases in Chicago, Illinois; 49 cases in Baltimore, Maryland; and 45 cases in Houston, Texas;

Whereas schools across the Nation continue to discriminate against AIDS and HIV-infected children and their families;

Whereas there are increasing numbers of HIV-infected children and it is important that the people of the United States diligently seek preventative measures and better solutions to care for HIV-infected pregnant women, including helping them gain access to new delaying and preventative therapies to allow time for biomedical progress;

Whereas early intervention and educational resources must be made available to all citizens, especially adolescents, women who are drug abusers, and other high-risk groups to make them more aware of AIDS and the risks associated with engaging in unprotected sexual activity;

Whereas the Health Care Financing Administration and the Public Health Service should work with appropriate State officials to help design optimal care packages needed for children with AIDS or HIV infection; and

Whereas States and localities should recognize relatives as an appropriate source of foster care for children with AIDS whose parents can no longer care for them, subject to the same review and afforded the same benefits as other foster parents: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That June 10 through 16, 1991, is designated as "Pediatric AIDS Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL SCLERODERMA AWARENESS WEEK

Mr. SAWYER. Mr. President, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 219) to

designate the second week in June, as "National Scleroderma Awareness Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so to acknowledge the work of the gentleman from New Jersey [Mr. DWYER], who was the chief sponsor of this joint resolution.

Mr. DWYER of New Jersey. Mr. Speaker, I rise today to thank my colleagues for their help in ensuring the passage of House Joint Resolution 219, which will designate next week as "National Scleroderma Awareness Week."

Scleroderma affects the lives of 300,000 Americans. It is a chronic orphan disease of unknown origin and with no cure. It causes thickening and hardening of the skin due to a build up of collagen. Indeed, the word scleroderma means stone skin. In its most severe form, the hardening process spreads to the joints, causing decreased mobility, and to the body organs, causing functional impairment.

While scleroderma does strike both sexes, it predominantly occurs in otherwise healthy women between the ages of 25 and 55 years old. In fact, scleroderma occurs four times more frequently in women than men.

As in any other disease, early diagnosis is very important in treating scleroderma. While there is no cure for scleroderma, early diagnosis and treatment can slow the progression of the disease—but not always. Even with treatment, the prognosis for scleroderma patients varies widely; some experience remission, some have minor symptoms, while others develop life-threatening symptoms. In severe cases, sufferers develop kidney malfunction, respiratory weakness, heart spasms, digestive and intestinal problems.

Activities and events have been organized around the country to heighten public knowledge about scleroderma as well as make sufferers aware of presence of local scleroderma support groups. It is my hope that additional public interest and education in this disease will also mean additional interest in scleroderma by the scientific research community.

Despite the fact that 300,000 Americans suffer from this disease, the Federal commitment to eradicating this disease has been small. In fiscal year 1990, the National Institutes of Health [NIH] allocated \$3.348 million for scleroderma. NIH further estimates that it will spend \$3.8 million and \$4.006 million, respectively, in fiscal years 1991 and 1992. The bulk of research into scleroderma is conducted by the National Institute of Arthritis, Musculoskeletal, and Skin Diseases [NIAMS]. NIAMS is supporting basic research into the vascular bed and the causes of scleroderma, what causes the body to make excess scar tissue, and potential environmental causes of scleroderma. The National Institute of Allergy and Infectious Diseases [NIAID] is studying the autoimmune nature of scleroderma. Additional research and research support on

scleroderma is conducted by the National Institute for Dental Research and the National Center for Research Resources.

The Scleroderma Federation has also been providing scientists with vital research dollars. In 1989 and 1990, private fundraising efforts raised \$650,000 and \$750,000 respectively for scleroderma research.

Finally, I wish to thank the membership of the various scleroderma State and national societies for all their work on House Joint Resolution 219. Special thanks and acknowledgement must be given to Heidi Fox of the New Jersey Scleroderma Society for her untiring efforts and enthusiasm.

Mr. HAYES of Illinois. Mr. Speaker, as I considered adding my name as a sponsor to House Joint Resolution 219, which designates June 9–15, 1991 as "National Scleroderma Awareness Week," one of the interns working in my office this summer relayed to me her personal experience with the disease. Not only did her story encourage me to sponsor this measure, it also sensitized me to the need to educate the Nation about this potentially fatal disease. I would like to share Roni R. Little's personal comments with you today:

At 11 years of age my mother was diagnosed as having lupus. It began with a bruise that would never go away, then there were mood swings, exhaustion and finally, shortness of breath. No doctor seemed to know what caused these problems. They thought it may be psychological. It definitely was not. No medical professional was sympathetic, no one seemed to really care. Now I know it was not that they were unsympathetic, they were merely ignorant of the symptoms of a potentially fatal disease.

After a while, the medical specialists decided she was not suffering from Lupus, but it was another similar, incurable disease called Scleroderma. It took 2 years for the doctors to finally label the disease.

Scleroderma is a rare and incurable disease resulting in hardening of the skin and organs. This disease is recognized as a horrible solidification of body tissue. Scleroderma is life threatening. The disease occurs four times as much in women as it does in men. It has an unknown origin and is often fatal. Translated literally, Scleroderma means hard skin. Scleros, meaning hard and Dermo meaning skin.

There was no medication to permanently stop my mother's back pains, her headaches or arthritis. Research was rare for this disease and still there is no cure.

Eventually, the doctor said she would die. They informed my family my mother only had a few months to live. Perhaps there was peace for her in her death because she was always so tired, so completely lifeless during her illness.

I desperately wanted someone to stop her pain. The doctors called it a common case, but where was the help, where was the wonder drug? Why didn't someone save my mother's life? It certainly was not common for our family as we struggled to deal with this crisis.

As the years went by, my mother's will to live died. Within the last 4 months of her life her lungs hardened so she couldn't breathe on her own. An oxygen tank was to be carted around with her both night and day. Work was impossible because she could barely move her hands or her legs.

In the 2 years of my mother's illness she was not the only one in pain. Her children,

her mother, and her friends were hurting, not physically, but emotionally.

Scleroderma in any of its forms, whether it be life threatening or not, is more common than Muscular Dystrophy. Yet, scleroderma has less funding and is little known. The public should be more aware of those 400,000 Americans who suffer from a disease that has them encased in their own skin like mummies.

As attention is slowly being drawn to the need to provide funding for research, the importance of designating a week to raise the public's awareness is greatly needed. I thank Congressman Dwyer for introducing this measure, and Congressman Hayes for lending his support. I encourage other members to do the same so those who suffer from scleroderma may not have to suffer as my mother did.

Mr. RIDGE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 219

Whereas scleroderma is a disease caused by the excess production of collagen, the main fibrous component of connective tissue, the affects of which are hardening of the skin and/or internal organs such as the esophagus, lungs, kidney, or heart;

Whereas approximately 300,000 people in the United States suffer from scleroderma with women of childbearing age outnumbering men three to one;

Whereas scleroderma a painful, crippling and disfiguring disease is most often progressive and can result in premature death;

Whereas the symptoms of scleroderma are variable which can complicate and confuse diagnosis;

Whereas the cause and cure of scleroderma are unknown; and

Whereas scleroderma is an orphan disease which requires intensive research to improve treatment as well as find the cause and cure: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week June 9, 1991 is designated as "National Scleroderma Awareness Week", and the President of the United States is upon the people of the United States to observe the week with the appropriate ceremonies and activities.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SAWYER

Mr. SAWYER. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. SAWYER: Strike all after the resolving clause and insert the following:

That the week beginning June 9, 1991, is designated as "National Scleroderma Awareness Week", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate ceremonies and activities.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Ohio [Mr. SAWYER].

The amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment of the joint resolution.

The joint resolution was ordered to be engrossed.

AMENDMENT TO THE PREAMBLE OFFERED BY
MR. SAWYER

Mr. SAWYER. Mr. Speaker, I offer an amendment to the preamble.

The Clerk read as follows:

Amendment to the preamble offered by Mr. SAWYER: strike the preamble and insert the following:

Whereas scleroderma is a disease caused by excessive production of collagen, the main fibrous component of connective tissue, the effects of which are hardening of the skin and internal organs, such as the esophagus, lungs, kidney, and heart;

Whereas approximately 300,000 people in the United States suffer from scleroderma, and women of childbearing years suffer from the disease 3 times more frequently than men;

Whereas scleroderma, a painful, crippling, and disfiguring disease, is often progressive and can result in premature death;

Whereas the symptoms of scleroderma are variable and therefore complicate and confuse diagnosis of the disease;

Whereas the cause of and cure for scleroderma are unknown; and

Whereas scleroderma is an orphan disease that requires intensive research to improve treatment and to discover its cause and cure: Now, therefore, be it

The SPEAKER pro tempore. The question is on the amendment to the preamble offered by the gentleman from Ohio [Mr. SAWYER].

The amendment to the preamble was agreed to.

The joint resolution was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. SAWYER

Mr. SAWYER. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. SAWYER: Amend the title so as to read: "To designate the week beginning June 9, 1991, as 'National Scleroderma Awareness Week'."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on House Joint Resolution 91 and House Joint Resolution 219, the two joint resolutions just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

SUPPORT NATIONAL FEDERATION OF INDEPENDENT BUSINESS

(Mr. IRELAND asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, this week more than 500 small business owners have been here in Washington to participate in a leadership forum of the National Federation of Independent Business.

Yesterday, I had the pleasure of meeting with a constituent who is here attending the NFIB forum. Jean Stinson, her mother and two of her sisters own R.W. Summer, a small contracting company in Bartow, FL, that repairs railroad track.

Jean and the other NFIB members I visited with talked about the difficulty and responsibility involved in meeting a payroll, complying with contradictory and confusing regulations and laws, the threat of costly lawsuits, and finding affordable health care for themselves and their employees.

Jean Stinson and other small business owners share one common characteristic: they are all bottom-line oriented. They have to be.

What does that mean to all of us here in Congress?

My colleagues, it means that it is easy to say you're for small business. But your small business constituents aren't going to measure your performance by what you say alone. It is how you vote that really counts.

DISTRICT OF COLUMBIA GOVERNMENT'S 1992 BUDGET REQUEST AND 1991 BUDGET SUPPLEMENTAL REQUEST—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 102-95)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed.

(For message, see proceedings of the Senate of today, Wednesday, June 5, 1991.)

ON AID TO YUGOSLAVIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. LIPINSKI] is recognized for 60 minutes.

Mr. LIPINSKI. Mr. Speaker, the political crisis in Yugoslavia intensifies daily. As the four democratic Republics take steps toward sovereignty, the dominant Communist Republic of Serbia tightens its grip on the nation. The chasm between the Republics is growing, and I fear the likelihood of full-scale civil war in Yugoslavia is growing with it.

In the midst of the crisis, the administration decided last week to lift a ban on aid to Yugoslavia. I can only shake my head at this decision. Aid was automatically cut off on May 5

because of a stipulation in last fall's Foreign Operations Appropriations Act that Yugoslavia meet human rights standards. I was surprised and disappointed when Secretary Baker reinstated aid the following week. Yugoslavia—and specifically Serbia—is trampling Croatia's right to self-determination.

Serbia is engaged in a systematic effort to undermine Croatia's economic and political reforms and to control the smaller Republics future. This dispute, which began more than a year ago with the election of Western-oriented reformers in Croatia and Communists in Serbia, grows more bloody and more bitter by the day. In the last 2 months, violence between Croatian police and Serbian separatists living in Croatia has claimed dozens of lives. Croats see the uprising as a sign of Serbian ambition to dominate the nation and believe the Serbian Government is supplying arms to the separatists. Serbian calls for intervention by the Yugoslav Army are seen as a thinly disguised ploy to allow the Serbian-dominated Yugoslav Army to occupy and intimidate Croatia.

The bloody battles in the streets of Croatia are matched by the heavy-handed actions of the Serbian leadership in the staterooms. Just 2 weeks ago, Serbia and its allies blocked the rotation of the Federal Presidency to Croatia. This was in direct defiance of Yugoslavia's Constitution, which mandates a yearly rotation of the Presidency to a leader from each Republic. With the rotation still stalemated, Yugoslavia has no head of state and no commander in chief of its Armed Forces. In the words of the Slovenian Republic's President, Serbia had "staged a camouflaged coup d'etat."

Croatia will not sit idly by while its freedoms are crushed by its powerful neighbor. Croatian President Franjo Tudjman has publicly stated that Croatia will not stay in a united, Federal Yugoslavia. In a referendum on May 20, more than 90 percent of the Croatian people demonstrated their support for this position. In the wake of the overwhelming vote for independence, last week Croatia declared itself a sovereign, independent state.

With Croatian sovereignty being challenged by the Serbian coup, I question the wisdom of a United States policy that continues aid to Yugoslavia. I realize the \$5 million designated for fiscal year 1991 is not monetarily significant, but sending even this small amount sends a loud and clear message to Serbia. It says to Serbia that you can do what you want within Yugoslavia. It's your business. We won't interfere in your internal matters.

This is exactly the wrong message we should be sending. After throwing off 45 years of inept Communist rule, Croatia's bold efforts to reform its economy and entrench democracy deserve our support. We must send a clear message to Croatia that the United States does not and will not support its oppressors. And we must stand solidly behind Croatia as it leads its neighboring Republics in the transformation to free-market democracy.

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SEXUAL HARASSMENT AT THE PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

The SPEAKER pro tempore (Mr. ORTON). Under a previous order of the House, the gentleman from Louisiana [Mr. LIVINGSTON] is recognized for 60 minutes.

Mr. LIVINGSTON. Mr. Speaker, it's time to set the record straight. It's time to clear the good name and reputation of a dedicated public servant. And it's time to expose a villain and a sexual harasser who has tried to make a name for himself by defaming others.

Tonight, Mr. Speaker, I am going to tell you and the American people the facts concerning a small Federal organization within the executive branch called the President's Commission on Executive Exchange, the PCEE. This is not a pretty story, Mr. Speaker. It concerns a pattern of harassment of women and abusive behavior by a lone employee who thought he could bully his way to the top.

That, in one of itself, is an abominable situation. However, what has made the PCEE controversy so terribly unique is the degree to which the rules and regulations that are supposed to protect Government employees have been abused in a concerted effort to obscure the truth and to defame a lady who has tried to uphold these same regulations.

Unfortunately, the President's Commission on Executive Exchange has now been abolished. However, the issues raised in this controversy are still very much with us and will remain with us for a long time to come.

In brief, this is the true story of a PCEE employee named Gordon Hamel, who, for the better part of a year, continually harassed and abused his female coworkers and his boss, who was also a female. Hamel's boss, Betty Heitman, issued repeated warnings to him, nearly all of which went unheeded. On the verge of being fired, Gordon Hamel went to the Office of Personnel Management, accused PCEE of fraud and mismanagement, and proclaimed himself a whistleblower, thus immune from discipline.

In the months that followed, he seized on every opportunity to attack viciously and contemptuously his coworkers and Mrs. Heitman. It is, indeed, a sad story, but it holds lessons for all of us.

To start at the beginning, Mr. Speaker: The President's Commission on Executive Exchange [PCEE] was founded in 1969 for the purpose of placing corporation executives within the Federal Government for 1-year stints. In turn, Federal employees would spend a year in the private sector.

Each would learn a little about how the other side operates. Hopefully, a more harmonious, more efficient rela-

tionship between Government and industry would result.

In 1989, a fine lady named Betty Heitman took control of the Commission. I have known Betty Heitman for over 20 years. I knew her when she was an articulate spokeswoman in Louisiana politics. I watched as she ascended to ever-higher positions of national prominence, including becoming chairwoman of the National Federation of Republican Women and then cochair of the Republican National Committee.

A more honest and decent person there could not be. Her reputation was impeccable and for that reason, in 1989, newly elected President George Bush selected her to run PCEE.

One would hope and expect that in an operation the size of the President's Commission on Executive Exchange—10 people who worked out of a townhouse across Pennsylvania Avenue from the White House—that there would be a certain collegiality, a certain sense of teamwork.

Well, you would expect that, but that was not the case. Mr. Gordon Hamel, the Director of Personnel at the Commission, did not see himself as a team player. Instead, he saw himself as a one-man show. Early on in his tenure, he determined that, in his own eyes, he was better than everyone else at the Commission; that he could do as he pleased; and that his coworkers—particularly his female coworkers—were objects to be alternatively toyed with and then cut off at the knees at his discretion.

Do I exaggerate? Mr. Speaker, at this point, I would like to read into the RECORD a statement of facts prepared by the U.S. Justice Department concerning Gordon Hamel. It is—in its entirety—based on statements of Mr. Hamel's coworkers—statements made under oath and under penalty of perjury.

This statement of facts paints a portrait of a man with a raging combination of insecurity and paranoia.

I designate this as exhibit A which I will read in its entirety.

EXHIBIT A

STATEMENT OF FACTS

Shortly after starting work as Director of Placement at the President's Commission on Executive Exchange, Mr. Gordon Hamel began having confrontations with his supervisors and other staff members of the PCEE. At first, these incidents took the form of verbal harangues by appellant against the female employees of the PCEE. As the frequency and seriousness of these encounters increased, appellant increasingly employed sexually explicit language and sexual innuendo. Mr. Hamel was also immediately at odds with his immediate supervisor, Mr. Jack Finberg, and frequently complained of him to Mrs. Heitman (Heitman Decl. ¶¶12-16; Finberg Decl. ¶¶7-8; 10-13; Farrel Decl. ¶¶3-4; Fader Decl. ¶¶2-8).

By February 1990, the PCEE had contacted OPM for guidance in dealing with the disruptive conduct of appellant (Brooks Decl. ¶3). At this time, Mrs. Heitman counselled appel-

lant twice in order to inform him that his conduct was unacceptable (Heitman Decl. ¶16). However, Mr. Hamel's abusive conduct towards his female co-workers continued unabated.

Throughout March and April of 1990, the PCEE was in constant contact with OPM concerning the conduct of appellant, and in April, with the help of OPM, Mrs. Heitman began drafting a counseling memorandum to him (Heitman Decl. ¶17; Brooks Decl. ¶¶4-5; Ramon Decl. ¶¶2-3; Finberg Decl. ¶¶14-15; Fader Decl. ¶9).

During Spring 1990, appellant frequently claimed to Mrs. Heitman and Mr. Finberg that he was in possession of documentation evidencing mismanagement at the PCEE. But each time his supervisors asked him to provide them with this information so that they could take any necessary corrective action, appellant refused to cooperate (Heitman Decl. ¶¶13; Finberg Decl. ¶¶18-19).

On May 3, 1990, Mr. Hamel indicated that he felt the PCEE was about to take adverse action against him (Agency File, Tab 2). On May 7, 1990, appellant disclosed his allegations of mismanagement to officials at OPM (Phillips Decl. ¶2). At this point, appellant claims to have become a "whistleblower", entitled to the protections of the Whistleblower Protection Act. Upon learning of these disclosures, Mrs. Heitman immediately requested that OPM perform a management audit of the PCEE (Agency File, Tab 4).

During Summer 1990, Mr. Hamel began contacting executives who had participated in the PCEE's programs. During his conversations with these executives, Mr. Hamel spoke derogatorily of the PCEE and its Chief of Staff. In addition, he solicited negative comments about the PCEE from the executives. Several of these executives contacted Mrs. Heitman to express their opinion that Mr. Hamel had conducted himself in an unprofessional and inappropriate fashion. They also felt that the incidents reflected poorly on the PCEE (Heitman Decl. ¶¶28-33, 42; Gallogly Decl. ¶5; Somers Decl. ¶¶6-8; Phelps Decl. ¶4; Walther Decl. ¶¶4, 6; Hogan Decl. ¶4; See Agency File, Tabs 11-15).

At the same time, appellant continued to engage in abusive conduct and sexual harassment, including one incident involving a college student working at the PCEE (Decl. ¶¶5-10). In July 1990, two female employees of the PCEE sent Mrs. Heitman formal complaints of sexual harassment by appellant (Agency File, Tabs 8-9).

Mr. Hamel continued to claim that he had a "thick file" of information documenting improper practices at the PCEE. Once again, however, he continued to withhold this information, and during one incident, he claimed to be doing so on the advice of counsel (Heitman Decl. ¶¶35-36; Finberg Decl. ¶19). Also, on several occasions, appellant offered to surrender his file to Mrs. Heitman in exchange for various favors including an "outstanding" performance rating and assistance in finding a job at another agency (Heitman Decl. ¶37; Finberg Decl. ¶19). Mrs. Heitman, however, refused to trade favors for information, and reminded Mr. Hamel that it was his obligation to provide his supervisor with any information in his possession about mismanagement at the PCEE. Appellant remained unswayed, preferring to keep his information to himself. *Id.*

By August 1990, as a result of appellant's misconduct, the situation at the PCEE had deteriorated to the point where it was determined necessary to place him on administrative leave (Heitman Decl. ¶¶39-41). Because of the seriousness of appellant's misconduct

and his inability to respond to counseling, the PCEE felt it had no choice other than to issue a notice of proposed removal of Mr. Hamel (Heitman Decl. ¶¶43, 45; Agency File, Tab 1).

Soon thereafter, this matter became the subject of Congressional hearings. In addition, appellant has contacted the Office of Special Counsel, which is currently conducting an investigation of this incident. Furthermore, appellant is challenging the notice of proposed removal, which is currently pending before Mrs. Mae Sue Talley, the Deciding Official. In addition to all these other proceedings, appellant has also filed an appeal before the Board to seek review of the PCEE's actions regarding him.

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One wishes this were it, Mr. Speaker. Unfortunately, the statement of facts does not convey the true despicable nature of what Mr. Hamel did at the commission. The statement reads like a dispassionate, lawyerly brief—which, in fact, it is. But to capture the true nature of what work must have been like at the Commission, I will now read from the prepared testimony that the Commission's director, Betty Heitman, delivered before a Congressional subcommittee on 10 December 1990:

Ms. Heitman testified that:

From the very outset of Mr. Hamel's arrival at the Commission, his relationship with the staff in general and me as his supervisor in particular has gone downhill. I had placed enough faith in Mr. Hamel when I had worked with him previously to offer him the position of chief of staff upon my taking on the position of Executive Director. My faith in Mr. Hamel has been diminished, not because he has attempted to claim himself a whistleblower but because he has repeatedly denied the responsibilities of his misconduct while at the Commission.

All individuals employed in the Federal and private sectors deserve to work in an environment without disruption, without references to sexual innuendo, and without cause for intimidation.

Just as critical, management of any organization, whether large or small, and in our case we have only ten staff members, requires that there be a line of authority which supervisors must have in maintaining the conduct of business. In the case of Mr. Hamel, it was his insubordination that I have called into question. His abusive language, his outburst of rage, and his methods of sowing seeds of discontent among my staff are legend.

In phone call after phone call, Mr. Chairman, Gordon Hamel sought to discredit his superiors and to gain the confidence of the executives towards his own vicious efforts. His references to sexual innuendo with one of our executives factually documents Mr. Hamel's poor judgement. His references in wishing to take over his bosses' position because Gordon Hamel thought he could do a better job is insubordination through and through. But his crass and rude remarks to one of the executives and to one of our corporate sponsors cuts against all means of integrity and loyalty.

She goes on to say:

But most of all, most critical to my concerns about Mr. Hamel's misconduct with regards to our internal operations has been his treatment of women. To use the phrase D— H— consistently and to demean

women in our office by calling them C— in front of their superiors or fellow staff members is not only inappropriate behavior for a professional but it is inappropriate on a staff comprised nearly all of women. We do not have on our commission an office of EEOC * * * We can only turn to the advice of the Office of Personnel Management. Sexual harassment in the workplace, as Congress has just recently reviewed and debated, is an injustice to all women. Mr. Hamel's repeated use of phrases such as D— H— and C— was an issue that I visited with him and warned him about such behavior. It is obvious that my warnings required written followup. * * * But in my experience when a supervisor warns a staff member about sexual harassment the message should have gotten through.

She then summarizes her testimony, again, marked exhibit B, with the following:

Mr. Hamel may wish to paint a picture that his world shows him as the hero, a man whose interest is the taxpayer and the integrity of the Federal employee. Mr. Hamel is a disruptive and manipulating individual who in one minute is concerned about management practices of the Commission and in the next minute is conducting a vicious smear tactic with the very executives with whom our mission is to build trust and support for the Federal process. You cannot have it both ways, saint-and-sinner, and Mr. Hamel wants it both ways.

EXHIBIT B

TESTIMONY OF BETTY HEITMAN, EXECUTIVE DIRECTOR, PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

Chairman Lantos and subcommittee staff, thank you for this opportunity to discuss at the outset the Commission on Executive Exchange and my service as Executive Director. While a public hearing is not the arena to discuss the circumstances of a personnel action between an employee and his employer, I am prepared to respond to the questions of the subcommittee relevant to the decision to propose an adverse action and the activities leading up to this decision.

As I outlined in my meeting, Mr. Chairman, with Mr. Weisburg and Ms. Nelson, my service in the Federal Government has been limited to my current position. I have had a wide array of managerial experiences in my life, but I do not have the long-standing experience Mr. Hamel has had in personnel issues and the guidelines available to respond to an individual's misconduct while in the employ of the Federal Government.

It would appear that my lack of personnel experience has been complicated by factors involving the ability of Mr. Hamel to move much faster in his actions than in my ability to correctly discipline him for his misconduct. And it would appear that in the case of Mr. Hamel's actions, a best defense when you know that your conduct is coming into question is to go on the offensive.

From the very outset of Mr. Hamel's arrival at the Commission, his relationship with the staff in general and me as his supervisor in particular has gone downhill. I had placed enough faith in Mr. Hamel when I had worked with him previously to offer him the position of chief of staff upon my taking on the position of Executive Director. My faith in Mr. Hamel has been diminished, not because he has attempted to claim himself a whistleblower but because he has repeatedly denied the responsibilities of his misconduct while at the Commission.

All individuals employed in the Federal and private sectors deserve to work in an environment without disruption, without references to sexual innuendo, and without cause for intimidation.

Just as critical, management of any organization, whether large or small, and in our case we have only ten staff members, requires that there be a line of authority which supervisors must have in maintaining the conduct of business. In the case of Mr. Hamel, it was his insubordination that I have called into question. His abusive language, his outburst of rage, and his methods of sowing seeds of discontent among my staff are legend.

In phone call after phone call, Mr. Chairman, Gordon Hamel sought to discredit his superiors and to gain the confidence of the executive towards his own vicious efforts. His references to sexual innuendo with one of our executives factually documents Mr. Hamel's poor judgement. His references in wishing to take over his bosses' position because Gordon Hamel thought he could do a better job is insubordination through and through. But his crass and rude remarks to one of the executives and to one of our corporate sponsors cuts against all means of integrity and loyalty.

Let's discuss Mr. Hamel's allegations of waste, mismanagement, fraud and abuse. Are these the allegations that on two occasions I asked Mr. Hamel to present to me so that I could make appropriate changes? Are these the unsubstantiated allegations on those two occasions that Mr. Hamel said he would present to me, his superior, and for which he responded that his attorney told him to not share them with me? Are these the same allegations that Mr. Hamel to this very date has not presented to me in either oral or written form but continues to tell me he has a file that he is building to prove his points?

And are these the same unsubstantiated allegations, Mr. Chairman, that I called upon the Office of Personnel Management to investigate and for which the Parker management audit was conducted? Are these the same unspoken allegations that I called upon the inspector general of OPF to conduct a full investigation?

Mr. Chairman, I come from Louisiana and we have a belief down there that you have to question the rooster who believes that because of his crowing the sun rises in the morning.

No one can dispute the fact that the 1986 OPF general counsel opinion which basically give the Commission the okay to use the revolving funds or funds we collect from fees was wrong. This is the same opinion that stayed on the books until late April, early May of this year. I did not know we were in conflict with existing present day regulations and both the Parker Report and the inspector general's report verify that. But it was one of my other staff members and not Mr. Hamel who caused the Commission to seek out the General Accounting Office and the OPF general counsel's office review of the old 1986 opinion. As a result of the newly issued, May 1990 opinion, the Commission is presently conducting its business in line with all current Federal acquisition regulations and policies. And I immediately asked the Commission staff to implement that practice upon receiving the new OPF opinion in May of this year.

Does my decision to propose Mr. Hamel's removal from Federal service do an injustice to the whistleblower protections provided under the act of 1989? If the subcommittee is truly interested in both sides of the Gordon

Hamel story then I think no one can refute two vital facts about this case:

First, my decision and all of the documents and the timing of this decision are purely based on the charges of misconduct by Mr. Hamel. I should have known and called into question my judgement of Mr. Hamel when way back in early February when Mr. Hamel could not obtain White House clearance. It was then that he demonstrated his conniving behavior, asking me to gain his clearance based on my good word of his character, seeking my loyalty.

Second, does the subcommittee think for one minute that I would take an adverse action to remove Mr. Hamel from his current position lightly knowing full well that the Commission carries both the title of the President and the White House with it?

But more importantly, I have asked for deliberative review of all legislation and law to ensure impartiality in deciding Mr. Hamel's fate. The subcommittee obviously calls into question both the Justice Department's involvement in this case and determination of selecting one of our Commission appointees as the deciding official for Mr. Hamel's proposed removal.

But most of all, most critical to my concerns about Mr. Hamel's misconduct with regards to our internal operations has been his treatment of women. To use the phrase "d - - - h - - -" consistently and to demean women in our office by calling them "c - - -" in front of their superiors or fellow staff members is not only inappropriate behavior for a professional but it is inappropriate on a staff comprised nearly all of women. We do not have on our Commission an office of EEOC. We can only turn to the advice of the Office of Personnel Management. Sexual harassment in the workplace, as Congress has just recently reviewed and debated, is an injustice to all women. Mr. Hamel's repeated use of phrases such as "d - - - h - - -" and "c - - -" was an issue that I visited with him and warned him about such behavior. It is obvious that my warnings required written followup. But in my experience when a supervisor warns a staff member about sexual harassment the message should have gotten through.

Those who wish to skim the surface of the concerns to be discussed today believe that this is a debate about retaliation against a whistleblower. That is Mr. Hamel's position. It has been my position all along that Mr. Hamel has desired nothing more than to coerce and threaten me into providing him with the things he requested as a trade off for not going to the IG, or not going to the special counsel. On no less than three occasions, Mr. Hamel stated either to me directly or through one of my staff members of his willingness to drop his actions with the IG or other investigative bodies in return for me providing the college course he wanted, an outstanding performance rating, or for me to find him another GM 15 position at another agency in the Federal Government. Mr. Hamel wanted the Commission to pay for college courses that he knew would lead towards his finally gaining a college degree. The Commission was not then and still is not now in a position to pay for his college courses as long as those courses did not relate to his training for the purposes of his carrying out his functions.

While the subcommittee has an interest in discussing our actions against Mr. Hamel for his alleged whistleblowing, I maintain that the whole story needs airing. I have provided to the subcommittee viz and viz this presentation the letters from members of last

year's Executive Exchange Program. These letters were generated after I received numerous calls from almost every executive in last year's group. I asked them to document for the record in their own words the calls they had received from Mr. Hamel; calls that were inappropriate, full of mean-spiritedness, and with a desire on Mr. Hamel's part to do damage to the reputation of the Commission. When Mr. Hamel learned that he would not be placed in charge of the Commission while I was away and that another person with another rank would be in charge, I believe he decided then to hurt the Commission and embarrass me.

The subcommittee knows that because of the status of this case, and as long as there is a pending personnel action, it is inappropriate for me to discuss the advice I was given under client privilege and I have asked Mr. Ramon, general counsel of OPM to stay within those parameters in his testimony today.

One last critical question seems to be the timing of all events surrounding this case. And again I must point out that I alone have no background in personnel issues and personnel disciplinary actions. What was I as a manager to do?

I must call upon those who have the knowledge to advise me in my deliberations and directions. I thought I was doing the right thing in discussing Mr. Hamel's sexual harassment and inappropriate contact with our executives with Mr. Hamel directly first. And as a side note, Mr. Chairman, let me point out Mr. Hamel has still continued to contact our executives inappropriately.

Mr. Hamel may wish to paint a picture that his world shows him as the hero, a man whose interest is the taxpayer and the integrity of the Federal employee. Mr. Hamel is a disruptive and manipulating individual who in one minute is concerned about management practices of the Commission and in the next minute is conducting a vicious smear tactic with the very executives with whom our mission is to build trust and support for the Federal process. You cannot have it both ways, saint and sinner, and Mr. Hamel wants it both ways.

This sort of behavior—crude sexual harassment, verbal abuse, insubordination—was quickly earning Mr. Hamel a one-way ticket to the unemployment line he so richly deserved. Unfortunately, Hamel had his own bag of tricks.

Timing is critical, Mr. Speaker, and so I want to give a chronology of the events surrounding Mr. Hamel's departure from the PCEE. Some of this was in the statement of facts which I earlier read into the RECORD, but I think it is worth going over again:

In February and March 1990, PCEE staffers approached OPM about Gordon Hamel's repeated pattern of insubordination, harassment and abuse of female coworkers.

On May 3, 1990, OPM investigators went to PCEE to follow up these charges. This we know from OPM, but conveniently enough, we also have a memo to file from Gordon Hamel himself, dated May 3, 1990. Mr. Speaker, I'd like to read this memo, which I'll call exhibit G, into the RECORD. This memo states unequivocally,

Mr. Brooke (black gentleman) and female associate came to office 12:00 to see Jackie

Feder and Jack [a reference to chief of staff Jack Finberg] both of them went behind closed doors. I don't know what's up and I really don't care, but I expect that they are still trying to find a way to get rid of me.

EXHIBIT G

MEMO TO FILE FROM GORDON HAMEL

I spoke to Jack this a.m. re: the calls that must be made to [illegible]. During the course of the conversation in which I told him I thought he had mishandled the legislation, he got angry and stated that the reason he had been [illegible] toward me was because I had told Betty that I felt Jack had mishandled the U.S.A. Jack further stated [illegible].

Mr. Brooke (black gentleman) and female associate came to office 12:00 to see Jackie Feder & Jack both of them went behind closed doors. I don't know what's up and I really don't care but I expect that they are still trying to find a way to get rid of me.

Again, timing is everything. This was May 3, 1990. Gordon Hamel knew he has gone too far in his harassment of female employees and his insubordination and abuse of Betty Heitman. He knew his deeds were catching up with him. So what does he do:

On May 7, 1990—4 days after the OPM investigators went to the Commission—Hamel himself went to OPM, threw out some allegations of mismanagement, and subsequently declared himself a whistleblower in an attempt to gain protection under the Whistleblower Protection Act of 1989.

Mr. Speaker, do you remember the old line about the true definition of gall? It's a child who kills his parents and then pleads with the court for clemency on the grounds that he is an orphan.

That is precisely the sort of cynical manipulation of well-intentioned public law that has become Gordon Hamel's hallmark. Let me be clear, Mr. Speaker. It is vital to the functioning of Government that workers are allowed to speak their mind, in particular, when they perceive problems. The Whistleblower Protection Act is designed to protect them. The act is emphatically not designed to provide a cover—a shield—for Federal employees who simply cannot work within the Government's system. Yet that is exactly what Gordon Hamel was trying—indeed, is still trying—to do.

On August 2, 1990, PCEE director Betty Heitman could take no more of Hamel's repeated pattern of sexual harassment and abuse. She placed Gordon Hamel on administrative leave and had him escorted from the building—terminated with pay.

LIST OF GOVERNMENT INVESTIGATIONS SPAWNED BY GORDON HAMEL

(1) Two separate, distinct investigations were done by the Office of Personnel Management, Inspector General.

(2) The Office of Special Counsel (an independent agency) investigated whether Hamel was protected under the Whistleblower Protection Act.

(3) The Government Accounting Office is preparing an audit report on the PCEE. (this

will be released at the Lantos hearing for the first time)

(4) The Merit Systems Protection Board was considering the adverse personnel actions taken against Hamel by the PCEE.

(5) One hearing has been held by the Committee on Government Operations Subcommittee on Employment and Housing and a second is scheduled for Monday, June 10.

□ 1850

Unfortunately for Betty Heitman—and for anyone else who believes in truth and fair play—that action threw her into a modern-day, 10-month-long Kafka trial. During that time, she saw press reports of selectively leaked information designed to make her seem the villain. She has had to watch Gordon Hamel make wild charges against her, knowing that she cannot respond because of Federal statutes. She has even had to endure a congressional subcommittee investigation—supposedly a dispassionate investigation into the facts—in which the subcommittee chairman interrupted her nearly 40 times during her answers.

In short, Mr. Speaker, to paraphrase Shakespeare, "Fair became foul and foul became fair." Let me cite a few examples:

Hamel enthusiastically cooperated with the syndicated TV show, "Hard Copy," feeding them through crocodile tears his imaginative yarn about his supposedly heroic whistleblower attempts. He posed for photos and video footage; he openly discussed both his public and personal lives; he taunted the very people he formerly abused.

I cite the following quotes from Hamel that appeared on that TV show, "Hard Copy." On Betty Heitman, he said:

I thought she was a very pleasant person who had a lot of responsibilities and duties and was a little bit confused about how she was going to accomplish what she had to.

On the executives at PCEE, including Mrs. Heitman, he said:

My personal feeling is that they wanted to run it like one of the political parties around town and just let one party in.

On himself, Saint Gordon modestly admits:

I think I'm acerbic at times. I don't pull punches.

What a guy.

On Heitman's charges against him, Hamel declared:

It was very difficult for me to understand exactly what Mrs. Heitman was accusing me of. She keeps alluding to numerous instances of all kinds of things happening, but she's not specific about anything.

That, Mr. Speaker, is an outright, demonstrable, provable lie as Gordon Hamel knows full-well. More about that in a moment.

In addition to the Hard Copy report, there was a Jack Anderson column on March 18, 1991, that also swallowed Hamel's distortions hook, line, and sinker.

Gordon Hamel was thus clearly show-boating for the media. But he very deviously refused to sign a waiver to the Federal Privacy Act—as was his right. His refusal to sign meant that while Betty Heitman and her good name and reputation had to endure repeated slings and arrows from Hamel, she was not allowed to divulge even the most basic substantiation of her charges. Had she done so, she would have been in violation of Federal law.

Fortunately, Mr. Speaker, I have seen depositions made by Mr. Hamel's coworkers—not only at the Commission, but also at the General Services Administration, where he worked prior to PCEE. Contained in these depositions—and I emphasize that they are legal documents made under oath and under threat of perjury—is a remarkable amount of information that is very revealing about this character's true nature.

Let me read some of the more interesting items; and these items are from exhibit C as follows:

EXHIBIT C

SYNOPSIS PREPARED BY BOB LIVINGSTON OF SWORN DECLARATIONS OF WITNESSES TO GORDON HAMEL'S ACTIONS

(1) Hamel was having trouble while at GSA getting promoted to GS-15. (Heitman p. 2/3)

(2) Hamel was unable to obtain White House Security Clearance due to past misconduct. (Heitman p. 3)

(3) Hamel denigrated Mr. Finberg, his superior, behind his back and to Betty but would not offer corroborating evidence when asked. (Heitman p. 3/4, Gallogly p. 2, Walther p. 2, Somers p. 2)

(4) A number of female PCEE employees complained about Hamel's unprofessional language, sexual innuendo, and abusive attitude towards females in general. (Heitman p. 4, Finberg p. 3, see also Brooks p. 2, Ramon p. 1, Laflam p. 2)

(5) Specific allegations of abusive behavior and sexual harassment are made by Jackie Fader, a PCEE employee, to Betty about Hamel. (Heitman p. 4)

(6) Specific allegations of abusive behavior and sexual harassment are made by Trish Farrell, a PCEE employee, about Hamel. (Heitman p. 5, Finberg p. 3)

(7) Hamel disregarded Betty's instructions not to confront Ms. Farrell about the above sexual harassment allegations and did so in a hostile manner. (Heitman p. 6)

(8) Hamel went to lunch with Betty during which he repeatedly criticized Finberg and alleged mismanagement. At this time, he told Betty that he had talked with Bill Phillips, Deputy Director of OPM and alleged mismanagement at PCEE. Hamel had yet to bring specific criticisms to Betty so that she could attempt to correct any problems. (Heitman p. 7)

(9) Hamel abusively derided Betty about her performance at PCEE in her office in a loud tone overheard by other staff members. (Heitman p. 8)

(10) Hamel obtained possession of PCEE employee timecards although he had no legitimate access to them. (Heitman p. 9)

(11) Hamel rudely treated Ms. Sandra Arangio, a corporate executive with the John Hancock Co. resulting in a phone call from her to Betty about Hamel's abusive behavior. (Heitman p. 9/10)

(12) Hamel again loudly yelled at Betty in her office and this time refused to leave when asked. Betty was forced to leave her own office to terminate an encounter she felt was threatening and distasteful. (Heitman p. 10)

(13) Hamel unilaterally contacted various corporate executives who had participated in PCEE programs and attempted to solicit negative comments about PCEE employees and programs. These contacts resulted in complaints by the executives to Betty about Hamel's inappropriate behavior. Among those contacted who found Hamel's conduct offensive are: Ivan Somers, Jim Gallogly (a federal executive), Andrew Phelps, Larry Walther, and Alice Hogan. (Heitman p. 10-13, Gallogly p. 1/2, Walther p. 2, Hogan p. 2, Somers p. 2)

(14) July 13, 1990—Hamel gave a memo addressed to Betty and dated June 15, 1990 to Jack Finberg which alleged a conflict of interest on the part of a participating executive which possibly could have created some irregularities in the PCEE procurement process. Hamel would not name the executive nor would he provide further details when asked. Betty had not seen the memo before this time. (Heitman p. 13)

(15) Hamel offered to drop all charges he had levied against the PCEE including those made to the Inspector General (IG) if Betty would give him a outstanding rating (which results in a bonus), pay for his college courses (so that he could finally obtain a college degree), and allow him to hire an assistant of his choice OR if Betty would get him a GS-15 job at another agency. Hamel made a similar offer to Finberg. (Heitman p. 14, Finberg p. 5, see also Brooks p. 2)

(16) A 20 year old college intern, Brigid Raczynski, is brought to tears at the prospect of working alone in the office with Hamel. (Heitman p. 15, Raczynski p. 2, Finberg p. 3)

(17) Other female staff members tell Betty that they are afraid of Hamel. (Heitman p. 15)

(18) Hamel caressed the shoulders of a 20 year old college intern working at the PCEE causing her to move away from him. (Raczynski p. 2, Heitman p. 19, Finberg p. 3)

(19) Betty is contacted by Ms. Joan Rodney of General Motors who states that someone had phoned her claiming to be Betty's superior at PCEE. This male misrepresented facts and used high pressure tactics in an attempt to force GM to provide an assignment for a public sector executive. Betty felt that this phone call could only have come from Hamel as placement of Federal executives was one of his primary responsibilities. (Heitman p. 16)

(20) Hamel used language such as "c—" and "b—" when referring to female coworkers. (Finberg p. 4)

(21) Gary Brooks, a Labor Relations Specialist at OPM, was contacted by the PCEE in February 1990 about Hamel's conduct at work and inability to follow the direction of his supervisors. (Brooks p. 1/2) Jamie Ramon, General Counsel for OPM is contacted about same problems in April. (Ramon p. 1)

(22) Numerous instances of misconduct are cited by Hamel's former supervisor at GSA, including an instance where Hamel arranged a meeting during work hours between himself, business associates, and a Capitol Hill staffer to discuss a contract for provide gain. (Barnett p. 1/2)

(23) Hamel threatened to sue Barnett, his supervisor at GSA, unless Barnett would give him an "outstanding" performance rating and the \$5000 bonus which accompanies such a rating. (Barnett p. 2)

(24) Hamel is again reprimanded while at GSA for his increasingly disruptive conduct in the office. (Barnett p. 2)

(25) Hamel's conduct at GSA is criticized by a co-worker as extremely disruptive. (Laflam p. 1)

(26) Hamel often sexually harassed female employees at GSA. (Laflam p. 2, Arnade p. 2)

(27) Hamel told a former co-worker at GSA that he was going to talk to Capitol Hill about what was going on in the GSA. (Laflam p. 2)

(28) While at GSA, Hamel threatened to throw a colleague out of the "G—D— window" if he didn't "shut the f— up" and stop giving him "s—". (Arnade p. 1/2)

Mr. Speaker, I emphasize again that these statements have been made under oath—in marked contrast to Gordon Hamel's statement to the media. Every person involved here was fully cognizant of the consequences of perjury.

Unfortunately, Betty Heitman could not release any of that information. For 10 months, she endured continued verbal shots from newspaper columns, TV shows, and Gordon Hamel, who was secure in the knowledge that because he didn't sign a Privacy Act waiver, Betty Heitman was prohibited—by law—from responding.

Well, now the story can be told. An exhaustive study by the inspector general of OPM has just been released and his conclusions, to be charitable, blow Gordon Hamel out of the water. This report demolishes his original charges against Betty Heitman and the Commission, thus debunking the canard that is some sort of heroic whistle-blower.

The inspector general's report is two-tiered. The first part focuses on Gordon Hamel's 43 allegations against Betty Heitman and the President's Commission on Executive Exchange. The second deals with the allegations against Gordon Hamel.

Regarding the allegations against Gordon Hamel—allegations of abusive and insulting behavior toward his superiors and his female coworkers—the inspector general concluded:

It was determined by the inspector general that the formal charges brought against Mr. Hamel were generally substantiated. Let me read that again, Mr. Speaker: It was determined by the Inspector-General that the formal charges brought against Mr. Hamel were generally substantiated.

□ 1900

Referring specifically to the Commission's co-workers' charges against Gordon Hamel, the IG continues:

Although small in absolute numbers, the charges . . . reflect complaints from just under half of the employees who worked with Mr. Hamel at the PCEE. If there had been only one or two of the less offensive remarks substantiated, then these might have been dismissed as thoughtless but unintentional misstatement. However, taken in the aggregate, the cumulative effect did illustrate a continuing pattern of offensive behavior bordering on sexual harassment insofar as it

pertained to the female employees with whom Mr. Hamel came in contact.

Mr. Speaker, I have compiled a synopsis of both the charges against Mr. Hamel and the findings of the inspector general. I'd like that synopsis to be included in its entirety in the RECORD—Exhibit D.

EXHIBIT D

BRIEF PREPARED BY CONGRESSMAN BOB LIVINGSTON OF THE OFFICE OF PERSONNEL MANAGEMENT, INSPECTOR GENERAL'S REPORT ON THE CHARGES MADE AGAINST GORDON HAMEL BY THE PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

The IG's report addresses the 12 formal charges listed in the November 29, 1990 "Notice of Proposed Adverse Action" (notice that the PCEE wanted to fire Hamel) sent to Gordon Hamel along with a separate section listing 3 additional issues/complaints of questionable conduct that were presented only in the affidavits of certain participants in the investigation.

Note on Hamel's status—The Merit Systems Protection Board issued a stay of Hamel's dismissal and all adverse actions against Hamel were rescinded May 13, 1991 by OPM. Thus, Hamel was never actually fired by the PCEE. Instead, he has been on Administrative leave with pay since August 2, 1990. Now that the PCEE has been abolished this status will end.

The charges against Gordon Hamel can be delineated into four main categories.

First, improper conduct directed toward undermining the mission of the PCEE;

Second, disrespectful and abusive behavior toward private sector executives participating in the PCEE executive exchange program and toward potential participants;

Third, disrespectful and abusive behavior toward Betty Heitman as his immediate supervisor; and

Fourth, disrespectful, abusive, and insulting behavior toward other coworkers, particularly female employees.

The general conclusion of the IG as to the validity of the formal charges brought against Gordon Hamel is that they were generally substantiated.

CHARGE 1

You have intentionally engaged in unauthorized and improper conduct and sought to disrupt and undermine the mission and functioning of the Commission. You have called a number of the Commission's participating executives and had highly improper conversations about other executives participating in the program, the program itself, and other Commission employees. Through these actions, you have seriously derogated the Commission's mission and functions as well as damaged its reputation with participating executives and private sector corporations. Some examples of your improper conduct are as follows:

1(a) Hamel contacted Jim Gallogly, a federal executive, and attempted to solicit negative comments about the Commission, Jack Finberg (Betty Heitman's Administrative

Assistant), and the 1990 International Seminar.

IG Findings: Both a July 23, 1990 letter by Gallogly to Betty Heitman and details of a January 25, 1991 interview of Gallogly by an IG special agent corroborate this charge. Hamel denies the charge.

1(b) Hamel contacted Ivan Somers, a participating executive, and attempted to solicit negative comments about Jack Finberg and the International seminar.

Findings: This charge is corroborated by a July 25, 1991 letter by Somers to Betty Heitman and a February 14, 1991 interview by the IG. Interestingly, Somers contacted the PCEE as the unofficial spokesman of a "round-table" of participating executives who had been contacted by Hamel and found his actions demeaning and unprofessional. Somers also stated that Hamel had referred to the Secretaries at the PCEE as "b—es". Hamel denies the charge.

1(c) Hamel made improper phone calls to Andrew Phelps, one of the participating corporate executives, wherein Hamel suggested that he (Hamel) should replace Finberg and that the Commission employees did not like Phelps.

Findings: The charge is corroborated by a July 26, 1990 letter by Phelps to Betty Heitman and from a January 30, 1991 interview with an IG special agent. Phelps said that Hamel threatened to expose him to his employer for some minor mistake he had made while participating in the program unless he helped Hamel "get" the info on Betty Heitman and Jack Finberg. Hamel also told Phelps that PCEE employees didn't like Phelps in an effort to provoke him into making negative comments about the commission. Phelps said that Hamel made crude, graphic comments about his desire to have sex with a female exchange executive. Hamel admits that he talked to people about his displeasure with Finberg but denies making sexual comments.

1(d) Hamel contacted Larry Walther, a participating corporate executive, and criticized the performance of Jack Finberg and the Commission in general bringing into question the program, the staff, and participating executives.

Findings: Corroborated by a August 2, 1990 letter to Betty Heitman from Larry Walther and a January 30, 1991 interview with a OSC special agent. Hamel admits he may have been critical of Finberg.

1(e) Hamel contacted Alice Hogan, a participating corporate executive, to solicit negative comments about the Commission. He asked Ms. Hogan to provide an unsigned, undated report of her complaints against the program.

Findings: Corroborated by a August 8, 1990 letter to Betty Heitman from Alice Hogan and a January 25, 1991, interview with a OSC special agent. Hamel admits that this charge is as close to the truth as any of the charges are but denies he only tried to solicit negative info.

CHARGE 2

You have also engaged in improper conduct during two other phone conversations to private sector corporate executives in which you were disrespectful and abusive. The details of these conversations are as follows:

2(a) During a June 10, 1990, phone conversation with Sandra Arangio, a corporate executive with the John Hancock company, Hamel rudely and abruptly stated that she had to take any assignment that the PCEE gave her. This resulted in a call to Betty Heitman from Ms. Arangio about the incident and an oral reprimand from Heitman to Hamel.

Findings: Corroborated by a December 7, 1990, letter to Betty Heitman from Sandra Arangio, and numerous interviews with other PCEE employees including Iretha Tate who was a party to the phone conversation between Hamel and Arangio. Hamel tried to force Arangio to take a job with the Navy she did not want. Both became upset and Hamel eventually put Arangio on hold and would not return to the phone. Hamel agrees that a three-way phone conversation occurred but claims it took place on June 14, 1990, not June 10, as indicated in the charge. He denies that Heitman ever reprimanded him for his actions in the matter.

2(b) On August 3, 1990, Betty Heitman received a letter from Joan Rodney, a General Director at General Motors. Ms. Rodney stated that she has received a phone call from someone at the PCEE who represented himself as Heitman's superior and used high pressure tactics to attempt to force GM to provide an assignment for public sector executives. This phone call could only have come from Gordon Hamel as he was the Director of Placement. Further, the caller told Ms. Rodney that the Chairman of GM had previously committed to the program, a fact that could not be verified.

Findings: Corroborated by a January 31, 1991, interview with a OSC special agent and the August 3, 1990, letter mentioned in the charge. While Ms. Rodney could not originally remember the male caller's name, when the name Gordon Hamel was mentioned to her she indicated that he was the man who had called her. Hamel admits talking to Ms. Rodney but denies misrepresenting himself or using high pressure tactics. The charge against Hamel indicates that the letter was received August 3, 1990, but Heitman's affidavit states that it was received August 30, 1990. Hamel maintains that since he was put on Administrative leave August 2, 1990, and the letter from Ms. Rodney states that the incident occurred several weeks earlier, he could not be the person described in the letter as he was no longer working at the PCEE.

CHARGE 3

Your Misconduct has not been limited to dealings with persons outside our office. One numerous occasions, beginning almost from the time you started working at the Commission, you have engaged in misconduct consisting of disrespectful and abusive actions, attitude and statements towards myself as your supervisor.

3(a) On or about May 7, 1990, Hamel confronted Betty Heitman in her office in a loud, disrespectful and abusive manner concerning complaints about the Commission Hamel had raised with officials at OPM.

Findings: While both Heitman and Hamel agree that a conversation took place, they disagree as to the severity of the affair. Arlene Davenport, a PCEE employee, does recall hearing Hamel yell at Heitman on one occasion but does not recall the date.

3(b) On or about June 12, 1990, Hamel again became highly agitated at Heitman when she orally reprimanded him about his conduct during a phone conversation with Ms. Arangio. Hamel yelled at Heitman and would not leave her office when asked causing Heitman to leave her own office to terminate the confrontation.

Findings: Both Hamel and Heitman agree that the conversation took place although they disagree as to the date and severity of the conversation. Heitman's version is corroborated by the sworn testimony of Jackie Fader, Iretha Tate, and to a lesser extent Jack Finberg, all of whom are PCEE employ-

ees. The conversation was initiated over a disagreement about Hamel's conduct on the phone and Heitman's decision to limit Hamel's contact with corporate participants. Hamel denies yelling or acting abusive.

3(c) On or about August 3, 1990, when Hamel was given notice that Betty Heitman was placing him on excused absence status, Hamel became highly abusive and insulting towards Heitman.

Findings: This charge is simply not corroborated by anyone. The special Agent interviewed 6 people present the day Hamel was removed and none recall Hamel being abusive and insulting towards Betty Heitman. Betty claims Hamel told her that she should go home to LA and find out how much money her husband had because she was going to need it. Hamel denies the charge.

CHARGE 4

From almost the inception of your employment with the Commission, you have acted in a disrespectful, abusive and insulting manner to other staff members, particularly to female employees. This behavior constituted a serious disruption to our office, and caused employees morale to plummet. The details of some of your abusive actions are as follows:

4(a) In February Hamel made a series of sexual innuendos and comments to Trish Farrell, a female PCEE employee. Hamel told Ms. Farrell that he enjoyed when she worked on his computer because it gave them the opportunity to "cuddle-up together" and that it would be fun for them to head over to the fitness center and take off all their clothes together. These incidents resulted in Betty Heitman orally reprimanding Gordon Hamel.

Findings: The Charge is corroborated by statements of other PCEE employees who claim to have heard about the incidents. Also the charge is supported by the target of the abuse, Trish Farrell. Hamel absolutely denies the incidents ever occurred and further denies that Betty Heitman reprimanded him for his actions.

4(b) Throughout Gordon Hamel's employment at the PCEE he was abusive and disrespectful towards Jacki Fader, Betty Heitman's female assistant. Hamel criticized her work performance even though he was not her supervisor and subjected her to his fits of rage and sexual innuendo. Hamel told Ms. Fader that the only thing on her mind was sex and that he would help her with that when he had time. He also called her a "c——" at one point, used the term "d——h——" in her presence, and generally continued to use off color language around Ms. Fader even after being told not to by Betty Heitman.

Findings: Hamel denies all of the points raised in this charge, although he does admit to having a conversation with Jack Finberg about Jacki Fader's poor job performance and he does vaguely remember Betty Heitman saying something to him about an off color remark made by him to Ms. Fader. The victim of Hamel's conduct, Jacki Fader, confirms the charge against Hamel. A third party, Jack Finberg corroborates that Hamel called Ms. Fader a c——t. An OPM employee confirms that the PCEE had been in contact with OPM as early as February 1990 about the conduct of an unnamed PCEE employee. During a May 3, 1990 meeting between OPM staff and PCEE employees concerning Gordon Hamel's conduct, the topic of Hamel's threat to go public was brought up. The term blackmail was used.

Other Issues of Questionable Conduct:

(1) Hamel filed charges of waste and mismanagement at the PCEE with the IG in order to coerce Betty Heitman into giving him preferential treatment including:

—an outstanding rating,

—payment for college courses unrelated to Hamel's duties at the PCEE, or

—in the alternative, a GS-15 position in another agency.

Findings: Hamel denies that he filed the charges against the PCEE in order to coerce Betty Heitman into doing anything contained in the charge. Jack Finberg confirms that Hamel requested that the PCEE pay for his college courses and that the amount requested approximated what would be the entire training budget for an agency the size of the PCEE. Alice Taussig, a PCEE employee, verified that Hamel told her that he would stay at the PCEE if he could have his own secretary or that he would leave if Heitman got him a job in another federal agency.

(2) Betty Heitman reported in her affidavit of February 19, 1991 that Gordon Hamel had offensively touched Brigid Raczynski, a 20 year old summer intern who worked at the PCEE.

Findings: Brigid Raczynski in a January 31, 1991 interview with a OSC special agent stated she had never heard Gordon Hamel use vulgar language, conduct himself in a vulgar manner, or sexually harass any PCEE employee. She did remember one incident where Hamel put his hands on her back which made her feel very uncomfortable. Also she recalled complaining to Jack Finberg about her desire not to be alone in the office with Gordon Hamel. She provided the Merit Systems Protection Board (MSPB) with a sworn statement that she cried at the prospect of working alone with Hamel. Nonetheless, Ms. Raczynski's statements largely discount this charge.

(3) It was rumored that Gordon Hamel was involved in sexual harassment while employed at GSA. This subject was raised in two sworn statements submitted to the MSPB (Tim Arnade and Joan Laflam's statements). They declared that they witnessed Gordon Hamel sexually harass female employees while he was employed at GSA. Mr. Arnade specifically identified GSA employee Laura Hermsmeyer as a victim of sexual harassment.

Findings: The OSC special agent was not able to corroborate this charge. In fact, the alleged victim of Gordon Hamel's sexual harassment commented that she had never been harassed by Gordon Hamel.

Finally, Mr. Speaker, I would also like included into the RECORD the executive summaries of both the IG's report on the charges against Gordon Hamel and his report on the charges against the PCEE and Betty Heitman—exhibits E and F.

EXHIBIT E

OFFICE OF PERSONNEL MANAGEMENT INSPECTOR GENERAL'S REPORT ON HAMEL'S ALLEGATIONS AGAINST THE PCEE

EXECUTIVE SUMMARY

The investigative report which follows is the product of an investigation which commenced in Washington, D.C., on December 10, 1990, at the request of Inspector General Patrick E. McFarland, Office of Personnel Management (OPM). It addresses allegations of illegal, improper, and wasteful practices on the part of the President's Commission on Executive Exchange (PCEE) made by Gordon R. Hamel, who was Director of Placement from December 3, 1989, until he was placed on

administrative leave from this position on August 2, 1990. It followed an earlier report on these allegations that was flawed and incomplete, which was the basis of hearings held by the Employment and Housing Subcommittee of the House Government Operations Committee on December 10, 1990.

The PCEE was created in 1969 by Executive Order No. 11451, and was abolished by Executive Order No. 12760 on May 2, 1991. It was a small agency, under the administrative guidance and support of OPM, which had been established to promote better understanding between the private sector and government through an exchange program, including corporate and other business executives and senior governmental officials within the Federal Government.

As a result of the investigation of Mr. Hamel's 28 allegations, the Inspector General has concluded that 5 of the allegations could be substantiated and in 9 cases, corollary, additional findings were made. Twenty-three of the allegations could not be substantiated. Following, by category, is a summary of the allegations and the report's conclusions.

Administrative—Allegations relating to such matters as the legality of the placement of Jeffrey Brown in the Overseas Private Investment Corporation (OPIC) under the Voluntary Services Exchange program, attempts to pressure Mr. Hamel to use his influence with the GSA Administrator to obtain a job for Betty Heitman's son, and that Mrs. Heitman attempted to pay an illegal honorarium could not be substantiated as having occurred. Other allegations, such as use of a sign-in log, use of a clerk to drive Mrs. Heitman to official functions during work hours and use of temporary employees, were found to have occurred but were not improper or illegal. The only allegation relating to the administration of the PCEE that could be supported as improper was the reimbursement by OPIC to the Pepsi-Cola Corporation of the participation fee of its employee in the PCEE executive exchange program. Also, many expenditures were improperly made in reliance on a 1986 OPM General Counsel's opinion that determined PCEE's private funds were not subject to Federal appropriations limitations, which subsequently was revoked as incorrect. It could not be determined that the increased costs from such expenditures were the cause of an increase in the participation fee.

Conflict-of-Interest—The relationship that John Healy had with the printer he selected to publish a PCEE brochure was found to be too tenuous to constitute a conflict-of-interest. An allegation that PCEE employee Susan Levine improperly used PCEE letterhead was substantiated, but she was found to have been counseled and terminated the practice. Another allegation involving receipt of compensation by Ms. Levine from her former employer was found to be without substance.

Procurement—An allegation concerning the purchase of jewelry by the PCEE for its employees was substantiated and found to be improper. Other allegations concerning leasing of a parking space for a PCEE employee from a private contractor and use of an outside consultant to develop a position description were not found to be improper.

Travel—Allegations concerning the impropriety of the manner in which travel services were procured for a 1990 foreign trip were substantiated and found contrary to Federal travel and procurement regulations. While payment of taxicab fares for Mrs. Heitman's after-hours trips from her home to official functions in the District of Columbia should

not have been made, the report would not characterize this as creating an inflated travel voucher as alleged. Other allegations concerning submission of false local travel vouchers by Alice Taussig and exaggerating the length of a Canadian trip could not be substantiated.

Time and Attendance—An allegation that Jacki Fader and Iretha Tate used official time to travel to Mrs. Heitman's residence to pay her maid could not be substantiated. However, it was found that these employees exceeded their lunch period to pick up clothing and other personal items to take to Mrs. Heitman at the hospital. This would not qualify as permissible, administratively excused absence. Another allegation concerning time and attendance abuses by Jacki Fader could not be substantiated.

Miscellaneous—An allegation concerning use of a Diners Club Card issued to the Federal Government for purchase of airline tickets for personal travel by Jacki Fader was substantiated but was not found to have been done to defraud the government inasmuch as her ex-husband did not inform her that it was for government use, and the bill was paid when received. Other allegations concerning refusal of Jack Finberg to supply Mr. Hamel with details about the PCEE program budget and that Ivan Somers, a private sector exchange executive, played computer games on office equipment while at PCEE, could not be substantiated.

BACKGROUND

This investigation examined 28 formal allegations brought to the attention of the Office of the Inspector General, Office of Personnel Management (OPM), by Gordon R. Hamel, Director of Placement, President's Commission on Executive Exchange (PCEE). These allegations were made over a period of time, beginning with a meeting held at his request with a member of the OIG staff on July 25, 1990, and concluding with him signing a formal compilation of allegations on January 17, 1991.

In a separate action, Mr. Hamel was formally charged by Mrs. Heitman in her capacity as Executive Director at the PCEE with misconduct, insubordination, and other unprofessional actions. Mr. Hamel's allegations pertain to illegal, improper, and wasteful practices on the part of PCEE management.

With respect to the PCEE as a governmental entity, this small agency was established in 1969 by Executive Order No. 11451 to promote a better understanding between the private sector and government through an exchange program made up of corporate and other business executives and senior governmental officials within the Federal Government. The PCEE offices formerly were located at 744 Jackson Place, N.W., Washington, D.C. The PCEE was recently abolished by Executive Order No. 12760, signed on May 2, 1991, by President Bush.

Also of interest is the fact that all adverse actions against Gordon Hamel were rescinded by OPM on May 13, 1991. The Merit System Protection Board, which is hearing Gordon Hamel's appeal, is considering whether his case is now moot and should be dismissed. The Office of Special Counsel has decided not to reach a decision on Mr. Hamel's charge that the PCEE's earlier adverse actions against him constituted retaliation under the Whistleblower's Protection Act of 1989. As a result of the PCEE's demise, Gordon Hamel's supervisor, Betty Heitman, no longer has her position. In light of these unusual circumstances, some explanation appears necessary as to why and how this report was prepared and why the Inspector

General believes, pursuant to his responsibilities under the Inspector General Act of 1978, as amended, it is still necessary and relevant.

At the outset, it should be noted that this investigation is also unusual in the degree of public scrutiny and notoriety it and the underlying controversies it reports have received. In attempting to resolve controversies and promote institutional reform, an investigative report, as contrasted with a program audit, should be a relatively confidential document. Insofar as proper and justified by the circumstances, the privacy and reputations of investigated persons, who may have committed no actionable wrong, should be protected to the fullest extent possible. In those circumstances involving possible criminal referrals, prejudicial publicity must be avoided to protect the integrity of the criminal justice process. Because the case has been aired publicly in the press, television expose programs, and newscasts, and was the subject of a Congressional hearing, these interests are of less concern here. However, the Inspector General is limiting initial distribution of this report to the Director of the Office of Personnel Management, the immediate parties, and the relevant Congressional oversight committees.

The Office of Inspector General (OIG) involvement in this case began with a meeting held at Gordon Hamel's request with a member of the OIG staff on July 25, 1990. Betty Heitman conferred on her case with OPM Inspector General Patrick E. McFarland on August 14, 1990. Mr. Hamel was then Director of Placement for the PCEE. As mentioned, Mr. Hamel made allegations of illegal, improper, and wasteful practices on the part of PCEE management, which became the basis of this and an earlier investigation. Separate meetings had already been held by Mr. Hamel and Mrs. Heitman at which accusations were exchanged. Mr. Hamel met on or about March 15, 1990, with OPM General Counsel Jaime Ramon to discuss PCEE administrative problems and concerns, including alleged improper contracting procedures. PCEE Executive Director Heitman claimed to have been consulting with other OPM officials at about the same time concerning allegations of Mr. Hamel's misconduct. General Counsel Ramon told the OIG that Mrs. Heitman and PCEE Chief of Staff Jack Finberg met with him in April 1990 and that OPM Chief of Labor Relations Gary Brooks then began work with them on counselling memorandum concerning the charges against Mr. Hamel.

Mr. Hamel carried his concerns regarding alleged mismanagement of the PCEE on May 7, 1990, to OPM Deputy Director Bill Phillips. Mrs. Heitman followed this action by writing a letter to OPM Director Constance Berry Newman requesting a review of procedures and policies at the PCEE. These requests led to issuance on June 14, 1990, of a report by the OPM Director's Counselor Vernon Parker with recommendations concerning changes in policies and procedures at the PCEE. This report formed a partial basis for the OIG's original investigation.

The Parker report and the present OIG investigation have found that many of the problems relating to the PCEE's misuse of appropriated funds related to a memorandum sent to its contracting officer by OPM Acting General Counsel James S. Green, dated July 25, 1986. It contained a conclusion that the Federal Acquisition Regulation was inapplicable to the purchase of goods and services by the PCEE when funds from private sources were used and was based on the as-

sumption, subsequently found to be erroneous, that such funds would be categorized as non-appropriated funds.

In a letter dated June 8, 1990, rescinding the 1986 opinion, OPM General Counsel Jaime Ramon found that the participant fees used to fund much of the PCEE's activities, which was the private funding at issue, were required by 5 U.S.C. 4109(d) to be credited to OPM's revolving fund. That fund, created by 5 U.S.C. 1304, was expressly made available to the PCEE for education and related travel, for printing, and for entertainment expenses but only in the amounts specified in OPM's appropriation. The General Counsel's decision also relied on Comptroller General decisions finding that even if revolving funds were totally financed by private contributions, they are still appropriated funds and under 31 U.S.C. 1301(a) could be used only for the purposes for which they have been made. [35 Comp. Gen. 436 (1953); 63 Comp. Gen. 110 (1983).]

Mr. Hamel was placed on administrative leave by PCEE Executive Director Betty Heitman on August 2, 1990. On the same day, Mrs. Heitman wrote to the newly appointed OPM Inspector General Patrick McFarland requesting him to conduct a "full investigation of possible abuse by Mr. Hamel of his position and professional responsibilities as well as any matters that he may have brought to your office's attention." In effect, her letter supported Mr. Hamel's earlier request for OIG involvement.

The OIG report on its original investigation was issued on October 1, 1990, less than two months after Inspector General McFarland assumed office. By the time hearings to review the report were held by the Subcommittee on Employment and Housing, House Committee on Government Operations, on December 10, the Inspector General was aware that a completely new investigation was necessary to correct certain deficiencies in that report. In his testimony, Inspector General McFarland told the subcommittee that he would assign new investigators to handle the case and would conduct a new investigation of Mr. Hamel's allegations concerning mismanagement and abuses at the PCEE. This report is the result of that promise.

Mrs. Heitman issued a Notice of Proposed Adverse Action to Mr. Hamel on November 29, 1990. Because of his concern that the OIG's earlier investigation had been instrumental in her decision, the Inspector General wrote to Mrs. Heitman and urged her to rescind her dismissal, suggesting that administrative leave with pay would be "a personnel action best suited to the circumstance of a new investigation." In her reply dated December 18, 1990, Mrs. Heitman advised that the OIG report was not used as the basis for the proposed adverse action against Gordon Hamel. The Merit System Protection Board subsequently issued an order to stay Mr. Hamel's dismissal.

METHODOLOGY OF THIS INVESTIGATION

Every possible effort has been made by this Office to conduct an investigation of Mr. Hamel's allegations that would be completely independent from earlier investigations and would in no way be biased by earlier findings. Completely new personnel were assigned to the task. The OIG's only senior criminal investigator was assigned to begin a review of Mr. Hamel's allegations of illegal, improper, and wasteful practices by the PCEE. Because the OIG was only beginning to staff its criminal investigations section, a criminal investigator was detailed from the Department of Housing and Urban Develop-

ment to assist in the early stages of the investigation. All persons involved in management of the PCEE or in any way concerned with the charges, were interviewed, many for the first time.

In the interests of fairness, a separate investigation was begun concerning Mrs. Heitman's charges against Mr. Hamel, which is resulting in a second report that is being issued in conjunction with this one. A senior criminal investigator on loan from the Department of Labor conducted that investigation. The decision to launch a separate investigation to consider the charges being directed against Mr. Hamel was made after it was determined that three investigating agencies were considering charges against the PCEE (the General Accounting Office was preparing an audit report or testimony on the PCEE; the Special Counsel had agreed to consider Mr. Hamel's charges of retaliation under the Whistleblower Protection Act of 1989; and the Merit System Protection Board was considering the adverse personnel actions taken against Mr. Hamel). No one, however, was directly concerned with Mrs. Heitman's charges against Mr. Hamel.

In further interests of fairness, the OIG has attempted to conduct an open and cooperative investigation. We have, where appropriate, shared investigative leads and have sought to informally coordinate with jurisdictional responsibilities of the Department of Justice, the Office of Special Counsel and the General Accounting Office to avoid unnecessary duplication of effort and taxpayer expense. A forum has been provided to any person wanting to provide information, and all sides of the issues have been thoroughly explored.

Although the PCEE has been abolished, the OIG believes that, under the Inspector General Act of 1978, it has a clear responsibility to OPM, as the agency providing administrative guidance to the PCEE while it was in existence, to determine errors that were made and assist OPM in formulating corrective measures to prevent future abuses and correct systemic flaws. The OIG also has a clear responsibility to complete the reporting process on this case to Congress to assist the legislative branch in its oversight role.

EXHIBIT F

OFFICE OF PERSONNEL MANAGEMENT INSPECTOR GENERAL'S REPORT ON THE PCEE'S ALLEGATIONS AGAINST HAMEL

EXECUTIVE SUMMARY

The investigative report which follows is the product of an investigation which commenced in Washington, D.C., on January 2, 1991, at the request of Inspector General Patrick E. McFarland, Office of Personnel Management (OPM). It addresses charges of misconduct, insubordination, and other unprofessional actions levied against Gordon E. Hamel while he was Director of Placement at the President's Commission on Executive Exchange (PCEE) from December 3, 1989, until August 2, 1990, when he was placed on administrative leave.

The President's Commission on Executive Exchange was created in 1969 through Executive Order No. 11451, and was recently abolished through Executive Order No. 12760, which was signed on May 2, 1991, by President Bush.

This small agency was established to promote a better understanding between the private sector and government through an exchange program made up of corporate and other business executives and senior governmental officials within the Federal Government. The PCEE conducted business out of

its offices located at 744 Jackson Place, N.W., Washington, D.C.

The charges against Mr. Hamel were contained in a Notice of Proposed Adverse Action dated November 29, 1990, addressed to him by Mrs. Betty Heitman, who was then Executive Director of the President's Commission on Executive Exchange. The Inspector General concluded that Mrs. Heitman was not placed under any undue pressure by the Office of Personnel Management or anyone to take the action she did in bringing these charges against Mr. Hamel.

This report addresses the 12 formal charges listed in the Notice of Proposed Adverse Action along with a separate section listing three additional issues/complaints of questionable conduct that were presented only in the affidavits of certain participants in the investigation.

A reading of these charges and complaints reveals four major categories relating to misconduct and other unprofessional actions. These are summarized as follows:

Category 1: improper conduct directed toward the undermining of the mission of the President's Commission on Executive Exchange;

Category 2: disrespectful and abusive behavior toward private sector executives participating in the PCEE executive exchange program and toward potential participants;

Category 3: disrespectful and abusive behavior toward Betty Heitman personally as his immediate supervisor; and

Category 4: disrespectful, abusive, and insulting behavior toward other co-workers, particularly female employees.

At the conclusion of this investigation, it was determined by the Inspector General that the formal charges brought against Mr. Hamel were generally substantiated. One specific exception, however, was the charge in which Mrs. Heitman stated that Mr. Hamel became highly abusive and insulting toward her parents in front of other PCEE staff members on or about August 2, 1990, which was the time Mr. Hamel was placed on administrative leave at the PCEE.

Attention should be called to the various charges falling under Category 4, *supra*. Although small in absolute numbers, the charges therein reflect complaints from just under half of the employees who worked with Mr. Hamel at the PCEE. If there had been only one or two of the less offensive remarks substantiated, then these may have been dismissed as thoughtless but unintentional misstatements. However, taken in the aggregate, the cumulative effect did illustrate a continuing pattern of offensive behavior bordering on sexual harassment insofar as it pertained to the female employees with whom Mr. Hamel came in contact. It should also be noted that the prohibition against sexual harassment is directed not only to an individual's acts but to the hostile working environment that can be created by offensive behavior directed toward a person because of his or her gender. [See *Meritor Savings Bank, FSB v. Vinson*, 447 U.S.C. 57 (1986)] It is the possibility of the cumulative effect that this continual behavior may have had on the PCEE work environment that makes these charges serious.

With respect to the preceding charges and complaints relating to offensive behavior, the countervailing force is the failure of PCEE management to take contemporaneous action at the time of these reported personnel problems.

The report herein reflects the findings and conclusions drawn to substantiate and/or deny those charges, and any portions there-

of, which were brought to the attention of the Inspector General.

BACKGROUND

This investigation addresses 12 formal charges of misconduct, insubordination, and other unprofessional actions brought against Mr. Gordon R. Hamel in his capacity as Director of Placement at the President's Commission on Executive Exchange (PCEE) by Mrs. Betty Heitman, his supervisor and Executive Director at the PCEE. Mrs. Heitman conferred on her case with Inspector General Patrick E. McFarland, Office of Personnel Management (OPM) on August 14, 1990, after writing to him on August 2, requesting him to conduct an investigation into these charges. Mrs. Heitman also placed Mr. Hamel on administrative leave on the same day.

In a separate action, Mr. Hamel, presented allegations pertaining to illegal, improper, and wasteful practices on the part of PCEE management to the Office of the Inspector General, Office of Personnel Management (OPM), beginning on July 25, 1990. The Inspector General requested an investigation, and a separate report is being issued in coordination with the release of this report.

With respect to the PCEE as a governmental entity, this small agency was established in 1969 by Executive Order No. 11451 to promote a better understanding between the private sector and government through an exchange program made up of corporate and other business executives and senior governmental officials within the Federal Government. The PCEE offices formerly were located at 744 Jackson Place, N.W., Washington, DC. The PCEE was recently abolished by Executive Order No. 12760, signed on May 2, 1991, by President Bush.

Also of interest is the fact that all adverse actions against Gordon Hamel were rescinded by OPM on May 13, 1991. The Merit System Protection Board, which is hearing Gordon Hamel's appeal, is considering whether his case is now moot and should be dismissed. The Office of Special Counsel has decided not to reach a decision on Mr. Hamel's charge that the PCEE's earlier adverse actions against him constituted retaliation under the Whistleblowers' Protection Act of 1989. As a result of the PCEE's demise, Gordon Hamel's supervisor, Betty Heitman, no longer has her position. In light of these unusual circumstances, some explanation appears necessary as to why and how this report was prepared and why the Inspector General Act of 1978, as amended, it is still necessary and relevant.

At the outset, it should be noted that this investigation is also unusual in the degree of public scrutiny and notoriety it and the underlying controversies it reports have received. In attempting to resolve controversies and promote institutional reform, an investigative report, as contrasted with a program audit, should be a relatively confidential document. Insofar as proper and justified by the circumstances, the privacy and reputations of investigated persons, who may have committed no actionable wrong, should be protected to the fullest extent possible. In those circumstances involving possible criminal referrals, prejudicial publicity must be avoided to protect the integrity of the criminal justice process. Because the case has been aired publicly in the press, television expose programs, newscasts, and was the subject of a Congressional hearing, these interests are of less concern here. However, the Inspector General is limiting initial distribution of this report to the Director of the Office of Personnel Management, the immediate parties, and the relevant Congressional oversight committees.

As mentioned, Mr. Hamel made allegations of illegal, improper, and wasteful practices on the part of PCEE management. Separate meetings had already been held by Mr. Hamel and Mrs. Heitman at which accusations were exchanged. Mr. Hamel met on or about March 15, 1990, with OPM General Counsel Jaime Ramon to discuss PCEE administrative problems and concerns, including alleged improper contracting procedures. PCEE Executive Director Heitman claimed to have been consulting with other OPM officials at about the same time concerning allegations of Mr. Hamel's misconduct. General Counsel Ramon told the OIG that Mrs. Heitman and PCEE Chief of Staff Jack Finberg met with him in April 1990 and that OPM Chief of Labor Relations Gary Brooks then began work with them on a counseling memorandum concerning the charges against Mr. Hamel.

Mr. Hamel carried his concerns regarding alleged mismanagement of the PCEE on May 7, 1990, to OPM Deputy Director Bill Phillips. Mrs. Hamel followed this action by writing a letter to OPM Director Constance Berry Newman requesting a review of procedures and policies at the PCEE.

As previously stated, Mr. Hamel was placed on administrative leave by PCEE Executive Director Betty Heitman on August 2, 1990, the same day, Mrs. Heitman wrote to newly appointed OPM Inspector General Patrick McFarland requesting him to conduct a "full investigation of possible abuse by Mr. Hamel of his position and professional responsibilities as well as any matters that he may have brought to your office's attention." In effect, her letter supported Mr. Hamel's earlier request for OIG involvement.

Mrs. Heitman issued a Notice of Proposed Adverse Action to Mr. Hamel on November 29, 1990. Because of his concern that the OIG's earlier investigation had been instrumental in her decision, the Inspector General wrote to Mrs. Heitman and urged her to rescind her dismissal, suggesting that administrative leave with pay would be "a personnel action best suited to the circumstance of a new investigation." In her reply dated December 18, 1990, Mrs. Heitman advised that the OIG report was not used as the basis for the proposed adverse action against Gordon Hamel. The Merit System Protection Board subsequently issued an order to stay Mr. Hamel's dismissal.

METHODOLOGY OF THIS INVESTIGATION

In the interests of fairness, a separate investigation also was begun concerning Mrs. Heitman's charges against Mr. Hamel, which is the basis for this report being released at this time. A senior criminal investigator on loan from the Department of Labor conducted that investigation. The decision to launch a separate investigation to consider the charges being directed against Mr. Hamel was made after it was determined that three investigating agencies were considering charges against the PCEE (the General Accounting Office was preparing an audit report or testimony on the PCEE; the Special Counsel had agreed to consider Mr. Hamel's charges of retaliation under the Whistleblower Protection Act of 1989; and the Merit System Protection Board was considering the adverse personnel actions taken against Mr. Hamel). No one, however, was directly concerned with Mrs. Heitman's charges against Mr. Hamel.

Every possible effort has been by this office (OIG) to conduct an investigation of Mr. Hamel's allegations that would be completely independent from earlier investigations and would in no way be biased by earlier find-

ings. Completely new personnel were assigned to the task. The OIG's only senior criminal investigator was assigned to begin a review of Mr. Hamel's allegations of illegal, improper, and wasteful practices by the PCEE. Because the OIG was only beginning to staff its criminal investigations section, a criminal investigator was detailed from The Department of Housing and Urban Development to assist in the early stages of the investigation. All persons involved in management of the PCEE or in any way concerned with the charges, were interviewed, many for the first time.

In further interests of fairness, the OIG has attempted to conduct an open and cooperative investigation. We have, where appropriate, shared investigative leads and have sought to informally coordinate with jurisdictional responsibilities of the Department of Justice, the Office of Special Counsel and the General Accounting Office to avoid unnecessary duplication of effort and taxpayer expense. A forum has been provided to any person wanting to provide information, and all sides of the issues have been thoroughly explored.

Mr. Speaker, regarding the second prong of OPM's investigation—the original, supposedly whistleblowing charges by Hamel against the Commission—the results are no less conclusive. In late April, in an oral briefing by the inspector general himself, I and three other Members of this body were told that Hamel lodged 43 separate charges against PCEE and Mrs. Heitman. These were consolidated into 28 formal charges.

By my count, 23 of Hamel's 28 allegations were thrown out by the inspector general. Only 5 of the 28 charges were substantiated, and—importantly—none of them were the result of anything malicious or circumspect on Betty Heitman's part. We have one violation, for example, where an employee sent out five personal letters on Commission stationery—but using her own stamps. Now, it is true that this is a violation, but it's also true that the cost to the Government was probably about 30 cents.

About the only substantive charge of the five was the question of an \$18,000 participation fee reimbursement to the Pepsi-Cola Corp. This is a complicated situation that is fully described in the OPM inspector general's report. It involves not only PCEE, but also the Overseas Private Investment Corporation [OPIC]. While the IG did find fault with the reimbursement, I think it's worth noting that the evidence demonstrates that the Federal officials involved consulted with their in-house counsels prior to making any decisions.

This internal legal advice was subsequently overturned by OPM's General Counsel; however, we should remember that it was given in good faith to officials within PCEE who, it should be emphasized, in seeking in-house legal advice were trying to be very careful in the way they managed funds.

On that note, Mr. Speaker, I would add that the officials at PCEE were obviously more careful in the way they handled public funds than Gordon Hamel was in the way he made up charges. Every one of the serious fraud and mismanagement charges Hamel launched were tossed aside by the inspector general.

Mr. Speaker, the sum total of the few violations substantiated at PCEE amounts to virtually nothing when compared with the costs of the various investigations into PCEE. At that same meeting in April, the Inspector-General estimated to me his cost for this investigation to be between \$100,000 to \$150,000.

One could reasonably assume that the ongoing GAO investigation into the Commission will cost around the same amount as did the OPM investigation. Also, throw in the costs of the Office of Special Counsel investigation, which looked into whether Mr. Hamel was, in fact, a whistleblower and the costs of the House subcommittee on Employment and Housing has incurred in its one hearing last December, as well as its second hearing to be held next Monday.

All that adds up, Mr. Speaker, to a sum of money that so completely outstrips any possibly improper expenditures at PCEE, that one would be tempted to laugh, if the situation were not so pathetic—and, I should add, an affront to the taxpayer. It is likewise an embarrassment to those, including some Members of this body, who saw in Gordon Hamel a cheap political skill to be used for partisan gain.

Fortunately, in the end, the truth came out. Betty Heitman's actions were proven to be in good faith and, in virtually all circumstances, correct. Gordon Hamel has had his veneer of white knighthood stripped away—revealing an abusive, nasty sexual harasser.

PCEE may have been a minor cog in the Federal wheel. With only 10 employees, it certainly was one of the smallest operations. But the people who worked in PCEE, especially Betty Heitman, have professional reputations just the same as those of us here in Congress. When their reputations are besmirched, all of us should stand up and take notice.

There is an outrage here, Mr. Speaker. A fine and upstanding woman was shafted—if only temporarily. Likewise, a sexually harassing bully could temporarily claim to be public-minded whistleblower. This was a rotten play, Mr. Speaker, and the taxpayers paid for all of it.

My special order here tonight may not fully take away the hurt and the defamation inflicted on Betty Heitman over the last 10 months. It does, however, set the record straight as to who is at fault and who is not.

THE GROWING PANDEMIC OF AIDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BURTON] is recognized for 60 minutes.

Mr. BURTON of Indiana. Mr. Speaker, I will not take the entire 60 minutes. I know it is getting late in the day and everybody wants to get out of here, but I think there is some very important information that needs to be disseminated to my colleagues, and I hope they are going to be paying attention.

One of the biggest problems facing America now and in the foreseeable future is the pandemic called AIDS. Literally millions of Americans are likely to die from this disease in the next decade or so.

As a matter of fact, up until April 1991, 2 months ago, 175,000 Americans are either infected with active AIDS or are dead from it. That means 175,000 Americans are dead or dying of AIDS as of last April.

By the end of this year, there will be over 203,000 Americans dead or dying of AIDS, and another 5 to 6 million are probably infected, and over the next 5 to 6 years they will die of AIDS.

The projections of a conservative nature are that by 1996 over 1 million Americans will be dead or dying of AIDS, 1 million; 1 out of every 240 Americans will be dead or dying of AIDS by 1996.

Now, that is a very sad state of affairs.

Now, what is even sadder, Mr. Speaker, is that we are getting a lot of misinformation through the media, on television, on the radio, and through the newspapers.

Now, I am not sure a lot of it is intentional. Many people who are giving this misinformation out to the public simply do not know what they are talking about, and yet they sound like experts on TV.

One of problems we have with television, Mr. Speaker, is that people watch it and they assume that the person on the other end of that tube really has some expertise and many times they do not, and they do a real disservice to this country, especially in the case of AIDS, because they give that information out through the airways and people gain a false sense of security. They feel like they are not likely to get the disease.

Now, a case in point is a television show that took place this past Sunday called "Off the Record" on Fox TV.

□ 1910

This TV show was hosted by a fellow whom I have debated previously on the program "Crossfire" and other programs over the years, Bob, his name is Bob Beckel, he was Jimmy Carter's 1980 campaign manager. Other participants in the program were Jim Glassman of Roll Call magazine, which we

all read around here, Michael Barone of U.S. News & World Report, Dan Goodgame of Time magazine, and Congresswoman SUSAN MOLINARI of New York, one of my colleagues.

I want to read to you some of the quotes from that program and I want to correct the misinformation that may have been given to the American people, so that they will know the facts and be able to protect themselves. Not all of the quotes on the program were misinforming the people. There were some real accurate statements and also some misinformation.

First of all, they interviewed me for 35 minutes approximately, in my office, and out of this 35-minute interview they took about a minute of quotes. And the quotes they took were the ones that were the most earth-shaking, that would garner the most controversy so that the people would be hooked and watch the television show.

Well, that is all right, I understand that. But the fact of the matter is the substantive comments that I made to them regarding how people get AIDS, where it is spreading, how rapidly it is spreading, and so forth, were not included in the program. I was very concerned about that.

Here is the quote they took from me: "We need to find out who has the AIDS virus so we can tell them to stop their irresponsible behavior so we can stop the epidemic from becoming worse." The reason I said that was because people carry the AIDS virus anywhere from 2 to 10 years before they even know they have it. All the time they are carrying the AIDS virus they have the capability of infecting other human beings. A person who has the AIDS virus and does not know it is a walking time bomb. If the person goes out and meets a person, they look perfectly healthy, they fall in love, they have sexual contact with them, and another person has been condemned to death because they caught the AIDS virus unknowingly. Even the person who gave it to them did not know it.

So it is important that people know they have the AIDS virus so they can stop irresponsible behavior, that is having contact with other human beings to whom they will be giving the death sentence.

I want on to say, "I think we need to do something to constrain that person. Persons who know they have the AIDS virus and continue to act irresponsibly. I think that means maybe even putting them in a sanatorium." The reason I said that was because if a person goes out with a gun and holds up a supermarket and they shoot the person, the cashier from whom they are stealing the money, we assume in society that they ought to be removed from society to protect people from being shot at by them in the future.

If a man or a woman shoots somebody once, we can assume they may do it again. They pay a penalty for that. We try to stop them from spreading that kind of mayhem in the public sector time and again.

Now, if a person has AIDS, active AIDS, and they know they have it and they know that if they have sexual contact with somebody else they are more than likely going to infect them and ultimately kill them, we do not do anything about that.

So I think, and still feel very strongly, that if a person has AIDS and knows they have AIDS and they go out and knowingly infect other people and expose them to that disease, they ought to be constrained in some way. Society must be protected from a person who is going to give someone a death sentence, whether it is from a gun or from a sexually transmitted disease that they know will kill them. That is why I said that. But that was not covered in detail in this interview.

Well, it was, but they did not put it on television.

Now, they had, after I made that statement, a person from the AIDS Action Council, whose name was Jeff Levi; he said,

People like Congressman Burton are not willing to put more resources into preventing the spread of this disease by educating people about how they can protect themselves. They would rather identify and stigmatize those who are already infected.

That could not be further from the truth. I believe we need to appropriate more money for AIDS education, more money for a comprehensive program to deal with the problem. We need to have education, we need to have testing to find out who has it so they will know and they will know better than to go out and spread it to someone else.

Those who are tested and found positive we need to give them psychological assistance so they will be able to cope with that problem. We need to tell them about AZT and other drugs so that they can protect themselves and prolong their life. But we also need to tell them that they can no longer go out and have sexual contact with people outside the AIDS community because they are going to kill them.

So we need a comprehensive program, education, testing, contact tracing so that people who have the AIDS virus, after they know it continue to spread it so that we can stop them from doing that, constrain them. We need to have the psychological assistance for them and for those who continue to act irresponsibly after they know they have the disease and are spreading it to other people, those people need to be constrained in some way. That would include, in my opinion, even putting them in a sanatorium if they go on killing other people by spreading this disease.

In fiscal 1991 we allocated \$400 million for AIDS prevention and much of that was used for education. So we are appropriating money to educate the population. We do not know how it is spreading.

There are those who say you can only get it through sexual contact or through needles by using drugs or through a blood transfusion. The fact of the matter is there are many more ways that we suspect it can be found, and I will talk about those in just a moment.

Studies have found "among heterosexual couples in which one partner carries the virus between 16 and 24 percent of the uninfected partners contracted the virus despite the use of sexual preventative measures such as condoms." In other words, people we have seen on television, that if a person uses a condom you cannot transmit the AIDS virus. That is just simply not the case. We know for a fact that according to the Hudson Institute study that was conducted last year, 16 to 24 percent of the people who used condoms still transmit the disease.

Education is not nearly as effective unless it is done in conjunction with a comprehensive program of testing. People do not change their behavior, many times, when they know they are infected.

Another quote used on the show was by the moderator himself, Bob Beckel. He said, "I never agree with DAN BURTON on anything." Well, Bob, my good friend, I think we have argued on more than one occasion. I remember that on Crossfire we did have some agreements. So I think that kind of categorical statement is not correct. But he does not agree with me very much, I will give him that.

He went on to say, "I do think there are lots of categories of people who should be tested. Health care workers ought to be tested. Anybody who goes around the business of curing people ought not to be infected with this disease. It is ravaging America. It is no longer just a gay disease. It has spread into the heterosexual community. One of these days if we are smart we are going to get everyone to take a test." Bob, we do agree on that. I think universal testing is going to have to be in the future for America because we cannot have people carrying a lethal disease not even knowing they have it, for 7 to 10 years, thus infecting other human beings.

The teen-age population in America is very sexually active. We know that. We know the college-age crowd in America is very sexually active. If we do not let them know whether or not their sexual partner has AIDS or whether or not they have AIDS, it is going to continue to spread rapidly through the future of America, that is the teen-age and college students of today.

Jim Glassman of Roll Call magazine said on the program, "I am not for testing anybody unless they want to be tested." Well, unless we test people, they are not going to know they have the AIDS virus. A voluntary testing program simply will not work because you are not going to have a large enough segment of the population being tested. So you are still going to have literally 4 to 5 million people, in my opinion, out there without the knowledge of their disease, going about their business, having sexual contact with other human beings, spreading the disease. It will spread in an exponential manner if we are not very careful.

He went on to say, "It is very clear there are only three ways to get AIDS. One is sexually, one is through using contaminated needles, and one is through a blood transfusion."

Mr. Glassman, I would say, is incorrect there. I want to set the record straight for anybody in America, and my colleagues who want to have this information.

A dentist in Florida, Dr. Acer, infected at least three of his patients during a medical procedure. That is not one of the three ways that Mr. Glassman talked about. The Federal Centers for Disease Control is funding a study right now to determine whether the virus can be transmitted in an infected aerosol form. In other words, they are saying that doctors and people who are working with another human being using saws and so forth or dentists using a drill and it turns into a miss, there is some concern that it is being spread that way. That dentist down in Florida may have given the AIDS virus to other people because of the aerosol transmission of it. We do not know.

So the Centers for Disease Control rightly is running tests right now to find out, funding a study right now to find out if AIDS can be spread as an aerosol, through the air, through spray and so forth.

A 24-year-old Italian soccer player apparently contracted the AIDS virus as a result of colliding, running into another player during a game. That was not through needles, that was not through sexual contact, that was not through a blood transfusion; that was from running into another person who had the AIDS virus and probably cutting themselves.

□ 1920

An American tourist caught the AIDS virus when splashed with blood. It was not any cut. It just went through his pores. An American tourist caught the AIDS virus when blood was splashed on him during a bus accident, according to the New York Post, March 22, 1989 article. Six cases of AIDS being spread through breast milk were reported at the Fourth International

Conference on AIDS. This was an AP story dated June 18, 1988. During breast feeding four mothers then contracted the AIDS virus from their babies through small cracks in the women's nipples. The baby was nursing and gave the mothers the AIDS virus. That was not through needles. That was not through blood-to-blood contact, not through sexual contact. Before people did not believe that was possible. We now know it is.

So Mr. Glassman is incorrect there. Mr. Glassman went on to say, "By requiring these test, you are going to do two things. One is the drive a lot of doctors out of the field and the other is to scare a lot of people unnecessarily." I have to take issue with that. What is better to keep everybody in the dark by not letting people know they have the AIDS virus, or to have a testing program that lets people know they have the AIDS virus and they have to change their behavior so they do not spread it to their husbands or wives or children or loved ones? People need to know, so we can do something about it. We need to know how AIDS is spreading, where it is spreading, who is spreading it and how rapidly. And to do that we need a comprehensive program, including testing of everyone in the sexually active age group. With successive confirmatory tests, false/positive rates can now be reduced to one in millions at relatively low cost. If we tested everybody in the country, it would cost under \$5 per person. And the total cost of that is something that is acceptable, as far as the health of this Nation is concerned. I will get into that in a moment because many people say that is going to cost over \$1 billion a year. Wait until you find out how much it is going to cost to treat AIDS patients, what it is going to do to the health care system and what it is going to do as far as health professionals are concerned.

He went on to say, "I would test people being admitted to hospitals patients, and I think almost all of them are now. Otherwise, absolutely no mandatory testing."

Once again, Mr. Glassman is incorrect. A UCLA survey found that only 15 percent of the hospitals in this country reported that they test some or all of the patients for infection at the time of admission, and 25 percent did not require threat patients be told if they tested positive. As a matter of fact, in the State of California, if you have the AIDS virus and a doctor finds out about it, he not only cannot report that to the State health agencies, as he has to do with any other sexually transmitted disease, he cannot even tell your wife or your husband because he will be in jeopardy of being sued and could be driven out of business because he would lose everything he has. So the fact of the matter is, hospitals to not test on a routine basis, very few do.

And they do not even tell the patients that they do test if they are testing positive.

Michael Barone said on this program, "The experience we have had so far with testing low-risk populations has not been positive."

That is incorrect. The military has been testing 2 million military personnel per year for some time with great success. The incidence of AIDS in the military is very, very low. These people are in a very sexually active age, the young men and women who fought in Desert Storm, and they have been able to keep the military relatively free from the AIDS virus because of this routine testing program. And because of the testing program, they have been able to get those that tested positive on AZT quicker. The military program dispels that myth cheaply and accurately, according to Dr. Redfield, who ran the U.S. military program. Mr. Barone said that there has not been much success in this area. Dr. Redfield, the expert from the military, disagrees with that. Successive confirmatory tests on those testing positive can reduce the false/positive rate to 1 million at a relatively low cost, according to the Hudson Institute report which was put out in October 1989.

My colleague, the gentlewoman from New York [Ms. MOLINARI] said the majority of Americans are not going to be in favor of or for mandatory testing. The fact of the matter is, a nationwide poll found that nearly two-thirds of all Americans, 65.5 percent, would find Government-imposed testing acceptable.

In addition to that study, the Journal of the American Medical Association found that 93 percent of the homosexual men would be tested if tests were confidential, and 88 percent would take mandatory AIDS tests if they were protected by antidiscrimination laws. And we passed one last year, the Americans With Disabilities Act, that protects them. So there is no reason not to have a mandatory test program to test the entire population to protect them, because they are protected under that civil rights bill we passed last year, the ADA bill.

And the American people will accept it because they are concerned about their husbands, their wives, and their children and the future health of this Nation.

The cost to test everybody in America on a yearly basis is \$1.24 billion, one and a quarter billion. That would test everybody. If you only tested the people in the age groups between 12 and 60, which is the sexually active age group, most people would agree, it would be \$620 million or less than half of that; \$620 million to find out who has the AIDS virus and how it is spreading, where it is spreading. We could really get a lot of information.

That is a relatively small addition to the \$150 billion Federal health bill that we have every year, \$150 billion is spent on Federal health care every year. It would cost \$620 million to test the people of this sexually active age group once a year. That is not much money considering the AIDS epidemic will cost the country \$44 billion a year in direct health costs in the year 2002.

Little over 10 years from now it is going to cost \$44 billion a year to take care of the AIDS patients and the related health costs dealing with them, and we can eliminate a lot of that cost if we would start a testing program right away, not to mention the people whose lives we would save. It would cost \$620 million a year, the total cost of medical care for the people with AIDS or HIV infection in New York State alone. I wish the gentlewoman from New York [Ms. MOLINARI] was here to hear this tonight. The total cost of medical care for people with AIDS or HIV infection in New York State alone was estimated at \$1.3 billion last year, and is expected to double in less than 2 years to \$2.6 billion. That State, New York, is one of the hardest hit in the country and testing would really help long term the health care problems of that State. And that is one of the reasons we need it.

That quote I just used was from the American Hospital Association News, February 26, 1990.

In New York State, hospitals will need an additional 7,000 nurses during the next 4 years just to take care of AIDS patients. Seven thousand additional nurses in one State alone to take care of AIDS patients in the next 4 years, and yet we do not have a testing program to find out who has it, to stop the spread of unknowing people. Remember, the people who have the AIDS virus do not even know they have it. And for the next 2 to 7 years before they get active AIDS, they look just like anybody else. They can be an athlete, a cheerleader, a basketball star in the NBA, whatever it happens to be. And all that time they are having contact with other human beings, sexual contact or maybe even other contact. We do not know. They could be spreading that disease.

That is why it is important that we test, find out, and then start a routine program, a comprehensive program to deal with this problem.

That quote was from the American Hospital Association News, February 26, 1990.

Due to the AIDS epidemic, the size of the labor force may be reduced by slightly more than 1 percent during the 1990's alone, just think what that means to the gross national product and the productivity of this country. One percent of the producing people in this country will be reduced from the labor force in the next decade because of the AIDS virus, and we do not have

even a program to deal with it. We do not have a comprehensive program to deal with it. We sit here and poke fingers in the air and years go by and more people are infected, destined to die, and they are spreading to other people, and we are not doing anything about it.

I first started talking about this in 1986 and 1987, when I came down to the well. And I went into this in a lot of detail. I started talking to experts from all over the world, doctors and scientists from London, from *Lancet Medical Journal*, from the *New England Medical Journal*, from people from Harvard, all over the world, scientists and doctors who had expertise in this area.

When I first started talking about it, they estimated we had 1.5 million people infected, and it was doubling every year. That was in 1986-87. Here we are in 1991, halfway through the year, and they are still telling us there are only 1.5 million people infected.

The fact of the matter is, many experts believe we have more like 5 to 6 million people infected, all of whom will get active AIDS eventually, all of whom have potentially been spreading that to other human beings, and 95, 96, 97 percent of them, we are not sure how many, but we know it is a high percentage, do not even know they have it. They are going on day in and day out, conducting business as usual and spreading it to other human beings.

□ 1930

Now I want to talk about Dr. Everett Koop, who has his own television show. I saw it the other night, and it was a pretty good show. I want to talk about some of the things he said about the AIDS virus, just a couple of short years ago.

Dr. Koop said, in a report to everybody in this country,

There is no danger of AIDS virus infections from visiting a doctor, a dentist, a hospital, a hairdresser, or a beautician. You may have wondered why your dentist wears gloves and perhaps a mask when treating you. This does not mean that he has AIDS or that he thinks you do. He is protecting you and himself from hepatitis, common colds, and so forth.

But he said you cannot get it from your doctor or your dentist.

Refutation is,

A definition danger exists of AIDS infection from any health care provider engaging in invasive procedures.

On November 15, 1985, and again on April 11, 1988, the Centers for Disease Control, the CDC, in Atlanta, issued recommendations for preventing transmission of AIDS between dentists and their patients, including the wearing of gloves and masks. These recommendations have been widely adopted. So that refutes what Dr. Koop said.

We also know he said you could not get it from a doctor or a dentist. We also know that people have gotten it from doctors and have gotten it from

dentists. They have been infected and are going to die because the doctor or dentist had it. They have given it to them through the course of their surgery or their profession.

I would like to read a couple of other quotes here.

Federal health officials yesterday reported evidence suggesting that for the first time a health professional with AIDS has transmitted the virus to a patient.

I talked about that. That was Dr. Acer in Florida.

"The CDC has found evidence to strongly suggest he," Dr. Acer, "infected at least two other patients."

We now know there were others.

Doctors and dentists infected with the AIDS virus should stop doing surgery or tell their patients about their condition, the American Medical Association and the American Dental Association said Thursday.

That was in *USA Today* in January 1991.

Yet, just a couple of short years ago we got a report that went all over this country saying you could not get it from doctors. Dr. Koop should not have made those categorical statements without knowing what he was talking about, but he did. And that is what I was talking about a little while ago, when I said these television shows that have people on that appear to be experts, and they give this false information to people, maybe not knowing that they are doing it, and it gives the American people misinformation, it gives them a false sense of security, and they do not protect themselves or their families, and they are at risk of getting the AIDS virus.

The *Washington Times*, February 15, 1991, Dr. Jewett, a professor of orthopedic surgery at the University of California, conducted a study that showed that aerosols containing HIV-infected blood were produced during orthopedic surgery. He found that these particles were small enough to penetrate a surgical mask. That meant that during surgery, when he was running a saw, spray went into the air. He has a mask on. He looked at these particles being sprayed into the air from the person that had the AIDS virus, and they were small enough to penetrate the mask he was wearing. That meant they could get onto his face and into his lungs. And that is why this test is being conducted, this study is being conducted, by CDC right now in Atlanta to find out if you can get the AIDS virus from an aerosol, from a spray in the air.

Two hundred thirty million AIDS viruses will fit on a period at the end of a sentence. Is it any wonder that people have had blood splashed on their skin and got the AIDS virus? Because their pores are so much bigger than the virus itself, the virus can penetrate their pores, even though there are not cuts.

That is why we need to have a comprehensive program.

The AIDS virus is hard to get and is easily avoided. Coughing or sneezing will not transmit the AIDS virus.

Dr. Koop said that.

Well, I just told you that they are doing a study right now to find out if it is an aerosol, if it can be spread that way, because CDC has now come to the conclusion that they really do not know.

But Dr. Koop a few short years ago said you cannot get it that way. Just like he said you cannot get it from a doctor or a dentist, which we now know to be false.

Doctors and dentists, the Surgeon General of the United States should not be making categorical statements without factual evidence. They need to be conducting a comprehensive program, a comprehensive study, across this Nation to find out how it is being spread, who is spreading it, how rapidly it is being spread, and what can be done to curtail the disease.

I told you a while ago about the soccer player who collided, the American tourist who caught AIDS when the blood was splashed on him during a bus accident, the man who said he spent 6 years beating up gay males and may have contracted the AIDS virus from the blood of his victims when he hit them.

Dr. Koop went on to say, "An infected woman can give the AIDS virus to her baby before it is born or during birth," but he did not include the fact that you can get it after birth.

Six cases of AIDS being spread through breast milk were reported at the Fourth International Conference on AIDS which I talked about a few moments ago.

Dr. Koop said you will not get AIDS from saliva, sweat, tears, urine, or a bowel movement.

The *Washington Post*, January 29, 1989, during breast feeding, four mothers then contracted the AIDS virus from the babies nursing.

The *New England Journal of Medicine*, transmission of HIV infection from a woman to a man by oral sex has been documented. This case report suggests that oral sex alone, you can transmit HIV, even when there is no coincident exchange of blood.

So you can get it without a blood transfusion.

New Dimensions, March of 1990. Anyone who would tell you categorically that AIDS is not contracted by saliva is not telling you the truth. AIDS may in fact be transmissible by tears, saliva, bodily fluids, and mosquito bites. That is a quote from Dr. William Haseltine, a Harvard AIDS researcher.

So we really do not know all the ways it is being spread. That is why this body and this Government and the Centers for Disease Control and the Surgeon General and the head of HHS—Health and Human Services—need to get down to brass tacks and come up

with a program that will deal with this in a responsible way.

We need to have a program of education. We need to have a program of testing. We need to have contact tracing. We need to have penalties for those who have the AIDS virus and know that they are spreading it to other human beings. And we need to give them psychological training. We need a comprehensive program.

We need to also make sure that those who have the AIDS virus, regardless of their sexual preference, are not discriminated against.

I feel very confident that with the Americans with Disabilities Act last year, that hurdle has been reached. There are parts of that bill that I think went way too far. Nevertheless, the civil rights of those people are protected, and we must get on to the business of protecting the vast majority of Americans who may or may not get the AIDS virus.

Mr. Speaker, most recently the *New England Journal of Medicine* came out with a new view of the AIDS virus and how we ought to deal with it. I would like to read an editorial by Dr. Marcie Angell, the concluding part of her editorial.

Here is what she says:

I believe that on balance systematic tracing and notification of the sexual partners of HIV-infected persons and screening of pregnant women, newborns, hospitalized patients, and health care professionals, are warranted. These populations are, after all, relatively accessible to the health care system and at some special risk. Attempting to screen the entire population would simply be impractical. On the other hand, targeting only high risk groups would be unworkable, in part because it would entail making distinctions that are often impossible, as well as invidious.

I would like to say I disagree with her on that. I think that ultimately, I really truly believe in my heart of hearts, ultimately we are going to have a comprehensive, routine testing program, for all Americans, like we did in years past for syphilis, for tuberculosis, and other diseases that threatened the health of the Nation.

The problem is, how long are we going to wait? Are we going to wait until we have another 6 or 8 million people infected, who are destined to die? I sincerely hope not.

She went on to say,

With any increase in screening, however, the specter of discrimination arises once a person is known to be infected. Only if such discrimination, at least in its more tangible expressions, is countered by statute, and if those with HIV infection are assured of receiving all the medical care they need, can we pursue the basic elements of infection control more resolutely, and so spare others the tragedy of this disease.

We need to do that. We need to protect those who have the AIDS virus from discrimination. But at the same time we need to get on with a com-

prehensive program to protect the vast number of people in this country.

Some Members want to allow anybody to come into this country who has the AIDS virus. They think we should not have any barriers.

That may sound all right on the surface, but the average cost of taking care of an AIDS patient from the time they come down with the disease to the time they die is between \$100,000 and \$150,000.

Multiply that times the number of people who are coming into the country that might carry the AIDS virus. Multiply that times the number of people in this country that already have the AIDS virus, that are going to come down with it. You get astronomical figures.

So we need to start dealing with this in a realistic manner. We need to come up with a program that is going to deal with the problem, control the problem, give us a guide as to where the AIDS epidemic or pandemic is going in the years to come, and then get on with protecting the majority of the people of this country.

□ 1940

The only way to do that, in my view, is to have this comprehensive program I have talked about. To do less, in my view, is a tragic mistake.

In closing, I just would like to say to the people who are doing television broadcasts, Mr. Speaker, and I tell my colleagues this, those who are doing television broadcasts about the AIDS pandemic really ought to do their homework. They should not be making off-the-cuff remarks that are going to mislead the American people. I am sure they do not do it intentionally, but the fact of the matter is when they make these irresponsible remarks they give people a false sense of security, and then many of these people will go out and get infected with AIDS because of this misinformation.

I would just challenge anyone talking about this to do their homework, to talk to the experts, to read the journals, to read the medical journals, the *Lancet*, the *New England Journal of Medicine*, the *AMA Journal* on this so that when they go on television, or the radio, or in the newspapers and start expounding about this pandemic that they really are giving the straight facts. And if they do not know, they should say, "Well, I don't know about that; we'll have to check."

We are talking about something that is very, very serious, very serious, because once you get the AIDS virus you are a dead person. It is just a matter of how long you are going to live, and we need to protect the American people from this pandemic.

Mr. Speaker, I yield back the balance of my time.

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON THE BUDGET REGARDING CURRENT LEVEL OF SPENDING AND REVENUES FOR FISCAL YEAR 1991

(Mr. PANETTA asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PANETTA. Mr. Speaker, on behalf of the Committee on the Budget and as chairman of the Committee on the Budget, pursuant to the procedures of the Committee on the Budget and section 311 of the Congressional Budget Act of 1974, as amended, I am submitting for printing in the CONGRESSIONAL RECORD the official letter to the Speaker advising him of the current level of spending, credit, and revenues for fiscal year 1991.

This is the fifth report of the first session of the 102d Congress. This report is based on the revised budget aggregates and allocations for fiscal year 1991 as authorized in section 12 of House Concurrent Resolution 121 and as submitted to the House on May 29, 1991.

The term "current level" refers to the estimated amount of budget authority, outlays, credit authority, and revenues that are available—or will be used—for the full fiscal year in question based only on enacted law.

As chairman of the Budget Committee, I intend to keep the House informed regularly on the status of the current level.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington DC, June 5, 1991.

HON. THOMAS S. FOLEY,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Section 12 of House Concurrent Resolution 121, the Fiscal Year 1992 Budget Resolution, outlined procedures for revising the Fiscal Year 1991 budget aggregates and allocations. That section, applicable only to the House of Representatives, permits the aggregate levels and committee allocations for fiscal year 1991 to be revised to make them consistent with the discretionary caps and pay-as-you-go provisions of the Budget Enforcement Act of 1990.

The 302(a) allocations to House Committees made pursuant to section 12 of H. Con. Res. 121 were printed in the Congressional Record on May 29, 1991, page H. 3698. The new aggregates and committee allocations set all direct spending and revenues exactly at current baseline levels using Congressional Budget Office (CBO) estimates. For discretionary appropriations, the new allocation exactly equals the sum of the existing discretionary caps.

As specified in section 12, Committees are not required to subdivide the Fiscal Year 1991 amounts allocated to them, and enforcement of the allocations will be based on the total amounts allocated to a committee.

In order to facilitate enforcement under section 302 and 311 of the Congressional Budget Act, I am herewith transmitting the status report for fiscal year 1991 reflecting the changes in budget aggregates and allocations as authorized by section 12.

The enclosed tables compare enacted legislation to each committee's 302(a) allocation of discretionary new budget authority, new entitlement authority, new direct loan obli-

gations and new primary loan guarantee commitments.

Sincerely,

LEON E. PANETTA,
Chairman.

Enclosures.

REPORT TO THE SPEAKER OF THE U.S. HOUSE OF REPRESENTATIVES FROM THE COMMITTEE ON THE BUDGET ON THE STATUS OF THE FISCAL YEAR 1991 CONGRESSIONAL BUDGET ADOPTED IN HOUSE CONCURRENT RESOLUTION 310 AS REVISED PURSUANT TO SEC. 12 OF HOUSE CONCURRENT RESOLUTION 121

REFLECTING COMPLETED ACTION AS OF JUNE 4, 1991

(On-budget amounts, in millions of dollars)

	Budget authority	Outlays	Revenues
Appropriate level	1,187,800	1,155,800	793,000
Current level	1,187,563	1,155,200	793,000
Amount under ceilings	237	600	
Amount over ceilings			
Amount over floor			

BUDGET AUTHORITY

Any measure that provides new budget or entitlement authority, that is not included in the current level estimate, and that exceeds \$237 million in budget authority for fiscal year 1991, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in H. Con. Res. 310, as revised, to be exceeded.

OUTLAYS

Any measure that provides new budget or entitlement authority, that is not included in the current level estimate, and that exceeds \$600 million in outlays for fiscal 1991, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 310, as revised, to be exceeded.

REVENUES

Any measure that would result in a revenue loss that is not included in the current level revenue estimate for fiscal year 1991, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in H. Con. Res. 310, as revised.

FISCAL YEAR 1991 BUDGET AUTHORITY—COMPARISON OF CURRENT LEVEL AND BUDGET RESOLUTION ALLOCATION BY COMMITTEE, PURSUANT TO SEC. 302

(In millions of dollars)

House committee	Current level		
	Budget authority	Direct loans	Primary loan guarantees
Agriculture	0	0	0
Appropriations	-237	0	0
Armed Services	0	0	0
Banking, Finance, and Urban Affairs	0	0	0
District of Columbia	0	0	0
Education and Labor	0	0	0
Energy and Commerce	0	0	0
Foreign Affairs	0	0	0
Government Operations	0	0	0
House Administration	0	0	0
Interior and Insular Affairs	0	0	0
Judiciary	0	0	0
Merchant Marine and Fisheries	0	0	0
Post Office and Civil Service	0	0	0
Public Works and Transportation	0	0	0
Science, Space and Technology	0	0	0
Veterans' Affairs	0	0	0
Ways and Means	0	0	0

Note: Committees are over (+) or under (-) their 302(a) allocation for "discretionary action."

FISCAL YEAR 1991—ALLOCATION OF NEW ENTITLEMENT AUTHORITY (NEA) PURSUANT TO SEC. 302

(In millions of dollars)

Committee	Allocation	Reported ¹	Enacted ²	Enacted over (+)/under (-) allocation
Agriculture	0	0	0	0
Appropriations	0	0	0	0
Armed Services	0	0	0	0
Banking, Finance, and Urban Affairs	0	0	0	0
District of Columbia	0	0	0	0
Education and Labor	0	0	0	0
Energy and Commerce	0	0	0	0
Foreign Affairs	0	0	0	0
Government Operations	0	0	0	0
House Administration	0	0	0	0
Interior and Insular Affairs	0	0	0	0
Judiciary	0	0	0	0
Merchant Marine and Fisheries	0	0	0	0
Post Office and Civil Service	0	0	0	0
Public Works and Transportation	0	0	0	0
Science, Space and Technology	0	0	0	0
Veterans' Affairs	0	0	0	0
Ways and Means	0	0	0	0

¹ These figures are used for 401(b)(2) of the Budget Act.

² These figures are used for 302(f) points of order.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 5, 1991.

HON. LEON E. PANETTA,
Chairman, Committee on the Budget, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, this letter and supporting detail provide an up-to-date tabulation of the current levels of new budget authority, estimated outlays, estimated revenues, and direct and guaranteed loan levels. These estimates are consistent with the technical and economic assumptions in the Concurrent Resolution on the Budget agreed to on May 22, 1991 and are compared to the revised 1991 budget aggregates pursuant to section 12 of House Concurrent Resolution 121. This report, for fiscal year 1991, is tabulated as of close of business June 4, 1991 and is summarized in the following table (in millions of dollars).

	On-budget current level	Revised on-budget aggregates	Current level +/- aggregates
Budget authority	1,187,563	1,187,800	-237
Outlays	1,155,200	1,155,800	-600
Revenues	793,000	793,000	—
Direct loans	18,355	18,355	—
Guaranteed loans	109,767	109,767	—

Since my last report, dated May 1, 1991, the Congress has cleared for the President's signature H.R. 2251, the Emergency Supplemental for Humanitarian Assistance. The current level of spending has also been adjusted to reflect the within-session OMB sequester of \$2.4 million in budget authority and \$1.4 million in outlays.

Sincerely,

ROBERT D. REISCHAUER,
Director.

PARLIAMENTARIAN STATUS REPORT, 102D CONGRESS, 1ST SESSION, HOUSE SUPPORTING DETAIL, FISCAL YEAR 1991 AS OF CLOSE OF BUSINESS JUNE 4, 1991

(In millions of dollars)

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues	—	—	793,001
Permanent appropriations and trust funds	740,762	683,281	—
Other legislation	668,128	695,667	—

PARLIAMENTARIAN STATUS REPORT, 102D CONGRESS, 1ST SESSION, HOUSE SUPPORTING DETAIL, FISCAL YEAR 1991 AS OF CLOSE OF BUSINESS JUNE 4, 1991—Continued

(In millions of dollars)

	Budget authority	Outlays	Revenues
Offsetting receipts	-225,151	-225,151	—
Total enacted in previous sessions	1,183,740	1,153,797	793,001
II. Enacted this session:			
Extending IRS deadline for Desert Storm Troops (P.L. 102-2)	—	—	-1
Veterans' education, employment and training amendments (P.L. 101-16)	(1)	(1)	—
Disaster emergency supplemental appropriations, 1991 (P.L. 102-27)	3,823	1,401	—
Higher education technical amendments (P.L. 102-26)	3	3	—
OMB discretionary sequester	-2	-1	—
Total enacted this session	3,824	1,403	-1
III. Continuing resolution authority	—	—	—
IV. Conference agreements ratified by both Houses:			
Emergency supplemental for humanitarian assistance (H.R. 2251)	(1)	—	—
V. Entitlement authority and other mandatory adjustments required to conform with current law estimates in budget resolution	—	—	—
On-budget current level	1,187,563	1,155,200	793,000
Revised on-budget aggregates	1,187,800	1,155,800	793,000
Amount remaining:			
Over budget resolution	—	—	—
Under budget resolution	237	600	—

¹ Less than \$500,000.

Note: Detail may not add due to rounding.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LIVINGSTON) to revise and extend their remarks and include extraneous material:)

- Mr. WELDON, for 60 minutes, today.
- Mr. BOEHLERT, for 5 minutes, today.
- Mr. DORNAN of California, for 5 minutes, on June 6.
- Mr. BURTON of Indiana, for 60 minutes each day, on June 18, 19, and 20.
- Mr. DUNCAN, for 5 minutes today.
- Mr. WELDON, for 60 minutes, on June 6.
- Mrs. BENTLEY, for 60 minutes each day, on June 14, 17, 18, 19, 20, 21, 24, 25, 26, and 27.

(The following Members (at the request of Mr. SERRANO) to revise and extend their remarks and include extraneous material:)

- Mr. ANNUNZIO, for 5 minutes, today.
- Mr. PANETTA, for 5 minutes, today.
- Mr. ROSTENKOWSKI, for 5 minutes, on June 6.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LIVINGSTON) and to include extraneous matter:)

Mr. CAMPBELL of California in two instances.

Mr. GRADISON.

Mr. CUNNINGHAM.

Mr. OXLEY.

Mr. CAMP in two instances.

Mrs. ROS-LEHTINEN.

Mr. LAGOMARSINO.

Mr. MCEWEN in two instances.

Mr. LEWIS of Florida.

Mr. YOUNG of Alaska.

Mr. FIELDS.

Mr. MICHEL.

(The following Members (at the request of Mr. SERRANO) and to include extraneous matter:)

Mr. SKELTON.

Mr. MCMILLEN of Maryland.

Mr. TAUZIN.

Mr. HAMILTON.

Mr. PETERSON of Florida.

Mr. REED in two instances.

Mr. CLAY.

Mr. RANGEL in two instances.

Mr. KOSTMAYER.

Mr. NEAL of Massachusetts.

Mrs. LOWEY of New York.

Mr. MARKEY in two instances.

Mr. BONIOR.

Mr. SWETT.

Mr. SANDERS.

Mr. DWYER of New Jersey.

Mr. BOUCHER.

Mr. ROYBAL.

Mr. LIPINSKI.

Ms. NORTON.

Mr. SHARP.

Mr. KILDEE in three instances.

Mr. STUDDS.

Mr. ERDREICH.

Mr. DELLUMS.

Ms. SLAUGHTER of New York.

ENROLLED BILL SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 971. An act to designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, OH, as the "Luke Easter Post Office."

ADJOURNMENT

Mr. BURTON of Indiana. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 42 minutes p.m.) the House adjourned until tomorrow, Thursday, June 6, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1471. A letter from the Department of Defense, transmitting notification that a study

has been conducted with respect to converting the transient aircraft maintenance function at McChord Air Force Base, Washington, and a decision has been made that performance under contract is the most cost-effective method of accomplishment, pursuant to Public Law 100-463, section 8061 (102 Stat. 2270-27); to the Committee on Appropriations.

1472. Acting Under Secretary of Defense, transmitting the Department's report on financial analysis methodology for return on investment studies, pursuant to Public Law 100-456, section 801 (102 Stat. 2007); to the Committee on Armed Services.

1473. A letter from the President, Resolution Trust Corporation, transmitting the Corporation's report pursuant to section 21A(k)(9) of the Federal Home Loan Bank Act, as amended; to the Committee on Banking, Finance and Urban Affairs.

1474. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting copies of the original reports of political contributions by Luis Guniot, Jr., of Virginia, Ambassadors-designate and members and his family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

1475. A letter from the Department of State, transmitting a report on the status of secondment with the United Nations by the Soviet Union and Soviet-bloc member nations, pursuant to Public Law 100-204, section 701(b) (101 Stat. 1385); to the Committee on Foreign Affairs.

1476. A letter from the Department of Education, transmitting the semiannual report of the Inspector General for the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1477. A letter from the Administrator, Agency for International Development, transmitting the semiannual report of the Office of Inspector General for the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1478. A letter from the Consumer Product Safety Commission, transmitting a copy of the annual report in compliance with the Government in the Sunshine Act during the calendar year 1990, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Operations.

1479. A letter from the National Endowment for the Arts, transmitting the semiannual report of activities of the Inspector General covering the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1480. A letter from the Securities and Exchange Commission, transmitting the semiannual report of activities of the Inspector General covering the period October 1, 1990 through March 31, 1991, pursuant to Public Law 95-452, section 5(b) (102 Stat. 2526); to the Committee on Government Operations.

1481. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

1482. A letter from the Attorney General, Department of Justice, transmitting a draft of proposed legislation entitled, "Foreign Agents Registration Act of 1991"; to the Committee on the Judiciary.

1483. A letter from the Department of Transportation, transmitting the annual report of activities of the Department's administration of the Deepwater Port Act, pursuant to 33 U.S.C. 20; to the Committee on Public Works and Transportation.

1484. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to eliminate duplication and inconsistency in VA programs for furnishing veterans with medical, therapeutic, rehabilitative, and prosthetic devices, appliances, equipment, and services; to the Committee on Veterans' Affairs.

1485. A letter from the Acting Secretary of the Navy, transmitting the Department's report on Naval Medical Research and Development Command's C.W. "Bill" Young Marrow Donor Recruitment and Research Program; jointly, to the Committees on Appropriations and Armed Services.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 1775. A bill to authorize expenditures for fiscal year 1992 for the operation and maintenance of the Panama Canal; with an amendment (Rept. 102-97). Referred to the Committee of the Whole House on the State of the Union.

Mr. BELLENSON: Committee on Rules. House Resolution 165. Resolution waiving certain points of order during consideration of H.R. 2521, a bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes. (Rept. 102-98). Referred to the House Calendar.

Mr. WHEAT: Committee on Rules. House Resolution 166. Resolution waiving certain points of order during consideration of H.R. 2519, a bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes. (Rept. 102-99). Referred to the House Calendar.

SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of Rule X, the following action was taken by the Speaker:

H.R. 2474. Referral to the Committee on Armed Services extended for a period ending not later than June 20, 1991.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ALEXANDER:

H.R. 2544. A bill to authorize the Secretary of Transportation to carry out a highway demonstration project for construction of a bridge to replace a bridge in providing motor vehicle access across the White River at DeValls Bluff, AR; to the Committee on Public Works and Transportation.

By Mr. BARTON of Texas (for himself, Mr. LENT, Mr. MOORHEAD, Mr. FIELDS, Mr. HOLLOWAY, Mr. OXLEY, and Mr. SYNAR):

H.R. 2545. A bill entitled the "Vehicular Natural Gas Act of 1991"; to the Committee on Energy and Commerce.

By Mr. BOUCHER (for himself, Mr. OXLEY, Mr. COOPER, Mr. HASTERT, Mr. FIELDS, Mr. BARTON of Texas, Mr. DOWNEY, Mr. GORDON, Mr. MCCLOSKEY, Mr. FUSTER, Mr. EVANS, Mr. OLIN, Mr. PAYNE of Virginia, Mr. FORD of Tennessee, Mr. HOCHBRUECKNER, Mr. TRAXLER, Mr. WOLPE, Mr. JACOBS, Mrs. LOWEY of New York, Mr. SPRATT, Mr. SHAYS, Mr. CHAPMAN, Mr. STALLINGS, Mr. NAGLE, Mr. LAUGHLIN, Mr. GREEN of New York, Mr. ARMEY, Mr. HAMMERSCHMIDT, Mr. HENRY, Mr. PENNY, Mr. COMBEST, Mr. MARLENEE, Mr. SKEEN, Mr. QUILLEN, Mr. TRAFICANT, Mr. ENGEL, Mr. DELAY, Mr. SMITH of Texas, Mr. LAFALCE, Mr. WISE, Mr. CLINGER, Mr. NEAL of North Carolina, and Mr. MACTHLEY):

H.R. 2546. A bill to advance the national interest by promoting and encouraging the more rapid development and deployment of a nationwide, advanced, interactive, interoperable, broadband telecommunications infrastructure on or before 2015 and by ensuring the greater availability of, access to, investment in, and use of emerging communications technologies, and for other purposes; to the Committee on Energy and Commerce.

By Mr. DONNELLY:

H.R. 2547. A bill to amend the Communications Act of 1934 with respect to the regulation of service tiers provided by cable television systems; to the Committee on Energy and Commerce.

By Mr. DURBIN:

H.R. 2548. A bill to authorize the Secretary of the Interior to establish an Abraham Lincoln Research and Interpretive Center; to the Committee on Interior and Insular Affairs.

By Mr. FRANK of Massachusetts:

H.R. 2549. A bill to make technical corrections to chapter 5 of title 5, United States Code; to the Committee on the Judiciary.

By Mr. GRANDY (for himself, Mr. RANGEL, Mr. HOUGHTON, and Mr. MORRISON):

H.R. 2550. A bill to amend the Internal Revenue Code of 1986 to encourage the formation of, and donation of contributions to, apprenticeship education organizations; to the Committee on Ways and Means.

By Mr. ROYBAL:

H.R. 2551. A bill to amend title XVI of the Social Security Act with respect to establishing minimum national standards to protect elderly and other residents of board and care facilities; jointly, to the Committees on Ways and Means and Energy and Commerce.

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

H.R. 2552. A bill to provide for a National Commission on Board and Care Facility Quality to review and recommend standards for board and care facilities; jointly, to the Committees on Energy and Commerce and Ways and Means.

By Mr. HOBSON:

H.R. 2553. A bill to require State agencies to register all offenders convicted of any acts involving child abuse with the National Crime Information Center of the Department of Justice; to the Committee on the Judiciary.

By Mr. HUBBARD:

H.R. 2554. A bill to amend chapter 3 of title 11, United States Code, to modify the compensation for private bankruptcy trustees; and for other purposes; to the Committee on the Judiciary.

By Mr. KOSTMAYER:

H.R. 2555. A bill to provide for the establishment of a summer camp program for low-income youths, and to expand the Youth Conservation Corps Program; jointly, to the Committees on Education and Labor, Interior and Insular Affairs, and Agriculture.

By Mr. LAGOMARSINO (for himself, Mr. GALLEGLY, Mr. PANETTA, and Mr. THOMAS of California):

H.R. 2556. A bill entitled "Los Padres Condor Range and River Protection Act;" jointly, to the Committees on Interior and Insular Affairs and Agriculture.

By Mr. McMILLEN of Maryland:

H.R. 2557. A bill to amend the Elementary and Secondary Education Act of 1965 to provide additional grants to schools eligible for grants under chapter 1 of title I of such act that require students to maintain satisfactory grades as a condition of participation in extracurricular activities; to the Committee on Education and Labor.

By Mr. MARKEY (for himself and Mr. RINALDO):

H.R. 2558. A bill to authorize appropriations for the National Telecommunications and Information Administration for fiscal years 1992 and 1993; to the Committee on Energy and Commerce.

By Mr. SCHUMER:

H.R. 2559. A bill to require that the U.S. Government hold certain discussions and report to the Congress with respect to the secondary boycott of Israel by Arab countries; jointly, to the Committees on Ways and Means and Foreign Affairs.

By Mr. SHARP (for himself, Mr. BRUCE, Mr. SCHEUER, Mr. BERUTER, Mr. BERMAN, Mr. COSTELLO, Mr. JONTZ, Mr. LANCASTER, Mr. MCCLOSKEY, Mr. PORTER, and Mr. RAVENEL):

H.R. 2560. A bill to provide that for purposes of determining the minimum allocation paid to any State under section 157 of title 23, United States Code, and determining the amount of any other allocation or appointment of Federal-aid highway funds, the amount of taxes treated as paid into the Highway Trust Fund with respect to alternative sources of energy shall be determined as if such energy sources were taxed as gasoline, and for other purposes; jointly, to the Committees on Public Works and Transportation and Ways and Means.

By Mr. WILLIAMS (for himself, Mr. GEPHARDT, Mr. HOYER, and Mr. DOWNEY):

H.R. 2561. A bill to remove the barrier to access for middle income students to Federal student financial aid programs, and for other purposes; to the Committee on Education and Labor.

By Mr. GEJDENSON (for himself, Mr. TAUZAN, Mr. DAVIS, Mr. STUDES, Mr. FIELDS, Mr. LEHMAN of Florida, Mr. REED, Mr. HOCHBRUECKNER, Mr. PANETTA, Mr. INHOFE, Mr. BLAZ, Mr. DE LUGO, Mr. GUARINI, Mr. RAVENEL, Mr. ESPY, Mr. SPENCE, Mr. MACTHLEY, Mr. SMITH of Florida, Mr. LANCASTER, Mr. BACCHUS, Mr. DARDEN, Mr. ENGEL, Mr. RAMSTAD, Mr. OWENS of Utah, Mr. BILIRAKIS, Mr. THOMAS of Georgia, Mr. LAGOMARSINO, Mr. JOHNSON of South Dakota, and Mr. ECK-ART):

H. Con. Res. 163. Concurrent resolution commending the Coast Guard for its impor-

tant role in the Persian Gulf conflict and urging the people of the United States to recognize such role; to the Committee on Merchant Marine and Fisheries.

By Mr. VISCLOSKEY (for himself, Mr. LEVIN of Michigan, Mr. ACKERMAN,

Mr. ANNUNZIO, Mr. BACCHUS, Mrs. BENTLEY, Mr. BERUTER, Mr. BEVILL, Mr. BONIOR, Mr. BROWN, Mr. BRUCE, Mr. BRYANT, Mr. BURTON of Indiana, Mr. CARDIN, Mr. CLEMENT, Mr. CLINGER, Mr. COYNE, Mr. DAVIS, Mr. DARDEN, Mr. DELLUMS, Mr. DURBIN, Mr. DWYER of New Jersey, Mr. ENGEL, Mr. ERDREICH, Mr. EVANS, Mr. FEIGHAN, Mr. GAYDOS, Mr. GEKAS, Mr. GUARINI, Mr. HARRIS, Mr. HERGER, Mr. HOCHBRUECKNER, Mr. HORTON, Mr. JONTZ, Mr. KANJORSKI, Ms. KAPTUR, Mr. KOLTER, Mr. KOSTMAYER, Mr. LAFALCE, Mr. LIPINSKI, Ms. LONG, Mr. MACTHLEY, Mr. MARKEY, Mr. MAVROULES, Mr. MCCLOSKEY, Mr. MCNUITY, Mr. MFUME, Mr. MONTGOMERY, Mr. MURPHY, Ms. NORTON, Mr. NOWAK, Mr. ORTON, Mr. OWENS of Utah, Mr. PAYNE of New Jersey, Mr. PEASE, Mr. POSHARD, Mr. RAHALL, Mr. REED, Mr. RITTER, Mr. ROE, Mr. ROEMER, Mr. ROSE, Mr. RUSSO, Mr. SARPALIUS, Mr. SAXTON, Ms. SLAUGHTER of New York, Mr. SMITH of Florida, Mr. STAGGERS, Mr. STUDES, Mr. TAYLOR of Mississippi, Mr. TOWNS, Mr. TRAFICANT, and Mr. WILSON):

H. Res. 167. Resolution expressing the sense of the House of Representatives that United States businesses engaged in the rebuilding of Kuwait should use United States subcontractors and all available United States goods and services; to the Committee on Energy and Commerce.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

163. By the SPEAKER: Memorial of the Senate of the State of Colorado, relative to the dual banking system; to the Committee on Banking, Finance and Urban Affairs.

164. Also, memorial of the Legislature of the State of Hawaii, relative to the establishment of a comprehensive national health insurance program; to the Committee on Energy and Commerce.

165. Also, memorial of the Senate of the State of Colorado, relative to the Federal Election Campaign Act of 1971; to the Committee on House Administration.

166. Also, memorial of the Senate of the State of Colorado, relative to the new Federal tax on recreational vessels; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BACCHUS:

H.R. 2562. A bill for the relief of M4 Data, Inc.; to the Committee on the Judiciary.

By Mr. BERUTER:

H.R. 2563. A bill for the relief of Richard W. Schaffert; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 14: Mr. NEAL of Massachusetts, Mr. GILMAN, Mr. FEIGHAN, Ms. OAKAR, Mr. CLAY, Mr. WASHINGTON, Mr. KILDEE, Mr. FROST, Mr. LEHMAN of Florida, Mr. ANDREWS of New Jersey, Ms. NORTON, and Mr. POSHARD.

H.R. 74: Mr. WASHINGTON, Mr. MARTINEZ, and Mrs. BOXER.

H.R. 116: Mr. GLICKMAN.

H.R. 134: Mr. REED, Mr. RIGGS, Mr. RITTER, Mrs. VUCANOVICH, Mr. VENTO, Mr. HEFLEY, Mr. NEAL of Massachusetts, Mr. WILLIAMS, Mr. DONNELLY, Mr. RIDGE, Mr. MINETA, Mr. McMILLAN of North Carolina, and Mr. SCHEUER.

H.R. 194: Mr. DARDEN and Mr. KANJORSKI.
H.R. 251: Mr. BEILENSON, Mr. JONTZ, and Mr. SIKORSKI.

H.R. 252: Mr. STUDDS.

H.R. 288: Mr. ENGEL, Mr. LANCASTER, Mr. JOHNSON of South Dakota, Mr. MCHUGH, Mr. TORRES, Mr. JACOBS, Mrs. MORELLA, Mr. ESPY, Mr. OWENS of Utah, and Mrs. UNSOELD.

H.R. 299: Mr. HUNTER.

H.R. 300: Mr. KANJORSKI.

H.R. 392: Mr. MORRISON and Mr. PANETTA.

H.R. 447: Mr. EVANS.

H.R. 539: Mr. LEHMAN of Florida.

H.R. 571: Mr. MARTINEZ.

H.R. 592: Mr. ROE.

H.R. 623: Mrs. MEYERS of Kansas and Mr. MACHTLEY.

H.R. 730: Mr. ESPY.

H.R. 784: Mr. PETRI.

H.R. 830: Ms. SLAUGHTER of New York.

H.R. 843: Mr. KANJORSKI.

H.R. 852: Mr. CLAY and Mr. KENNEDY.

H.R. 945: Mr. INHOFE, Ms. MOLINARI, Mr. HOBSON, Mr. GILLMOR, and Mr. RHODES.

H.R. 1063: Mr. JONTZ, Mr. SABO, Mr. DELLUMS, Mr. HOCHBRUECKNER, Mr. HERTEL, Mr. SIKORSKI, and Mr. STUDDS.

H.R. 1077: Mr. SAXTON, Mr. PENNY, Mr. DWYER of New Jersey, Mr. ASPIN, and Mr. CRANE.

H.R. 1080: Mr. ENGEL, Mr. MACHTLEY, Mr. LEWIS of Florida, and Mr. HORTON.

H.R. 1107: Mr. APPELGATE, Mr. BARNARD, Mr. BERMAN, Mrs. BOXER, Mr. BROWN, Mr. BRYANT, Mr. CHANDLER, Mr. CONDIT, Mr. DARDEN, Mr. DELLUMS, Mr. DURBIN, Mr. ERDREICH, Mr. EDWARDS of California, Mr. ENGEL, Mr. ESPY, Mr. EVANS, Mr. FEIGHAN, Mr. GLICKMAN, Mr. HUTTO, Mr. LEVINE of California, Mr. LEWIS of Georgia, Mrs. LOWEY of New York, Mr. MILLER of Washington, Ms. NORTON, Mr. OLIN, Mr. ORTON, Mr. RICHARDSON, Mr. RITTER, Mr. SARPALIUS, Mr. SCHEUER, Mr. SIKORSKI, Mr. SMITH of Oregon, Mr. TALLON, Mr. TRAFICANT, Mrs. VUCANOVICH, Mr. WEISS, Mr. WILSON, Mr. YATRON, and Mr. ZELIFF.

H.R. 1124: Mr. FISH and Mr. MARTIN.

H.R. 1130: Mr. LUKEN.

H.R. 1200: Ms. LONG, Mr. CONDIT, Mr. MORRISON, Mr. PETERSON of Florida, Mr. VOLKMER, Mr. YATRON, and Mr. SIKORSKI.

H.R. 1246: Mr. OWENS of Utah, Mrs. KENNELLY, and Mr. RANGEL.

H.R. 1269: Mr. ENGEL.

H.R. 1368: Mr. HERTEL.

H.R. 1414: Mr. CONDIT.

H.R. 1444: Ms. NORTON.

H.R. 1454: Mr. PRICE, Mr. GRAY, Mrs. COLLINS of Illinois, Mr. WEISS, Mr. OWENS of Utah, and Mr. ANDREWS of Maine.

H.R. 1457: Mr. JONES of Georgia and Mr. JOHNSTON of Florida.

H.R. 1468: Mr. HANCOCK.

H.R. 1472: Mr. DANNEMEYER, Mr. CUNNINGHAM, Mr. RAVENEL, Mr. HAYES of Louisiana, Mr. JOHNSON of South Dakota, and Mr. ROTH.

H.R. 1514: Mr. SMITH of Oregon, Mr. HUNTER, Mr. LEWIS of California, Mr. KYL, Mr. SKEEN, Mr. THOMAS of Wyoming, Mr. HANSEN, Mr. McCANDLESS, Mr. STUMP, Mr. RICHARDSON, and Mr. THOMAS of California.

H.R. 1633: Mr. CRAMER, Mrs. LOWEY of New York, Mr. GUNDERSON, Mr. LAFALCE, Mr. MANTON, Mr. WOLPE, Mr. SWETT, Mr. FLAKE, Mr. WHEAT, Mr. SOLARZ, Mr. JONES of Georgia, Mr. GILMAN, Mr. McMILLEN of Maryland, Mr. FISH, Mr. RICHARDSON, Mr. CARDIN, Mr. JOHNSON of South Dakota, Ms. PELOSI, Mr. KOLBE, and Mr. JOHNSTON of Florida.

H.R. 1662: Mr. WHEAT, Mr. BRYANT, and Mr. WEISS.

H.R. 1724: Mr. KANJORSKI.

H.R. 1737: Mrs. UNSOELD, Mr. GORDON, Mrs. COLLINS of Illinois, Mr. McDERMOTT, Mr. FEIGHAN, Mr. HUCKABY, Mrs. MINK, Mr. RANGEL, Mr. ROE, and Mr. FROST.

H.R. 1751: Mr. GILMAN and Mr. MACHTLEY.

H.R. 1782: Mr. WOLPE, Mr. RIGGS, Ms. HORN, Mrs. MORELLA, Mr. COUGHLIN, Mr. PRICE, Mr. SCHUMER, Mr. NOWAK, Mr. MFUME, Mr. BRYANT, and Mr. BOUCHER.

H.R. 1860: Mr. NAGLE, Mr. ESPY, and Mr. ANTHONY.

H.R. 1960: Mr. RANGEL, Mr. WHEAT, Ms. NORTON, and Mr. HOBSON.

H.R. 1969: Mr. BOEHLERT and Mr. RINALDO.

H.R. 2027: Mr. KOPETSKI and Mr. JOHNSTON of Florida.

H.R. 2041: Mr. BILIRAKIS.

H.R. 2046: Mr. ZELIFF and Mr. SWETT.

H.R. 2049: Mr. CUNNINGHAM.

H.R. 2056: Mr. MILLER of Washington.

H.R. 2141: Mr. BEILENSON, Mr. GUARINI, Mr. HOAGLAND, Mr. PAYNE of Virginia, Mr. POSHARD, Mr. RICHARDSON, and Mr. TOWNS.

H.R. 2199: Mr. NOWAK, Mr. FISH, Mr. UPTON, Mr. SMITH of Texas, Mrs. BYRON, Mr. MINETA, and Mr. ECKART.

H.R. 2212: Mr. WELDON, Mr. GORDON, Mr. ANDREWS of New Jersey, Mr. EDWARDS of Oklahoma, Mr. HERTEL, Mr. TRAFICANT, Mr. GONZALEZ, Mr. DOOLITTLE, Mr. HOYER, Mr. CUNNINGHAM, Mr. POSHARD, Mr. EVANS, Mr. BOUCHER, Mr. SKAGGS, Mr. MANTON, Mr. CARPER, Mr. SARPALIUS, Ms. ROS-LEHTINEN, Mr. PALLONE, Mr. GILMAN, Mr. TORRES, Mr. PRICE, Mr. HAYES of Louisiana, Mr. RANGEL, Mr. WOLPE, Mr. LEHMAN of Florida, Mr. PERKINS, Mr. MAVROULES, and Mrs. KENNELLY.

H.R. 2231: Mr. GILCHREST, Mr. ROSE, Mr. WEBER, and Mr. LANCASTER.

H.R. 2258: Mr. BUSTAMANTE, Mr. CARR, Mr. DORGAN of North Dakota, Mr. FLAKE, Mr. GILCHREST, and Mr. SYNAR.

H.R. 2279: Mr. DELLUMS.

H.R. 2291: Mr. LIPINSKI.

H.R. 2303: Mr. KOPETSKI.

H.R. 2361: Mr. NAGLE.

H.R. 2363: Mr. DWYER of New Jersey, Mr. JEFFERSON, Mr. GILMAN, Mr. HAYES of Illinois, Mr. JOHNSTON of Florida, and Mr. SIKORSKI.

H.R. 2386: Mr. WALSH, Mr. HERTEL, Mr. PAYNE of Virginia, and Mr. BURTON of Indiana.

H.R. 2448: Mr. DERRICK, Mr. HAMILTON, Mr. MARLENEE, Mr. MAZZOLI, Mr. MOORHEAD, Mr. RICHARDSON, Mr. STALLINGS, Mr. SWIFT, Mrs. PATTERSON, Mr. NEAL of North Carolina, Mr. AUCCOIN, and Mr. THOMAS of Wyoming.

H.J. Res. 130: Mr. STAGGERS.

H.J. Res. 195: Mr. KOSTMAYER.

H.J. Res. 207: Mrs. COLLINS of Michigan, Ms. OAKAR, Ms. WATERS, Mr. WAXMAN, Mr. JENKINS, Mr. JONES of North Carolina, Mr. LEVIN of Michigan, Mr. SARPALIUS, Mr. ABERCROMBIE, Mr. BLAZ, Mr. BREWSTER, Mr. BUSTAMANTE, Mr. CALLAHAN, Mr. CRAMER, Mr. VOLKMER, Mr. DARDEN, Mr. DAVIS, Mrs. BENTLEY, Mr. DICKS, Mr. ESPY, Mr. FORD of Tennessee, Mrs. BYRON, Ms. HORN, Mr. HYDE, Mr. FISH, Mr. WOLPE, Mr. SLATTERY, Mr. YATRON, Mr. SERRANO, Mr. ZIMMER, Mr. HARRIS, Mr. HAMMERSCHMIDT, Mr. MFUME, Mr. MAVROULES, Mrs. MEYERS of Kansas, Mr. MURPHY, Mr. MCDADE, Mr. McMILLAN of North Carolina, Mrs. MINK, Mr. ORTON, Mr. RAMSTAD, Mr. ROBERTS, Mr. PURSELL, Mr. TRAFICANT, Mr. VANDER JAGT, Mr. TOWNS, Mr. TAUZIN, Mr. TALLON, Mr. KANJORSKI, Mr. STAGGERS, Mr. MARTIN, Mr. PERKINS, Mr. HENRY, Mr. SKEEN, and Mr. BILIRAKIS.

H.J. Res. 219: Mr. RUSSO, Mr. GRAY, Mr. ROEMER, Mr. MORAN, Mr. BUNNING, and Mr. GILCHREST.

H.J. Res. 228: Mr. BRYANT, Mr. FISH, Mr. HUNTER, Mr. LEVIN of Michigan, and Mr. HALL of Texas.

H. Con. Res. 101: Mr. MFUME and Mr. EVANS.

H.J. Res. 83: Mr. LAGOMARSINO, Mr. BALLENGER, Mr. SCHAEFER, Mr. BOEHNER, Mr. HYDE, Mr. INHAFF, Mr. DICKINSON, Mr. CALLAHAN, Mr. HORTON, Mr. HEFLEY, Mr. IRELAND, Mr. COX of California, Mr. HERGER, and Mr. TAUZIN.

H. Res. 125: Mr. Goss, Mr. RIGGS, Mr. LENT, Mr. BATEMAN, Mr. LEWIS of Florida, Mr. KYL, Mr. LAGOMARSINO, Mr. PETRI, Mr. KOLBE, Mr. BAKER, Mrs. VUCANOVICH, Ms. MOLINARI, Mr. ARMEY, and Mr. COX of California.

H.J. Res. 129: Mr. DYMALLY, Mr. FISH, and Mr. LEWIS of Florida.

H. Con. Res. 101: Mr. MFUME and Mr. EVANS.

H.J. Res. 83: Mr. LAGOMARSINO, Mr. BALLENGER, Mr. SCHAEFER, Mr. BOEHNER, Mr. HYDE, Mr. INHAFF, Mr. DICKINSON, Mr. CALLAHAN, Mr. HORTON, Mr. HEFLEY, Mr. IRELAND, Mr. COX of California, Mr. HERGER, and Mr. TAUZIN.

H. Res. 125: Mr. Goss, Mr. RIGGS, Mr. LENT, Mr. BATEMAN, Mr. LEWIS of Florida, Mr. KYL, Mr. LAGOMARSINO, Mr. PETRI, Mr. KOLBE, Mr. BAKER, Mrs. VUCANOVICH, Ms. MOLINARI, Mr. ARMEY, and Mr. COX of California.

H.J. Res. 129: Mr. DYMALLY, Mr. FISH, and Mr. LEWIS of Florida.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1790: Mr. SENSENBRENNER.

EXTENSIONS OF REMARKS

A TRIBUTE TO CHARLIE
BENNETT'S ATTENDANCE RECORD

HON. FRANK ANNUNZIO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. ANNUNZIO. Mr. Speaker, every Member of this House should take pride in the fact that Congressman CHARLIE BENNETT today is celebrating 40 years of perfect attendance on rollcall votes.

CHARLIE's voting record demonstrates his dedication to public service and the institution of this House. But beyond that, CHARLIE has earned our respect time and again by voting his conscience regardless of politics.

Mr. Speaker, over the past 40 years, CHARLIE BENNETT has demonstrated a determination to vote for what he believes in regardless of the political fallout. That quality is a perfect complement to the 40-year voting record we are recognizing today.

TRIBUTE TO REPRESENTATIVE
CHARLIE BENNETT

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. CLAY. Mr. Speaker, I would like to take note of the exemplary voting record of my colleague Representative CHARLES BENNETT who on June 4, 1991, celebrated the anniversary of his 40th year without missing a legislative vote. This remarkable record, the longest in congressional history, is an achievement that certainly deserves special recognition and commendation. I welcome this opportunity to express my admiration for Representative BENNETT's record that is indicative of his dedication and commitment to the welfare of our Nation.

PROUD OF OUR OWN CHARLES
BENNETT

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. SMITH of Florida. Mr. Speaker, today our esteemed colleague and friend, CHARLES BENNETT, celebrates his 40th year in Congress without missing a single legislative vote. The Guinness Book of World Records is being rewritten every day he comes to work. His voting record is the longest in U.S. congressional history. Mr. BENNETT is one of the most respected people in Congress and his years of dedication and commitment to his constituents and his country are to be commended.

CHARLES BENNETT has struggled with bad weather conditions and a World War II injury, made emergency transportation reservations, and even left the hospital where his wife was giving birth to their fourth child in order to fulfill his duties as a Member of Congress. He has still cast a record-breaking number of legislative votes. His dedication to his work has earned him the deep admiration of his colleagues on both sides of the aisle.

But CHARLIE's dedication does not stop with voting records. He has had tremendous impact on the passage of important legislation. He has successfully promoted military and environmental legislation. Nevertheless, he has authored and enacted legislation in the areas of crime, auto safety, education, government efficiency, and fiscal responsibility. He is responsible for legislation that required that buildings be accessible to the handicapped.

CHARLIE has served his district, his State, and his country for over 42 years with dedication and commitment. Today we celebrate that commitment. We in Florida are very proud of our own CHARLES BENNETT.

TRIBUTE TO CHARLES BENNETT

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. YATRON. Mr. Speaker, I rise today, with great honor, to pay tribute to my esteemed colleague from Florida, CHARLIE BENNETT. Mr. BENNETT is the 10th longest serving Member in the history of the U.S. House of Representatives and, as you know, has set an all-time voting record in Congress, having not missed a single vote since June 4, 1951.

It has truly been a pleasure to work with CHARLIE over the last 23 years. His outstanding performance has continually shown an undaunted enthusiasm and fervor for tackling important issues and his presence at each vote has been an inspiration to all. Having served since January 1949, CHARLIE has been a leader in various areas ranging from issues in ethics to environmental and military legislation. He authored the code of ethics for government service and his legislation created the House Ethics Committee of which he has twice been chairman. It was CHARLIE who introduced the legislation to make "In God We Trust" our national motto.

It has been my district privilege and honor to know and work with CHARLIE BENNETT. He has continued to serve his constituents and his Nation with honor and dedication. I would like to wish him continued success and happiness in the future and I look forward to seeing him at the next vote.

BELL COMPANIES AND THE LINE
OF BUSINESS RESTRICTIONS

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. MARKEY. Mr. Speaker, today, legislation passed in the other body which would allow the Bell Operating Cos., or BOC's, into the manufacturing marketplace, an area which the BOC's have been restricted from since the 1984 consent decree which broke up the old Bell telephone system.

This legislation, introduced by the distinguished Senator from South Carolina, Senator HOLLINGS, provides the United States telecommunications industry with an opportunity to improve this Nation's status as a leader in communications technology and will usher in a new generation of advanced telecommunications equipment manufactured right here in the United States. I would like to commend the chairman of the Senate Committee on Commerce, Science and Transportation for providing his leadership on this vital issue of American competitiveness in high-technology products. Because of this tremendous effort on the part of Senator HOLLINGS and his staff, S. 173, the Telecommunications Equipment Research and Manufacturing Competitiveness Act of 1991, passed in the Senate.

Last month, I circulated draft legislation which would permit the BOC's to manufacture telecommunications equipment, with several safeguards to protect consumers and ensure competition. In addition, the draft legislation would require telephone network upgrades and modernization and institute certain prospective safeguards, if or when the BOC's are given additional relief from MFJ restrictions.

In short, the legislation would revise the FCC rules for governing an outsider's access to the telephone network; institute standards for service quality in the local telephone networks; require that BOC's provide nondiscriminatory interconnection with large business customers and other common carriers; create new price and cost-accounting rules and new protections for residential customers from bearing the cost of BOC entry into new business.

This legislation must be carefully crafted to allow the BOC's to compete in manufacturing, while controlling the potentially negative ripple effect on other businesses that unleashing such powerful marketplace forces could have. In addition, consumers, who depend on a single company to provide local telephone service, must be guaranteed the same quality service and reasonable rates that have traditionally been provided for the American consumer. We cannot allow ourselves to be blinded by the relative gleam of new ventures and technological advances without ensuring that these important safeguards are in place.

* This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

And we must have the vision to create legislation which will comprehensively address all of the issues involved.

For far too long, Congress has allowed itself to be effectively by locked out of its legitimate leadership responsibility in this area of telecommunications policy. Even during the Senate debate, there was an attempt to insert judicial influence in the process. For this reason, any attempt at legislating in this area should not be so limited in scope as to deny the appropriate role of Congress.

This month, as debate on MFJ legislation moves to the House, the Subcommittee on Telecommunications and Finance will have a unique opportunity to hear from the administration's leading experts on this issue. The Assistant Secretary for the National Telecommunications and Information Administration, the chief telecommunications advisor to the President, will testify this month, as well as the Chairman of the Federal Communications Commission. These forums will provide members with an open discussion of all of the issues related to the difficult task of moving legislation in this area. The decisions we eventually make will have profound and far-reaching effects on the information technology and telecommunications industries.

I urge my colleagues to consider the significance of these issues and to support legislation which will protect consumers, invigorate competition, and stimulate growth and investment in the telecommunications industry.

CONGRESSMAN KILDEE HONORS
BARBARA STEWART

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. KILDEE. Mr. Speaker, I would like to take this opportunity to honor a wonderful and distinguished individual—Mrs. Barbara Stewart of Flint, MI—who is retiring after 40 years with the Flint Community Schools.

Her retirement marks the end of four decades of dedicated and extraordinary service to kindergarten education at Pierson and Neithercut Elementary Schools.

Mrs. Stewart began her teaching career after extensive schooling that included graduate studies at the University of Michigan and postgraduate work at Michigan State University; the University of Michigan; the Sorbonne, and the University of Paris in France; and the Centres Europeens Langues et Civilisations in Lausanne, Switzerland. She is a charter member of the Beta Mu Chapter of Delta Kappa Gamma, the international honorary teachers' society.

Besides her teaching, she also has earned enormous respect and admiration for her talents and devotion to music—"the universal language of mankind"—as Longfellow said.

Over the years, Barbara has been an active member of the Flint Civic Opera, and in 1990, she toured England with the Flint Festival Chorus. She has performed at Flint's Whiting Auditorium with the Flint Symphony Orchestra, Detroit's Cobo Hall, New York City's Lincoln

Center for the Performing Arts, and in concert twice at New York City's Carnegie Hall.

Her love of music, and her great interest in the cultures and languages of Europe, have served as great inspiration to her students for years. Through her, they also have had a rare opportunity to learn about other young people across the ocean, removing cultural barriers, and creating a better tomorrow.

Mrs. Stewart will be greatly missed by her colleagues and the students of the Flint Community Schools, and she will always be remembered for her accomplishments in the academic arena and in the field of fine arts.

Mrs. Stewart has succeeded in making the Flint community a better place in which to live. It gives me great pride to stand before you today to honor such a fine individual and to give her the credit she so richly deserves.

HON. JAMES L. WATSON, SENIOR
JUDGE, U.S. COURT OF INTERNATIONAL TRADE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. RANGEL. Mr. Speaker, I would like to bring to the attention of my colleagues a resolution adopted by the chief judge and judges of the U.S. Court of International Trade recognizing Judge James L. Watson. Judge Watson, is a jurist whose illustrious career illustrates his devotion to the service of our Nation.

Judge Watson is a decorated World War II veteran, former New York State Senator and civil court judge. During his 25 years of regular service as a judge of the U.S. Court of International Trade he has built a reputation of fairness, patience, and dignity.

The resolution which was prepared by the court on February 28, 1991, follows:

RESOLUTION

The United States Court of International Trade recognizes with appreciation, respect and admiration the Honorable James L. Watson upon the occasion of his decision to retire after twenty-five years, from regular active service as a judge of this Court, effective at the close of business on February 28, 1991, and thereafter to perform substantial judicial duties as a senior judge.

Judge Watson's service to his country began with the 92nd Infantry Division during World War II. He was wounded while a combat infantryman in Italy and received the Battle Star, Purple Heart, Combat Infantry Badge, and European Theater Ribbon.

Before his appointment in March 1966 to the United States Customs Court, predecessor to this Court, Judge Watson served as a Senator of the State of New York and a Judge of the Civil Court of the City of New York.

During his twenty-five years service to this Court, Judge Watson, in addition to his judicial duties, also served as Chairman of the Legislative Committee of the Court, which was concerned with important legislation such as the Customs Courts Act of 1970 and of 1980, the Trade Agreements Act of 1979, and the Court of International Trade Amendments Act of 1985. He also served as Chairman of the Rules and Practice Commit-

tee of the Court guiding major revisions and amendments to the Rules, through to adoption. And, as Chairman of the Committee on Automation, he influenced and encouraged the acquisition of needed automation and technological facilities, including computer assisted legal research, personal computers with related hardware and software, and electronic court recording equipment for the judges and staff of the Court.

Judge Watson also served with distinction, pursuant to eighty-eight separate designations by two Chief Justices of the United States, on district courts throughout the United States.

Of course, Judge Watson's contributions to the Court cannot be described by merely listing events and achievements. His wise counsel on controversial issues; his objectivity and low-key demeanor; his keen judgment in matters requiring Court action; his quiet elegance; his charm, wit and sense of fair play; his congeniality; his sensitivity for human freedom and dignity; his unpretentiousness; his innate sense of decency and propriety—are some of the qualities which best describe Jim Watson, our friend and colleague.

Throughout his judicial career, he has epitomized the personal attributes required by Canon 3 of the Code of Conduct for United States Judges—patience, dignity, and courtesy to litigants, lawyers, witnesses, jurors, and all others with whom he dealt.

We, the Chief Judge and Judges of the Court, on behalf of the institution, its staff and its bar, and the public, are proud to acknowledge his friendship and his dedicated service to the judiciary, and we congratulate him on his successful and rewarding career—a career that will continue as he goes forward with many more years of future service as a senior judge.

TRIBUTE TO THE ARMY NATIONAL
GUARD 460TH SUPPLY UNIT

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. CAMP. Mr. Speaker, it is with pleasure and great pride that I recognize the Army National Guard 460th Supply Unit based in my hometown of Midland, MI.

About a month ago, this unit celebrated a joyous occasion in Midland—their return home. I was on hand to see their emotion-filled return to their families and friends in mid-Michigan. This 166-member unit which served proudly in the Persian Gulf, had an additional reason to rejoice since they returned home without any loss of life.

Mid-Michigan residents are extremely proud of the skills and sacrifices exhibited by their family, friends, and neighbors who served in the 460th Supply Unit and were stationed in the Persian Gulf during Operation Desert Storm. Their contributions helped make Operation Desert Storm a great success.

We have known for many years that National Guard and Reserve Units are a cost-effective way of providing for the defense and security of our Nation both in peacetime and in war. They are the grass roots support of our military operations. Their outstanding contributions during Operation Desert Storm reinforced their important role in our military operations.

While I certainly hope that the National Guard and Reserve Units will never be called on to serve in a military conflict, we can be confident that they would again serve us bravely and skillfully.

Mr. Speaker, I am sure you will join with me in recognizing and commending the 460th Supply Unit of Army National Guard for a job well done. They wholeheartedly deserve this special recognition.

MEMORIAL DAY IN SURFSIDE

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it brings me great pleasure to honor the Memorial Day celebration of Surfside, a growing south Florida town in the northern part of my district. The ceremony was held in conjunction with the Harry H. Cohen Post No. 723 of the Jewish War Veterans of the United States.

With the ending of the Persian Gulf war, the true meaning of "Memorial Day" becomes all the more clear. When we commemorate our veterans, we celebrate our commitment to democracy and freedom. We honor their courage and their willingness to give their lives for our way of life. We realize that we are fortunate to live in a country which prides itself on liberty.

Comdr. Ruth Sondak and Mayor Eli Tourgeman arranged a moving ceremony. Many civic leaders came out to speak at the celebration. Among them were Chaplain Max Akst introducing Mayor Eli Tourgeman the master of ceremonies; Scout Mark Pomerance of the 67th Boy Scout Troop who led the Pledge of Allegiance; Rabbi Shalom Lipskar of Surfside Shul who delivered the invocation; Maj. Bruce Pagel of the U.S. Marine Corps who just returned from Desert Storm 3 weeks ago; Comdr. Greg Kirkbridge of the U.S. Coast Guard; Sr. M. Sgt. Harvey Dworin of Homestead Air Force Base; Lt. Comdr. Renee Simpson of the U.S. Navy; Gwen Margolis, the president of the Florida State Senate; Dr. Jon Rauch, leader of Boy Scout Troop 67; Mr. Ainslee R. Ferdie, past national commander of the Jewish War Veterans; Ben Levine, former Mayor of Surfside; Rabbi Phineas A. Webberman of Ohev Shalom; Frita Cohen, wife of the late Harry H. Cohen, who laid the wreath with Chaplain Max Akst; Sam Brenner, former Mayor of Surfside who delivered the benediction; and Gold Star mother Gertrude Eisenberg whose son died in World War II.

These speakers, along with the residents of Surfside, honored war veterans in the true spirit of Memorial Day. It is with great pride that I bring their spirit to the attention of the House and the American public.

TRIBUTE TO SGT. DAVID W. WILLIAMSON

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. McEWEN. Mr. Speaker, as Members of Congress we have the frequent opportunity to meet and work with dedicated individuals who play a critical role in the successful protection of America's communities.

Occasionally, among those many devoted State and local officials, we find an individual of such unusual distinction and accomplishment that his work requires special notice. That is my purpose in rising today.

It is with great pride and pleasure that I ask you to join me in recognizing Sgt. David W. Williamson upon his retirement from the city of Jackson Police Force. Upon becoming acquainted with David Williamson's career, I am confident that our colleagues will be anxious to join the officers of the city of Jackson Police Force along with Sergeant Williamson's family and friends in saluting his contributions to law enforcement, safety, and to civic responsibility.

Sergeant Williamson's 25-year career with the city of Jackson Police Force began in June 1966. During his time as a distinguished public servant, Sergeant Williamson was responsible for law enforcement and public safety in a rural community of nearly 9,000 residents. His range of responsibilities included day shift operations and supervision of assigned officers, traffic accident division operations including alcohol intoxication testing, drug testing/identification and evidence room operations. Of particular significance, Sergeant Williamson was most recently responsible for startup, training, and operational supervision of a highly effective Neighborhood Watch Program. Sergeant Williamson has been recognized for his outstanding performance having received the 1990 Sergeant of the Year Award, 1989 FOP Appreciation Award, and was nominated for Officer of the Year in 1981, 1984, and 1987.

But to fully understand and appreciate David Williamson, one must look beyond his life on the job. Sergeant Williamson and his wife, Iva, are parents of a daughter, Sarah, who is 9 years old. They worship at Good Shepherd Wesleyan Church. David served as president of the Fraternal Order of Police Lodge for 3 years and is currently the Fraternal Order of Police Lodge secretary. He has also served as president of the Coalition Alumni.

David Williamson is one of those special people who, in addition to giving so much to their professional responsibilities, make generous use of their spare time to the added benefit of all our lives. It is difficult to place an exact value on the many contributions David has made to life in Ohio, as a police officer and as an involved citizen. It would be still harder to try to imagine what life in Ohio would have been like if we had never known David Williamson. But Ohio has been fortunate, Mr. Speaker, very fortunate.

Mr. Speaker, the city of Jackson Police Force protects the lives and property of the citizens of Ohio every day. Through tireless effort and dedication to the duties of the Jack-

son Police Force, Sergeant Williamson earned the gratitude and respect of all whom he served. I urge my colleagues to join me today in commending Sgt. David Williamson for his years of honorable service as an exemplary member of the city of Jackson Police Force and, equally important, as a caring friend and neighbor.

Our best wishes should rightfully go to David and his family as they enjoy the fruits of a well-earned retirement. I know that David will remain dedicated to his life-long pursuit of an ideal: Active and continuing good citizenship. It is an honor to have had David's friendship for these many years. I know that his good health and faithful service will give him many years of joy ahead.

SALUTING EAGLE SCOUT BRIAN LAMARSH OF TROOP 49

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. REED. Mr. Speaker, I rise today to salute a distinguished young man from Rhode Island who has attained the rank of Eagle Scout in the Boy Scouts of America. He is Brian M. Lamarsh of Troop 49 in the Lake-wood section of Warwick, and he is honored this week for his noteworthy achievement.

Not every young American who joins the Boy Scouts earns the prestigious Eagle Scout Award. In fact, only 2.5 percent of all Boy Scouts do. To earn the award, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. He must earn 21 merit badges, 11 of which are required from areas such as Citizenship in the Community, Citizenship in the Nation, Citizenship in the World, Safety, Environmental Science, and First Aid.

As he progresses through the Boy Scout ranks, a Scout must demonstrate participation in increasingly more responsible service projects. He must also demonstrate leadership skills by holding one or more specific youth leadership positions in his patrol and/or troop. These young men have distinguished themselves in accordance with these criteria.

For his Eagle Scout project, Brian Lamarsh led a group of Scouts in landscaping the House of Hope temporary shelter in Warwick.

Mr. Speaker, I ask you and my colleagues to join me in saluting Eagle Scout Brian Lamarsh. In turn, we must duly recognize the Boy Scouts of America for establishing the Eagle Scout Award and the strenuous criteria its aspirants must meet. This program has through its 80 years honed and enhanced the leadership skills and commitment to public service of many outstanding Americans, two dozen of whom now serve in the House.

It is my sincere belief that Brian Lamarsh will continue his public service and in so doing will further distinguish himself and consequently better his community. I am proud that Brian Lamarsh undertook his Scout activity in my Representative district, and I join friends, colleagues, and family who this week salute him.

HONORING HELEN ANN HENKEL

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. ENGEL. Mr. Speaker, today I wish to pay tribute to Helen Ann Henkel, a distinguished member of the Slavic community in Yonkers, who is being honored with the Book of Golden Deeds Award by the Exchange Club of Yonkers.

The Book of Golden Deeds Award is a prestigious honor given to an outstanding individual who has provided many years of service and dedication to the Yonkers community. Helen Henkel certainly fits this description. As chief clerk in the Yonkers Department of Public Works, she has coordinated many essential city services. In addition, she serves as vice chair for the Yonkers Board of Ethics, second vice president for Big Brothers and Big Sisters of Yonkers, and on the board of directors of a host of other important civic organizations.

The Exchange Club of Yonkers, which was founded in 1937, has a long history of raising funds for the improvement of the community. It is a group that judiciously bestows its honors on those rare individuals who have given freely and selflessly to the people of Yonkers. Helen Henkel is only the ninth recipient of the Golden Deeds Award in the 54 years of the Exchange Club of Yonkers, and she is the first local female recipient of the award.

As the grand daughter of Polish and Ukrainian immigrants who came to this country at the turn of the century, Helen Henkel has carried on the rich traditions of her heritage while also giving generously to her community and country. I salute her today along with the Exchange Club of Yonkers.

RITA WEBB SMITH THE WOMAN WHO TOOK BACK HER STREETS**HON. CHARLES B. RANGEL**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. RANGEL. Mr. Speaker, I would like to call to the attention of my colleagues an article about Mrs. Rita Webb Smith. Mrs. Smith has earned a master's degree in social work from Fordham University, two honorary doctoral degrees and special recognition from various government officials and community organizations. She has shown a sincere commitment to revitalizing her community through various housing and socioeducational programs. Her efforts have breathed new life into the idea that the true hope for our Nation's struggling communities lies in the strength of its members.

The article, which appeared in the New York Daily News on May 21, 1991, follows:

MRS. SMITH GOES TO WASHINGTON—AND BRINGS BACK THE MONEY TO SAVE HER HARLEM STREETS

(By Hollie I. West)

At Rita Webb Smith's door, petunias, gladiolas and ivy are in full bloom. The only greenery in sight, they stand in bright contrast to the concrete of W. 143d St.

"I planted these flowers," she recalls, and "people would pull them up or mash them. But I'd just plant them again. Now nobody bothers them."

Smith was just as persistent—and successful—in her fight to oust drug dealers and renovate housing in her Central Harlem block. The struggle is captured in the recently published "The Woman Who Took Back Her Streets" (New Horizon Press \$19.95).

Written by Smith with Tony Chapell, the book is a powerful account of how she mobilized her block, built a coalition, made Washington deliver, got off welfare, earned a master's degree in social work from Fordham, received two honorary doctorates and won the plaudits of government officials and community organizations.

Hers is a saga of growing up in an unhappy home, getting married and divorced twice before the age 28 while giving birth to five children (twin daughters came later).

"I wanted to tell the other side of what's happening in Harlem," says Smith, 51, moving briskly around her office in the building where she grew up and now owns. "There're a lot of good people that hold the place together."

Smith's cause began in 1979 when her son David became the innocent victim of a drug enforcer, who shot the 21-year-old in the face. She helped police track down the assailant and fueled the prosecution with evidence that resulted in a conviction for attempted murder and a jail sentence of 25 years.

"I had to respond," she says. "I couldn't stand it. People were being held as human pawns of poverty."

Before David was shot, Smith's family and neighbors lived in terror. Gunfire crackled in the street; police and fire sirens pierced the air. Mornings usually brought the discovery of dead youngsters in vacant lots. Fires broke out in abandoned buildings that drug addicts used as freebasing galleries.

In fear of the flames, Smith kept a bag of necessities and important papers ready in case she and her children had to flee their apartment at a moment's notice.

After the trial, Smith turned her attention to the decrepit housing that had become drug havens. She wrote a proposal that brought the last of the federal Section 8 housing money available to the city to her neighborhood. Residents established a development company, Make a Neighborhood Again, and are renovating 700 low- and middle-income units in buildings in a 10-square block area.

Smith calls the late Catholic activist Dorothy Day her mentor. "Dorothy was like a mother to me," she says. "Sometimes she'd pay my water and heat bills. She raised money to help me go to college. But she always wanted me to stay in Harlem and fight."

"As a kid growing up, my dream was to live somewhere else. I thought I'd marry a doctor or lawyer. . . . But at one point, I decided to make the best of this. After having all the kids, I decided to make my own American dream."

With her twin daughters in college, another daughter just graduated from law school and the other children on their own, Smith, now in a new third marriage, had launched the Survival Clinic and Take Back Your Street Center. At the clinic, she directs local residents to community services; at the center, she hopes to hold organizing sessions for neighborhood leaders.

"At one point, I was president of everything," she said. "I looked forward to the

day when I could step aside. Now I want to help people develop their self-help skills."

KILDEE SALUTES 50 YEARS OF WORSHIP AT JACKSON MEMORIAL TEMPLE OF GOD IN CHRIST**HON. DALE E. KILDEE**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. KILDEE. Mr. Speaker, I rise today to urge my colleagues in the House of Representatives to join me in commemorating the 50th anniversary of the Jackson Memorial Temple of God in Christ serving my hometown of Flint, MI. The parishoners of Jackson Memorial will celebrate the golden jubilee of their church this July.

The Jackson Memorial Temple of God in Christ, established in December 1941, has been a bedrock of faith and spiritual support for the members of the parish over the last five decades. The priests and sisters of the Jackson Memorial Temple of God in Christ have helped the parishioners through many difficult periods, and the parishioners have given generously of their time, talents, and love to make this parish the close and supportive community it remains today.

Since December 1941, when Elder Leo J. Jackson first celebrated mass for the parish, the Jackson Memorial Temple of God in Christ has been the heart of a vibrant Christian community on the south side of Flint. Elder Jackson began the work of the Lord 50 years ago with his wife Dorothy, his mother and sister, Thelma Washington. The four of them dedicated their lives to serving the Lord. Through their time and perseverance, the Jackson Memorial Temple of God in Christ has become a reverent example of Christianity.

Rev. Vincent M. Lewis and his staff have had a strong, unifying influence on the community. Sunday school, Bible studies, and Christian outreach youth and action weekly meetings have been instrumental in molding good families and developing good citizens of the Flint community.

Mr. Speaker, without a doubt, our community is a much better place in which to live because of the 50 years of service, love, and spiritual support from the parish of the Jackson Memorial Temple of God in Christ. I urge my House colleagues to join me in congratulating the people of Jackson Memorial Temple of God in Christ for a wonderful, fulfilling 50 years, and in wishing them even greater success in the years ahead.

PROPOSAL FOR REORGANIZATION BY THE ARMY CORPS OF ENGINEERS**HON. WILLIAM O. LIPINSKI**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. LIPINSKI. Mr. Speaker, I rise today to call attention to a proposal for reorganization by the Army Corps of Engineers. This reorga-

nization would cause the shutdown and relocation of many offices across the country.

Included in this proposal is a recommendation to close both the Chicago District Office and the North Central Division Office, also located in Chicago. I strongly believe this to be a terribly misguided recommendation.

Today I had the opportunity to present testimony before the Commission on Defense Base Closure and Realignment on this subject. The fact that this Commission, properly understood, does not have jurisdiction over the reorganization of the Army Corps of Engineers is one point of objection. My comments, however, focus on the fact that it would be a grave environmental and economic mistake to close the Chicago offices.

In order to register my opposition to this reorganization plan, I would like to submit my complete testimony for the RECORD:

TESTIMONY OF HON. WILLIAM O. LIPINSKI BEFORE THE COMMISSION ON DEFENSE BASE CLOSURE AND REALIGNMENT

Thank you for the opportunity to provide testimony before the Commission today on this very important matter.

I would like to start by stating that I respectfully question the jurisdiction of the Commission on Defense Base Closure and Realignment to consider the proposed reorganization of the Army Corps of Engineers (ACOE). The jurisdiction of the Commission relates to facilities with military missions. The ACOE's mission, however, is in significant part a civil works and environmental mission.

I will not focus on this issue today, however. Rather, I would like to concentrate on the substance of the recommendations regarding the reorganization of the ACOE.

I oppose the closing of the Chicago District and North Central Division offices of the ACOE on the grounds that such closure would seriously undercut efforts of regional and national significance to protect both the natural and man-made environment, and to promote trade and commerce on the nation's waterways. It would disrupt important intergovernmental and civic relationships that have been painstakingly established over a long period of time, and which serve vital ecological and economic interests which are national in scope and importance. The closure would be costly and wasteful.

The Great Lakes Basin holds the largest concentration of fresh water on earth. It provides a transportation route for raw materials into the nation's heartland, and for feeds, grains and manufactured goods out to the rest of the world. It is a vital national and international resource, the proper management of which is essential to the physical and economic well-being of the region and the nation.

The City of Chicago is the largest metropolitan area on the Great Lakes. It has the largest population and the longest publicly owned shoreline in the entire Great Lakes Basin. Chicago is also the location of the north-south aquatic continental divide; it is through the Chicago and Calumet Rivers that the Great Lakes Basin connects with the Mississippi River, and eventually, the Gulf of Mexico. The construction of the Illinois & Michigan Canal at the turn of the century, which achieved this connection, involved a greater engineering effort and movement of earth than the Panama Canal. As such, Chicago is a crucial population center and hydrological site for both the Great Lakes and Mississippi River systems.

The Chicago District of the ACOE is central to the proper regulation and protection of the Great Lakes. The Chicago District has charge of the lock system on the Chicago River that regulates the diversion of water from the Basin into the Mississippi watershed. The rate of diversion is governed by the Supreme Court of the United States, so as to guarantee that the waters of the Basin are not depleted to the detriment of the Great Lakes States and Canada. The Chicago District's oversight of the confluence of these two important watersheds is thus of interstate and international significance.

The Chicago District and the North Central Division are directly involved in water quality issues for the Great Lakes. Remediation of environmentally impaired sites in the region, such as the Waukegan Harbor and Gary, Indiana Superfund sites, has proceeded with significant involvement of the North Central Division and the Chicago District. Similarly, the Chicago District has been active in dredging contaminants from the Calumet River, and disposing of the dredge material in cells it constructed for containment of contaminants.

The proposal to remove the ACOE district and division offices from Chicago would constitute a serious abnegation of ACOE, and federal, responsibility for the Great Lakes environment. The presence of the ACOE offices in Chicago, which is a major industrial center with the problems of environmental impairment associated with past industrial activity, is key to effective coordination of environmental remediation of Great Lakes contamination. Given the concentration of approximately one-quarter of the world's fresh water in the Great Lakes, the North Central Division's and the Chicago District's continued participation in environmental remediation of the Basin has national and global significance.

Also of national significance is the work being undertaken by the Chicago District and the North Central Division regarding coastal management. At a time when coastal erosion and conflict between natural processes and development pressures has reached crisis dimensions in coastal communities throughout the nation, the ACOE offices in Chicago have helped develop an approach to coastal protection that is a model for the nation. Through coordination with the City of Chicago, the Chicago Park District, the State of Illinois, and civic organizations, the Chicago District has developed a coastal erosion plan that will restore and protect the 26-mile public shoreline of Chicago in a way that will enhance open space, preserve water quality and protect literally billions of dollars of investment and development, by accommodating natural fluctuations in lake levels. Personnel from the North Central Division have participated in task forces and technical groups to establish the foundations for the plan. It is a plan which has won praise, from both coastal engineers and environmental activists, as ecologically sensitive and workable.

The process of public discussion and participation, with local and state governments and citizen and civic organizations, resulted in broad public consensus and an environmentally sensitive plan. This process was possible because of the location of the ACOE district and division offices in Chicago. Implementation of the plan will require similar broad cooperation, including continued ACOE participation. The removal of the Chicago District and North Central Division offices will undercut the institutional and personal relationships that have been painstakingly

established and fostered in the planning process, and which need to be maintained to assure successful completion of the project. As the ACOE expands its efforts to protect the environment, removal of the Chicago District, where this role has most fruitfully been realized, is wasteful and counterproductive. What has been established in Chicago is a model for the nation. The offices and personnel that have achieved this should not be broken up and disposed.

The important on-going tasks of the Chicago District include flood prevention and control. The district office is in the process of completing the study of the final leg of the Tunnel and Reservoir Project undertaken by the Greater Chicago Metropolitan Water Reclamation District to prevent flooding and to control storm water runoff so as to improve Lake Michigan water quality. The District office is also engaged in regional surface, storm water retention basin projects throughout the Chicago region. The extremely complex hydrogeology of the northeastern Illinois region makes the long-term presence and involvement of the Chicago District office and the North Central Division in floodplain study and development essential for effective flood control in the region.

Finally, the continuing role of the Chicago District in promoting trade and commerce in the region should be noted. From the earliest period of Chicago history, when it helped establish the path of the Chicago River as it entered Lake Michigan, built and maintained the breakwaters that still protect the Chicago Harbor, the ACOE Chicago District has provided key assistance to the economic life of the region. Presently, the Chicago District is helping trade and commerce by maintaining the channels of the Chicago and Calumet Rivers for barge traffic. It is anticipated that the urban industrial core along the Chicago River, which municipal ordinances have designated as a Protected Manufacturing District, will have continuing vitality in part through further Chicago District dredging projects. In addition, there are now discussions underway regarding Chicago District cooperation in restoring riverine wetlands and natural areas within the urban river corridors, furthering the local/federal coordination already manifest in the Lake Michigan coastline project.

The Chicago District and the North Central Division offices of the ACOE have proven themselves to be a responsible and innovative representative of the federal government and the Department of the Army. Both of these offices have become effective institutions for environmental protection and responsibility. They have acted as reliable and able partners to governments and civic organizations in the region. Their continued presence is important to Chicago, to projects essential to regional trade and commerce, and to environmental concerns vital to the Great Lakes, the nation and the world. Closure of the Chicago District and North Central Division would not serve the Army Corps of Engineers, and would greatly disserve the interests of Chicago, the Great Lakes and the United States.

INTRODUCTION OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION REAUTHORIZATION ACT OF 1991

HON. EDWARD J. MARKEY

OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. MARKEY. Mr. Speaker, today I join my colleagues in introducing the "National Telecommunications and Information Administration Reauthorization Act of 1991". This legislation would authorize appropriations for fiscal years 1992 and 1993 for the National Telecommunications and Information Administration [NTIA]. The bill authorizes the full NTIA budget request of \$18.7 million in fiscal year 1992 and \$21 million in fiscal year 1993.

The funding authorized in the bill will enable the agency to effectively continue its important role in developing our national policy for the telecommunications industry. The funding levels reflect the importance that telecommunications has in our national and global economies and is consistent with the needs of the agency and the needs of this vital industry. Specifically, this legislation will allow NTIA to fulfill its responsibilities for the development and presentation of domestic and international telecommunications and information policy for the executive branch, for management of the radio spectrum assigned to Federal Government users, and for performing research in telecommunication sciences.

During the next 2 years, NTIA will continue to pursue several specific program and policy priorities, which will be critical to ensuring the future growth of the telecommunications industry in the United States. In previous years, NTIA has conducted detailed telecommunications infrastructure studies and provided expert advice and technical information to telecommunications entities in various countries. During the past year, NTIA met with senior officials of Eastern European nations to assess those nation's telecommunications infrastructure, determine needs, and identify resources for improving basic telephone and mass media communications requirements. NTIA also undertook serious policy discussions with these officials to familiarize them with essential elements of competition and privatization in telecommunications. In 1990, spectrum management seminars were conducted in Hungary, Czechoslovakia and Romania. This year, similar seminars will be conducted in Poland, Bulgaria, and Yugoslavia. These seminars not only introduce new techniques to the host country, but they also provide the host with a good technical environment in which to meet with U.S. service and equipment suppliers.

NTIA has been an increasingly active player in international telecommunications issues, assuming a particularly strong role in the Federal Government's effort to reduce foreign barriers to the world-wide telecommunications trade. The telecommunications provisions of the 1988 Trade Act required determinations to be made of the extent to which market access is available in other nations. NTIA provided the U.S. Trade Representative with technical advice in the bilateral negotiation process with the European Community and the Republic of

Korea, and on telecommunications market access in Japan.

In addition, NTIA contributed to preparations for and served on delegations to meetings of the Organization for Economic Cooperation and Development [OECD] and the General Agreement on Trade and Tariffs [GATT] pertaining to international telecommunications services and regulatory and trade policy developments. And, in 1990, NTIA chaired an executive branch committee which developed initial U.S. views for the 1992 World Administrative Radio Conference [WARC] at which decisions will be made on many radio frequency standards affecting new and innovative telecommunications services. NTIA also chaired a group within the Organization of American States [OAS] charged with developing common western hemisphere views and united positions prior to the conference.

NTIA's domestic policy activities include, among other things, the conduct of studies in areas of significant interest, testimony on legislation affecting the telecommunications and information industries, recommendations to the Federal Communications Commission, and minority participation in the telecommunications industry. NTIA initiated three major domestic policy initiatives in 1990 through its Office of Policy Analysis and Development. First, in February 1991, NTIA released a study, "U.S. Spectrum Management Policy: Agenda for the Future," which examines alternative spectrum management methods, technology developments affecting spectrum use, and anticipated spectrum requirements.

Second, NTIA's Telecommunications Infrastructure Inquiry posed questions relating to the role of government in promoting development of national telecommunications networks; the ways in which those networks contribute to U.S. competitiveness and quality of life; and the technological improvements that are changing the basic capabilities of telecommunications networks.

Third, NTIA's Inquiry on the Globalization of Media explores the phenomenon of international media enterprises, and asks how the increasingly international nature of electronic media firms should affect current U.S. domestic media policies. NTIA and the City University of New York cosponsored a symposium on these issues in December 1990.

Mr. Speaker, I have only scratched the surface of the international and domestic activities of NTIA. This organization is vital to the future competitiveness of the United States in the critical area of high-technology products and information systems. As the global economy depends more and more on the quick transfer of information and data through innovative means of communicating, the importance of American leadership in telecommunications policy will become increasingly important. I urge all of my colleagues to support this critical legislation.

A TRIBUTE TO MANUEL FERNANDEZ

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, it is my pleasure to pay tribute to a most outstanding citizen, Manuel Fernandez. Mr. Fernandez is an 86-year-old resident of Miami, FL, and is constantly making an effort to enhance the community and make Miami a better place to live.

Mr. Fernandez is a very caring and thoughtful individual. Not only does he care for his wife, Carmen, to whom he has been married for over 50 years, he also maintains the household in which they have lived for nearly 17 years. From actually collecting door to door, he has raised thousands of dollars for "La Liga Contra El Cancer," an organization to help fight cancer. He is also very active in helping refugees and aliens acquire citizenship to the United States. These are the efforts of a true humanitarian.

Among many community activities, he holds a position as one of the officers in his Southwinds Condominium building. He also works very hard in his effort to increase voter registration. Through his dedication to make Miami a safer community, he has helped to obtain a crosswalk at the intersection of 94th Avenue and Flagler Street, an area in which this was greatly needed.

Mr. Manuel Fernandez does not ask for recognition nor does he look for it, but this is a man whose achievements cannot go unnoticed. He is a wonderful human being and an inspiration to all who know him. It is my pleasure to bring him to the attention of my colleagues and the American public.

TRIBUTE TO SHELDON S. SOLLOSZY

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. REED. Mr. Speaker, I rise today to pay tribute to Sheldon S. Sollosy, who will this week be named recipient of the Providence Rotary Club's 1991 Rhode Island Distinguished Citizen Award. Mr. Sollosy, who has since 1954 served as president of Manpower, Inc. of Providence, has long distinguished himself as an activist in Rhode Island's business and Jewish communities, and has consistently devoted considerable time and effort to various charities. I join thousands of Rhode Islanders in praising his worthy selection for this award.

The impressive range of Mr. Sollosy's community involvement reflects his devotion to business, education, faith, and his fellow Rhode Islander. He is vice chairman for the Government Affairs Council of the Greater Providence Chamber of Commerce, vice president of the Providence Public Library, and a member of the Workers Compensation Advisory Council, the board of the public education fund, and the Governor's Small Busi-

ness Council. He is also chairman of religious practices for the Jewish Home for the Aged, and a director of the Genesis School, the Jewish Federation of Rhode Island, Leadership Rhode Island, the Turks Head Club, and the Providence Performing Arts Council.

In recent years, Mr. Sollosy has served as president of the Rhode Island Chamber of Commerce, honorary president of Temple Torat Yisrael and Providence Hebrew Day School, a delegate to the White House Conference on Small Business, and chairman of the Rhode Island March of Dimes during the last outbreak of polio.

For his efforts, Mr. Sollosy has been named Small Business Leader of the Year by the Greater Providence Chamber of Commerce, recipient of the distinguished Amudim Award by Providence Hebrew Day School, and recipient of Brandeis University's Distinguished Community Service Award.

Mr. Speaker, I ask you and my fellow colleagues to join me in saluting distinguished Rhode Island citizen Sheldon S. Sollosy. Thousands of Rhode Islanders, like myself, have been touched by Sheldon's many gestures of compassion, enthusiasm, and innovation, and I am proud that he has undertaken much of his work in my Representative district. I join family and friends who next week celebrate his many contributions.

CONGRESSMAN KILDEE HONORS
NASA ASTRONAUT, LT. COL.
DONALD R. McMONAGLE

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. KILDEE. Mr. Speaker, I would like to bring to your attention the outstanding achievements of Lt. Col. Donald R. McMonagle, a native of my hometown of Flint, MI, who recently returned from an 8-day mission aboard the space shuttle *Discovery*.

During this flight, the first unclassified Department of Defense mission, Lieutenant Colonel McMonagle and the other six crew members circled the Earth 134 times, logging over 3.5 million miles. As part of this mission, the *Discovery* crew conducted a number of experiments including gathering data for the strategic defense initiative, observing and photographing the Southern Lights as well as strong storms on the surface of the Sun.

Lieutenant Colonel McMonagle's flight into space marks the highlight of a stellar career in the U.S. Air Force. As Lieutenant Colonel McMonagle has risen to prominence in the Air Force, he has gained over 3,400 hours of flying experience. After graduating from pilot training school in 1975, McMonagle went on a 1-year tour of duty in South Korea. Upon his return, he was assigned to Holloman AFB in 1977 and then to Luke AFB in 1979 as an F-15 instructor pilot. In 1981, he entered the U.S. Air Force Test Pilot School at Edwards Air Force Base, CA, and was the outstanding pilot graduate in his class. From 1982 to 1985, McMonagle was the operations officer and a project test pilot for a technology demonstration aircraft. He was the operations officer for

the 6513th Test Squadron at Edwards AFB when chosen for the astronaut program.

Selected by NASA in June 1987, McMonagle became an astronaut in August 1988, and qualified for assignment as a pilot on future space shuttle flight crews. His technical assignments have included the space shuttle main engines, external tank, and main propulsion system. Prior to McMonagle's space shuttle mission assignment, he worked as capsule communicator [CAPCOM], the focal point for all verbal communication with the crew in the orbiting vehicle.

Since McMonagle's return from space, he has discussed his mission with hundreds of students in the Flint area. His appearance and talks with the students has increased both their enthusiasm and their confidence. One local principal said that Lieutenant Colonel McMonagle makes the children "believe that if they put their mind to it, they can accomplish anything."

Mr. Speaker, I ask that you join me and our colleagues as we honor the fine achievements of Donald McMonagle. He serves as a model for the Flint community. His outstanding accomplishments certainly make him worthy of recognition by the House of Representatives today.

HONORING COL. WILLIAM H.
FRIZELL, U.S. MARINE CORPS

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. McEWEN. Mr. Speaker, I rise today to recognize and honor the outstanding service of Col. William H. Frizell, U.S. Marine Corps, a Marine Corps Congressional Liaison Officer to the U.S. House of Representatives in the Office of Legislative Affairs.

Colonel Frizell has been a tremendous asset to the U.S. Marine Corps throughout his service as liaison to the House from August 1987 to June 1991. He has been an influential and well respected spokesman for congressional policy supporting the mission and preparation of the Marines, and his contribution to assuring that the Marines were provided the support they needed to perform with the capability they recently exhibited in the Persian Gulf cannot be measured.

Mr. Speaker, I have had the pleasure to work personally with Bill Frizell on numerous occasions. He has always performed his duty with absolute professionalism, exceptional integrity, superior judgement, and a mastery of national security issues which made his assistance and advice much sought after. He has also always maintained a breadth of vision which went beyond matters of direct impact on the Marine Corps. This made Colonel Frizell's advice and counsel an invaluable commodity to numerous members whenever national security matters came before the House.

Along with providing assistance directly to Members of Congress, Colonel Frizell carried out his service with a tone of professionalism that reflected positively on the Marines. As the Chief House Liaison for the Marines, Colonel Frizell personified the Corps. In doing so, he

served in the House with the same exceptional professionalism and excellence that the U.S. Marines have always exhibited on the field of honor. Every Member that worked with Colonel Frizell could only think better of the Marine Corps and the U.S. Navy thereafter.

Colonel Frizell displayed initiative and creativity in devising and implementing a member-relations program that personalized the needs and capabilities of the Navy/Marine team. His Quicklook Outreach Program has become a cornerstone of the Department of the Navy orientation, and promises to remain so for many years.

Mr. Speaker, Bill Frizell's accomplishments in the Marine Corps are too numerous to detail. He has been decorated with the Distinguished Flying Cross, the Purple Heart, the Defense Meritorious Service Medal, the Air Medal with strike flight numeral "15," the Navy Commendation Medal and the Combat Action Ribbon. He has served with distinction and valor on the field of battle protecting American freedom and values, he has served with honor in numerous posts during peacetime, and he has been a marked success during his tenure in the House.

Col. William Frizell departs his position in the Congressional Liaison for another assignment in the Marine Corps. After nearly 25 years of active duty service he heads off to Hawaii, but not to retire and enjoy the trade winds of the Pacific, instead he moves to the USCINCPAC, Airborne Defense Command Post at Camp Smith, Hawaii. Though I know that I will miss him here in Congress, I wish him well in this newest challenge offered to him by his beloved Corps.

Colonel Frizell's contributions to the Marine Corps and Navy will keep benefitting the Nation well into the 21st century. He leaves behind an impressive network of close personal and professional relationships, and his service as director of the Marine Corps House liaison will be the Yardstick by which those who follow him will be measured.

Mr. Speaker, I join my colleagues in commending and thanking Bill Frizell for his service to America, his service to the Marine Corps, and his service to the U.S. Congress. He will be greatly missed, but he will remain a valued friend to many in Congress and will not be forgotten.

TEN YEARS SINCE AIDS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. RANGEL. Mr. Speaker, I would like to call the attention of my colleagues to an article printed in the New York Times on June 5, marking the first decade of the battle against AIDS. Today marks 10 years since the official recognition of Acquired Immune Deficiency Syndrome by the medical community.

Since then, the struggle against this tragic disease has affected the lives of every American. It has shattered families, strained city, State, and Federal budgets, and ruined lives. In 1990 alone, over 160,000 were diagnosed with AIDS and more than 100,000 have died.

In New York City especially, AIDS has had devastating effects. There are more cases of AIDS in New York City—over 31,000 reported cases this year—than the next 4 cities with the highest incidences of AIDS combined. Of all the cases diagnosed in the country, 25 percent have been in New York City. AIDS has become the leading cause of death in New York City for women aged 25 to 29 and for men aged 30 to 44.

In particular, the black and Latino communities in New York City have been ravaged by AIDS. Black and Latino men and women comprise over 60 percent of the adult cases in the city. And nationally, 28 percent of all the reported AIDS cases are black and 16 percent are Latino. Tragically, 91 percent of the pediatric AIDS cases are black and Latino.

As we enter the next decade, the fight against AIDS must be strengthened. The saying "Silence is death" applies more to AIDS now than ever before. The leadership of this country must step forward, speak up, and direct their energies to the fight against the disease—and not against those who are afflicted with it.

The Nation must fight the war against AIDS with as much commitment and resources as it fought the war in the Persian Gulf. I urge my colleagues to support full funding of the Ryan White Comprehensive AIDS Resource Emergency Act. This act provides essential funding to intensify AIDS education, treatment, and research.

The next decade will be vital in all areas regarding AIDS. I pray that we are not here 10 years from now, lamenting over the horrors of AIDS, when we can act now and save thousands of lives.

[From the New York Times, June 5, 1991]

AIDS—THE SECOND DECADE; LEADERSHIP IS LACKING

(By Michael S. Gottlieb)

LOS ANGELES.—Ten years ago, I treated a few patients with mysteriously high fevers, weight loss and unusual lung infections. On June 5, 1981, the Centers for Disease Control published my description of this rare array of symptoms. At first, I naively thought that the patient would recover and that they would be healthy once again. I was wrong. All of them died. It was clear to me before too long that we were on the brink of a natural disaster as devastating as any on earth.

In 1981, less than 100 people died of the disease that came to be known as acquired immune deficiency syndrome. By the end of 1990, approximately 160,000 people in the U.S. had been diagnosed with AIDS and 100,000 had died. What we thought might be a curable outbreak was a full-fledged epidemic.

As we enter the second decade of AIDS, the question that haunts me must haunt everyone. How did this epidemic happen? Why wasn't every possible step taken to halt the spread of this virus? And, perhaps most important, why is there no comprehensive national plan to address the most costly epidemic of our time?

The tragedy, of course, is that the AIDS epidemic was preventable. The war could have been won early if there had been a commitment at the highest levels of the Government.

As in Vietnam, the war was fought without a will to win. The leadership in Washington underestimated the enemy and mistook the threat as coming from people who had the virus rather than from the virus itself.

Americans may tend to regard AIDS as a problem of the 1980's, yet the 1990's will be much worse. According to the Centers for Disease Control, by the end of 1993 there will have been 285,000 to 340,000 deaths. It is estimated that in each year of the 1990's at least 2,000 babies will be born infected with the AIDS virus.

Despite these astounding figures, two Presidents of the United States have been reluctant to be the commander-in-chief in this fight. Ronald Reagan gave AIDS only passing notice, and President Bush has failed to enter the battle as forcefully as the crisis demands. Consider these figures: In the first 30 days of the Persian Gulf war, 14 Americans were killed in combat; in the same period, 2,500 Americans died of AIDS.

We need a battle plan for AIDS in the 1990's. Mine would aim to do the following:

Persuade President Bush to take charge of this crisis by putting AIDS at the top of his domestic agenda.

Revive the prevention message first voiced by Surgeon General C. Everett Koop. It has been neglected since he left the Government in 1988. He made condoms a household word. Because of inadequate prevention strategies, 40,000 to 50,000 Americans are newly infected each year.

Prevent the spread of the virus among drug users, their sexual partners and babies. This strategy must include distributing free clean needles to addicts, and expanding methadone programs and basic health care for this impoverished population.

Increase access to prenatal care and testing for the 80,000 or so women of child-bearing age who are infected with the HIV virus.

Expand financing for research on treatment and vaccines. AIDS is still a medical emergency and warrants urgent expenditures.

Our leaders in Washington have ducked the issue for far too long. There should no longer be a political risk in supporting an effort to make AIDS a zero-growth epidemic.

One million Americans are already infected with the HIV virus. The AIDS crisis has not passed, and the worst is yet to come. It is likely that in three or four years every American will know someone who has AIDS. Maybe that is what it will take to change attitudes and make every American an AIDS activist.

(Michael S. Gottlieb is a physician specializing in patients with AIDS and HIV infections.)

UNITING AGAINST ANTI-SEMITISM

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. FRANK of Massachusetts. Mr. Speaker, I have an entry today for that list which consists of good news about bad news. That is, there are phenomena in our society which we all wish did not exist, and which are very bad news. From time to time individuals and organizations take effective action against these various forms of bad news, and in our effort to eradicate these blights in our life, it is important that we pay proper attention to the efforts that are made against them.

Anti-Semitism continues to be a problem in American society, and no organization does more to combat it than the Anti-Defamation League of B'nai B'rith. We are especially fortu-

nate in New England to have Leonard Zakim as the head of the ADL regional office. Recently he along with leaders of the Massachusetts Council of Churches, the Roman Catholic Archdiocese of Boston, and the Greek Orthodox community began a new program entitled, "Uniting Against Anti-Semitism—the Christian Community Responds." This is a very promising program and I extend my very sincere congratulations to all of those involved in it. I ask that the explanation of this program be printed here. As the statement says, it is meant to be a national model and my purpose here is to offer this model to other sections of the country in the hope that they will emulate it to the benefit of all of us.

UNITED AGAINST ANTI-SEMITISM—THE CHRISTIAN COMMUNITY RESPONDS

Calling it a national model for collaboration against anti-Semitism by Christians and Jews, leaders from the Archdiocese of Boston, the Massachusetts Council of Churches, the Greek Orthodox community, and the Anti-Defamation League in Boston announced that a new pamphlet entitled, "Uniting Against Anti-Semitism—The Christian Community Responds" is being distributed to over 8,000 churches and individual priests and ministers in Massachusetts.

The initiative for the pamphlet came after the Anti-Defamation League reported a 171% increase in the number of reported incidents in Massachusetts for 1989. The Pamphlet is designed to address the unique problem of anti-Semitism as emanating from persistent myths and stereotypes about Jews.

"Anti-Semitism cannot be seen only as a Jewish problem and we at the ADL are grateful for the strong alliance with our Christian friends that enables us to stand together condemning anti-Semitism not only manifested through hate groups and vandalism but through rebutting centuries old attitudes and anti-Semitic stereotypes. Through giving people who want to do something specific ideas on what to do against anti-Semitism, we are ensuring today that not only Jews will be acting against anti-Semitism in their own communities," said Leonard Zakim, Executive Director of the New England office of the Anti-Defamation League.

The Massachusetts Council of Churches is sending out over 5,000 pamphlets and intends to recommend that the pamphlet be used as a catalyst for preventive discussion in its 41 ecumenical and interfaith associations. Reverend Diane Kessler, Director of the Massachusetts Council of Churches and one of the writers of the pamphlet said, "Even in our own writing of the pamphlet the intense and substantive discussions were so important in learning about each other and the problem of anti-Semitism. Even though the pamphlet is specially intended to deal with anti-Semitism, the ideas contained in it can be transferred to other incidents of bigotry and racism."

Father George Papademetriou of the Greek Orthodox school of theology and one of the writers of the pamphlet pledged to make this available to Greek Orthodox dioceses across the country. "We believe any prejudice against any people is against our Christian faith."

FORKED TONGUES SPEAK
AGAINST ARCTIC OIL SEARCH

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. FIELDS. Mr. Speaker, I want to recommend to my colleagues an excellent article printed in the May 23 edition of the *Houston Chronicle*. It is written by Michel T. Halbouty, a pioneer of America's oil industry, and owner of Michel T. Halbouty Energy Co. in Houston, an independent oil producer.

The article discusses the crucial need to explore the Arctic National Wildlife Refuge [ANWR] for oil and gas, and goes on to document sworn testimony by several environmental groups from the early 1970's belittling the value of ANWR.

I urge my colleagues to read this article.

FORKED TONGUES SPEAK AGAINST ARCTIC OIL SEARCH

(By Michel T. Halbouty)

When analyzed rationally, it becomes clear that there can be no question that the development of Alaska's Arctic National Wildlife Refuge oil resources is essential to the security of the United States. This need is made all the more pressing when we consider the fact that oil imports are again rising, having topped 8.3 million barrels per day for the first week of May.

Despite this telling evidence, however, the environmental lobby remains intransigent. Part of the reason is that opposition to oil exploration on ANWR has grown to mythic proportions in the environmentalists' pantheon of issues, becoming in effect their Holy Grail. As with any group's quintessential issue, they have come to pursue opposition to drilling on ANWR with a virtually religious fervor.

For example, holding the line on ANWR became the environmental lobby's litmus test in last year's congressional election, with the groups threatening active opposition to any candidate who dared refuse to pledge unqualified support for keeping oil explorationists out. But it was not always so. In fact, at one time, the very groups that are so adamant about ANWR's unique ecological value today were singing quite a different tune. It is interesting to read on and see just how they condoned and even suggested various heavy activities to be conducted in ANWR.

Between 1969 and 1973, the Department of the Interior held an exhaustive series of hearings examining the environmental consequences of building the Trans-Alaskan Oil Pipeline System. The record of these hearings comprises tens of thousands of pages, many of which are taken up by testimony from various members of the environmental lobby, which saw blocking the TAPS pipeline's construction as a way to block Alaskan oil development.

Although in most respects the arguments they put forward against the TAPS line are virtually identical to those offered in opposition to ANWR today, they differ in one important respect: their attitude toward ANWR.

The testimony they presented in these hearings provided a valuable insight for today's debate, because it shows how facile the environmental lobby is at tailoring its arguments to the cause of the moment. Indeed, the testimony clearly reveals the flimsy fab-

ric of their current position, bringing to mind the old Indian expression of "speaking with forked tongues."

At the May 4, 1972, TAPS hearing, Thomas J. Cade, testifying on behalf of the Wilderness Society, Friends of the Earth and Environmental Defense Fund, stated:

"The Arctic National Wildlife Range has practically no exceptional or unique natural values in its northern foothills and narrow coastal plain sections."

Sierra Club representative Lloyd Tupling stated at the same hearing:

"An all-land route through Canada, with a spur running to Prudhoe Bay south of the Arctic Wildlife Range (in which is now ANWR), would have several advantages over the North Slope-Valdez route."

Nor was this position new to the environmental lobby. A year earlier, at a hearing on May 16, 1971, Chris Hartwell, another environmentalist, had stated:

"It is far better to run the pipeline through the wildlife range."

Richard Rice, a professor at Carnegie-Mellon University, even went so far as to suggest building a railroad across ANWR to ship Prudhoe Bay oil!

And what about the most basic issue, the importance of Alaskan oil production?

At the Feb. 4, 1971, hearing on TAPS held in Washington, D.C., David Wayburn, vice president of the Sierra Club, turned his crystal ball to the future, noting that development of Alaskan oil "suggests an increasing need for oil at a rate of 4 percent a year at the very time the internal combustion engine may be becoming obsolete."

Since Wayburn offered this opinion, the number of cars, trucks, buses and motorcycles on the road in the United States has risen by nearly 72 million from their 1971 level.

At the Feb. 17, 1971, hearing, Berkeley Professor Richard B. Norgaard said: "The North Slope oil does not particularly add to our security."

As noted earlier, the North Slope contributes 20 percent of all the oil produced in the United States today.

Most revealing of all, however, in terms of the real goals of the environmental movement was a May 4, 1972, *New York Times* article, later included in testimony by David Brower of Friends of the Earth. His summary of the environmentalist attitude presented one of the clearest revelations of its real objectives when he stated at one point:

"There is a hope our population will not increase over the next years. Furthermore, new generations may find the quest for more material goodies a less satisfactory way to spend their lives than relating to more permanent systems of value."

And what might these "more permanent systems of value" be? Obviously, whatever Brower and his friends think they should be. What Brower's comment so clearly reveals is there is actually a hidden agenda behind the environmental lobby's opposition to virtually every effort to produce additional domestic energy, whether it is in ANWR or offshore, or anywhere else.

Their much vaunted concern over the environment, it seems, is merely a subterfuge to permit them to accomplish their genuine goal: the restructuring of society to conform with their own narrow concept of what it should be.

While they are certainly free to advocate whatever societal structure they want, their failure to be more forthright about their true aims is simply disingenuous.

So, following their dream might permit an elitist few to live well, but would condemn

the masses in most nations to the status of a permanent underclass. In short, theirs is an elitist vision that would benefit only a chosen few.

The above quotes of the environmentalists on their early attitude on ANWR clearly reveal that they will tailor their actions to whatever suits their fancy at the moment.

Passing up the opportunity ANWR presents is a luxury the nation cannot afford. It is our last best chance to stem the rising tide of imports. Let the environmental lobby have its self-absorbed dreams of restructuring society, but let the explorationists have ANWR for the benefit of the nation. To do otherwise can only aggravate our import dependence without justification, and we have seen all too graphically over the last 10 months just how costly that dependence can be.

INTRODUCTION OF STUDENT
INCENTIVE ACT

HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. McMILLEN of Maryland. Mr. Speaker, today I am introducing the Student Incentive Act, or Studi Act. The bill would encourage school districts to establish a 2.0 grade point average in order for students to participate in extracurricular activities—and reward those schools adopting the standard with a 10-percent bonus in Federal chapter 1 funding. This bill is identical to legislation I introduced in the 101st Congress.

Under the legislation, to qualify for grants, States must adopt regulations encouraging all State public secondary schools to issue policies requiring a student to maintain a 2.0 on a 4.0 scale grade point average [GPA] in a core curriculum in order for the student to participate in any extracurricular activity sponsored by the school. To comply, a State's 2.0 GPA program must be certified by the Secretary of Education.

I have introduced this bill because I believe there is an imbalance in the priorities of young Americans between athletics and academics. For years we have been hearing of abuses in the collegiate athletic system, athletes becoming all-American linebackers, but who cannot read after 4 years of college. But the problems begin much sooner—in America's high schools and junior high schools.

A survey by USA Today reviewed the dismal State requirements of high school students to participate in sports—and showed the average is only a 1.3 to 1.7 grade point average. These D-minus students will not be able to compete in the 21st century international marketplace.

However, more and more individual school districts are raising their standards for students who participate in sports and extracurricular activities. These districts have seen the light—they see their students, years after graduation, with no hope for a job, no steady career, with only the memories of a great game.

Mr. Speaker, America is sending the wrong signal to our young people—that their athletic skills are more important than their thinking skills. We'll need better students to compete in

an increasingly competitive world—because that's where the real game is played.

THE COMMUNICATIONS COMPETITIVENESS AND INFRASTRUCTURE MODERNIZATION ACT OF 1991

HON. RICK BOUCHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. BOUCHER. Mr. Speaker, today I am pleased to join with the Gentleman from Ohio [Mr. OXLEY], and 41 of our colleagues in introducing the Communications Competitiveness and Infrastructure Modernization Act of 1991.

Senator BURNS and GORE today have introduced a companion bill in the other body.

Mr. Speaker, the goals of our bill are twofold: To remedy the many problems presently experienced by cable television subscribers and to ensure that a modern fiber optic network, which will improve the quality of telecommunications and enhance the American economy, is deployed nationwide.

Our bill provides telephone companies with the economic incentive to modernize the telecommunications infrastructure by allowing them to compete in the cable television market through a phased lifting of the restrictions which prevent telephone companies from offering cable TV services in their telephone service areas.

Today, with only a handful of exceptions nationwide, the cable television industry is an unregulated monopoly. Only one company provides the service in virtually all American localities, and the rates charged to cable subscribers are not subject to governmental review.

In that atmosphere, cable rates have soared. In addition to complaining about high cable rates, consumers complain about poor cable service, insufficient program choices, and retiering—the moving of program services from the basic tier to a higher priced tier. Our legislation will lead to consumer savings, improved cable service, and an increase in both the quantity and quality of the programs that are offered to subscribers:

A study by the Consumer Federation of America indicated that truly effective competition would reduce cable rates by approximately one-half and save consumers \$6 billion annually. In the approximately five communities nationwide where some competition exists in the delivery of cable television service, the rates tend to be one-half the national average.

Service repairs would occur more rapidly if there was genuine competition for customers.

Allowing the telephone companies to compete in the cable market will hasten the provision of cable TV service in rural areas. The telephone industry presently serves more than 99 percent of all American homes and businesses. In the near future, the telephone industry could provide universal cable television service as well.

Program providers would have alternative means for distributing their programs, which will ultimately lower the cost of program distribution.

Consumers would have expanded program options with greater variety and higher quality than the programs currently offered.

Finally, the passage of our bill will result in the rapid deployment of fiber optic cable into homes and businesses nationwide, with attendant benefits for our economy. Japan expects to have a nationwide fiber optic network serving every home and business by 2015. Businesses in the United States need the same high speed data transmission capabilities which that deployment will give to their Japanese counterparts. Our telephone industry will deploy fiber optics nationwide during the next 20 years if it has the financial incentive which the right to offer cable television service will provide. Our legislation will, therefore, ensure fiber deployment in the United States within the same timeframe as is contemplated by the Japanese without the investment of any public moneys.

The Boucher/Oxley bill provides for a phased lifting of the restrictions preventing telephone companies from offering cable TV services in their telephone service area. Initially, telephone companies will be allowed to transport video programming offered by other companies. This video dial tone service is defined to include video gateways, navigational aides, billing and collection, network management, and other ancillary services.

After the State public utility commission [PUC] and the FCC have approved a telephone company's implementation plan for the deployment of broadband technology, the telephone company may license, package, own, and produce video programming on 25 percent of the total channel capacity, leaving 75 percent of the available channels to other program providers.

It is essential that the telephone companies be prohibited from cross-subsidizing the provision of cable television services. To allow such a cross-subsidy would be unfair both to telephone ratepayers and to the telephone companies' cable competitors. Accordingly, our legislation contains a statutory prohibition against cross-subsidization, and provides a "death penalty" for willful violations of that prohibition, under the terms of which an offending telephone company would be required to divest its video programming subsidiary. The bill also contains the following strict regulatory safeguards:

A separate video programming subsidiary will be required;

Telephone companies will be prohibited from purchasing existing cable systems;

Cross-marketing of telephone and video services will be prohibited;

Cost allocation rules to protect telephone ratepayers are required; and

Local cable franchises and all other regulatory constraints faced by the cable industry will be imposed on telephone companies offering cable TV services.

The broadcast industry has long been seeking assurances that local over-the-air stations will be carried on cable systems and that they will have appropriate channel positions. In addition, the broadcasters recently have been seeking retransmission consent—the right to be paid for carriage of their signal by the cable operators. While our bill does not address their concerns, broadcasters should be as-

sured that the inclusion of such provisions are not incompatible with the overall objectives of our legislation.

I want to thank my colleague Mr. OXLEY, the Senator from Montana [Mr. BURNS], and the Senator from Tennessee [Mr. GORE], for their assistance in structuring the legislation we are introducing today, and ask my friends in the House to join us in this effort. It is a thoughtful means of promoting a solution to current cable TV concerns and of assuring the deployment of a modern fiber optic network during the coming two decades.

INTRODUCTION OF LEGISLATION TO DESIGNATE LANDS WITHIN THE LOS PADRES NATIONAL FOREST AS WILDERNESS

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. PANETTA. Mr. Speaker, I rise today to join Congressman ROBERT LAGOMARSINO in introducing legislation to designate lands within the Los Padres National Forest as wilderness. I am pleased to be introducing this legislation with Congressman LAGOMARSINO and thank the gentleman for his efforts in putting this package together.

This legislation is similar to legislation being introduced today in the Senate by our colleagues from California, Senator CRANSTON and Senator SEYMOUR. As my colleagues may recall, Los Padres National Forest wilderness legislation was approved by the House in the last Congress, but was never considered by the Senate due to unresolved differences between the two Senators from California. As such, I am pleased that after many months of negotiations between myself, Senators CRANSTON and SEYMOUR, Congressman LAGOMARSINO, Congressman THOMAS, and Congressman GALLEGLY, an agreement on the Los Padres legislation has been reached. It is my hope and expectation that these negotiating efforts will ensure the enactment of this legislation by the 102d Congress. Compromise and concessions were made by all parties involved and I believe that the legislation agreed to achieves a balance between the need to provide strong environmental protection and allow for multiple uses of the Forest's resources.

The Los Padres National Forest is an important resource to central California. It is home to many rare and endangered species such as the bald eagle, peregrine falcon, and the California condor. The Forest offers outstanding recreational opportunities for the residents of California and contains much of the Big Sur coastline, one of our Nation's greatest coastal treasures.

The legislation introduced today would designate areas of the Los Padres National Forest within my congressional district as wilderness and include two rivers in my district in the wild and scenic rivers system.

The bill would add nearly 38,000 acres to the existing Ventana Wilderness in the Los Padres National Forest. The areas in the Ventana addition include Bear Mountain, Black Butte, and Junipero Serra Peak. Furthermore,

the bill would designate approximately 14,500 acres in the coastal Silver Peak area as wilderness. The areas are important additions to the existing wilderness areas in the Los Padres and warrant the permanent protection from encroachment and contrary activities provided by the wilderness designation.

As noted above, this legislation also makes additions to the wild and scenic rivers system. First, the legislation designates the Big Sur River as a wild and scenic river from its headwaters to the point at which it emerges from the Ventana wilderness. Second, the bill directs the Secretary of Agriculture to study the Little Sur River, from its headwaters to the Pacific Ocean, for possible inclusion in the wild and scenic rivers systems. As was included in the Los Padres Wilderness bill which passed the House last Congress, this legislation specifically directs the Secretary to consult with the Big Sur Multi-Agency Council during this study to ensure that local interests and concerns are recognized and reflected in the Forest Service's study. The Big Sur Multi-Agency Council has played a vital role in ensuring the proper management of the Big Sur area and I believe that its participation in this study will be a benefit to both the Forest Service and the local residents.

Mr. Speaker, the Los Padres National Forest is a national treasure warranting strong, yet balanced, protection. I believe this legislation achieves that goal by protecting the most sensitive areas of the Forest while continuing to allow multiple uses of other Forest lands. I urge my colleagues to support its adoption.

HONORING AILEEN E. BURNS

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. ENGEL. Mr. Speaker, This week, the Westchester Irish Committee is holding its annual cocktail party-buffet during which it honors individuals who have worked tirelessly to improve the local community. I wish to particularly recognize one of the honorees, Aileen Burns, a life-long resident of the city of Yonkers in my Congressional District.

Aileen has demonstrated a concern for issues that affect her fellow Irish-Americans, as well as a dedication to serving the community. She currently is the employment manager at St. John's Riverside Hospital in Yonkers, and she is working toward continuing her health care career by pursuing a Masters of Science in Health Services at Iona College.

Aileen has also been an active member of the American-Irish Association for the past 10 years, including a stint as the first woman president of the organization. She has served on the Scholarship, Heritage Day, and Journal Committees for the Association, and she also serves on the Yonkers mayor's Irish Advisory Board.

In short, Aileen Burns is the type of young woman of whom we can all be proud. She has remained true to her heritage and served her community and country well. It is a pleasure to join the Westchester Irish Committee in recognizing her outstanding accomplishments.

THE LOS PADRES CONDOR RANGE AND RIVER PROTECTION ACT

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. LAGOMARSINO. Mr. Speaker, today I am reintroducing a bill to address wilderness and river protection issues in the Los Padres National Forest in southern California. This Los Padres Condor Range and River Protection Act represents the culmination of efforts of a number of parties over the last 3 Congresses and provides for comprehensive protection of resources within this heavily visited national forest.

In all, this bill will provide for designation of almost 400,000 additional acres of wilderness in seven different management areas, designation of 85 river miles on 3 different rivers under the Wild and Scenic River Act, wild and scenic river studies totaling 110 miles on 4 other rivers, and withdrawal of over 100,000 acres of some of America's most beautiful coastal lands from mineral entry. With the designation of wilderness under this measure, almost 50 percent of the land within this forest will have been permanently protected as wilderness; providing the Los Padres National Forest with one of the greatest percentages of wilderness designation of any national forest in the country.

Throughout the development of this measure, I have been guided by two basic objectives. First, was to ensure that lands recognized under this act fully meet the criteria set forth under the 1964 Wilderness Act and 1968 Wild and Scenic River Act. As a long-time supporter of both of these important pieces of legislation, I could certainly not be an advocate for any measure which would assault the integrity of these laws.

Second, I have attempted to develop a balanced piece of legislation; one that recognizes the legitimate interests of all forest users. Due to conflicting interests, it was not possible to develop a bill which meets the full approval of all the various interest groups. Numerous difficult choices had to be made in crafting this measure. In order to guide me in these difficult choices, I have relied heavily upon the expertise of the Forest Service, the extensive public comment developed through the 1988 planning process, and guidance from my colleagues in the House and Senate.

The centerpiece of this legislation is the Sespe

Wilderness unit. This 220,500-acre wilderness unit surrounds the 31.5 mile segment of Sespe Creek which would be designated for protection under this Wild and Scenic River Act.

As Sespe Creek winds through this section of the national forest, it offers numerous scenic and recreational opportunities. Many varieties of plants and animals can be found along the river's banks. The 53,000-acre Sespe Condor sanctuary, located on lands adjacent to the river, protects habitat which will be critical for the reintroduction effort for the endangered California Condor. Sespe Creek is also known as an excellent trout fishery and a portion of the river was recently designated as

a State wild trout stream. Recreational activities along Sespe Creek includes swimming, camping, hiking, horseback riding, and fishing. Several trails parallel or cross the river at various points.

The proposed 220,500-acre Sespe Wilderness begins just east of the Dick Smith Wilderness which was established largely through my efforts with passage of the 1984 California Wilderness Act. This area is characterized by rugged and diverse topography and serves as a major watershed for the Piru, Sespe, and Cuyama Rivers. Although the Wilderness lies almost entirely within the Los Padres National Forest, a small portion of it extends into the adjacent Angeles National Forest. This Sespe area is known for its unique natural and geologic features, including Topatopa Mountain, Sespe Hot Springs, and the pristine Sespe Condor sanctuary. The Sespe also serves as an important habitat for sensitive bird and animal species, including the recently reintroduced Bighorn sheep.

Nature study, fishing, and hunting are popular recreational activities in this area. Numerous trails through the area and several trail camps enhance other activities such as cross-country hiking and backpacking.

I must point out that in proposing portions of Sespe Creek for wild and scenic designation, Great care has been taken to not foreclose the option for future water development projects at Cold Springs and Oat Mountain. On the other hand, this bill would prohibit construction of a water storage project at the Topatopa site, which is considered to be the best site for dam construction by water development interests.

It is important to recognize that this bill authorizes no dam construction on Sespe Creek or anywhere else. I have taken no position with respect to dam construction on Sespe Creek, because I believe that further study and a referendum of persons who would be affected by such a project are necessary prerequisites to any final decision. For Congress to make a decision at this point in time would be both premature and short-sighted, especially in light of the drought conditions already facing southern California. I would also point out that until a final decision is made, this measure would ensure that all portions of the Sespe Creek within the forest would remain in their current, undeveloped state.

In addition to the Sespe Creek, my bill also provides for designation of 33 miles of the Sisquoc River within the forest and 19.5 miles of the Big Sur River. Other wilderness areas which would be designated under this bill are the 30,000-acre Matilija unit; 43,000-acre San Rafael unit; 14,600-acre Garcia unit; 38,200-acre Chumash unit; 38,000-acre Ventana unit; and the 14,500-acre Silver Peak unit. I have also made substantial changes in a number of the general provisions of the bill from the version passed by the House last year. These changes include: deletion of provisions which would have allowed new leases for directional drilling beneath wilderness, addition of language permitting establishment of water rights, and revision of language pertaining to access for fire and watershed management purposes.

I have worked very closely with Senators SEYMOUR and CRANSTON in the development

of this bill, and most of the difficult issues have been resolved among the three of us. I want to commend both Senators for their willingness to objectively evaluate and consider a full range of alternatives to address the issues contained in this bill. Their assistance and cooperative attitude will continue to be important at this measure proceeds through the legislative process. I would also like to recognize my cosponsors on this bill: Mr. GALLEGLY, Mr. THOMAS and Mr. PANETTA. Between the four of us, we represent all of the land in Los Padres National Forest addressed by this measure.

Mr. Speaker, the legislative initiative I am introducing today represents a comprehensive and far-reaching addition to the National Wilderness System and the National Wild and Scenic River Systems. It will preserve and protect in perpetuity some of our most serene and secluded canyons, rivers, and peaks. In addition, by virtue of their close proximity to the urban areas of southern California, these resources will provide numerous diverse recreational opportunities to meet the demands of an ever increasing population. Therefore, I urge my colleagues to cosponsor and support this important legislation.

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION, GOVERNMENT DOES WORK

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. KOSTMAYER. Mr. Speaker, I rise today to bring to the attention of my colleagues the work of the Pennsylvania Avenue Development Corporation [PADC], the Federal agency responsible for the revitalization of Pennsylvania Avenue between the White House and the Capitol. Since it was created by Congress in 1972, the PADC has achieved extraordinary success in transforming "America's Main Street" from "a scene of desolation," in the words of a Presidential committee formed in the late 1960's to study the condition of the Avenue, to a great boulevard worthy of its role in the Nation's history and its place in the center of the Nation's Capital City.

Work on the public areas and 21 square blocks within the Corporation's territory has been guided by a master plan, approved by Congress in 1975. With appropriations from Congress, PADC has undertaken a program of extensive public improvements that includes landscaping, lighting, new sidewalk and roadway paving, street furniture, the planting of 700 willow oak trees, and the restoration of landmark structures. Six parks and plazas have been created or refurbished: Meade Plaza, John Marshall Park, Indiana Plaza, Market Square Park/Navy Memorial—in cooperation with the private U.S. Navy Memorial Foundation—Freedom Plaza—formerly Western Plaza—and Pershing Park. Work to refurbish a seventh public open space, Sherman Park, is to begin shortly.

Construction and development on the squares involves joint ventures between PADC and private developers. Where PADC has acquired a site, the Corporation holds an

open competition to select a developer/architect team. The restoration of the historic Willard Hotel, the development of mixed-use complexes such as National Place and Market Square, and the all-residential development of the Lansburgh apartment building are a result of the competitions PADC has held, attracting high-quality teams of architects and developers.

Deteriorated and vacant buildings have been restored or replaced with attractive new structures alive with offices, retail shops, and restaurants and, in the Pennsylvania Quarter neighborhood, with residential apartments and condominiums. Since 1981, 22 projects have been completed or are nearing completion. These range from smaller scale, historic projects such as Sears House—an adaptive reuse of historic buildings at 7th and Pennsylvania—to large, mixed-use complexes such as 1001 Pennsylvania which takes up the entire block between 10th and 11th Streets. Completed projects include: The Canadian Embassy, 601 Pennsylvania Avenue, Sears House, Pennsylvania Plaza, Argentine Naval Building, Bob Hope USO Building, 625 Indiana Avenue, Liberty Place at 325 7th St., Gallery Row, Jenifer Building, 717 D St., the Lansburgh, Market Square, the Stables Art Center, 1001 Pennsylvania Avenue, the Evening Star Building, 1201 Pennsylvania Avenue, 1275 Pennsylvania Avenue, 1301 Pennsylvania Avenue, National Place, National Press Building, and the Willard Hotel and Office Building. The new Pennsylvania Avenue contains award-winning architecture, including the work of three American Institute of Architects [AIA] Gold Medal winners.

The Corporation began its development efforts in the western portion of the project area, between 10th and 15th Streets. Office, retail, hotel, and theater uses characterize this now largely developed area.

PADC's focus has been, in recent years, on the creation of a new neighborhood, Pennsylvania Quarter, midway between the White House and the Capitol, between 6th and 9th Streets. Four projects—Market Square, the Pennsylvania, the Lansburgh, and Market Square North—offer almost 1,000 housing units in accordance with the Pennsylvania Avenue plan. The Pennsylvania has leased 120 of its 150 units. This month, the first 139 rental units in the first phase of the Lansburgh became available; the remaining units will be ready in December 1991. Market Square, with 210 residential units on the top four floors, has begun marketing its condominiums which offer spectacular views east and west along the Avenue end of The Mall. Market Square North, with 201 housing units, is expected to begin construction later this year.

The Pennsylvania Quarter neighborhood offers its residents an abundance of amenities: Museums, art galleries, and theaters—all within walking distance, including the new 450-seat theater in the Lansburgh; a short trip to Capitol Hill and downtown business offices; easy access to Union Station and five Metro stations; and superb views. Three new white-tablecloth restaurants have opened recently in Penn Quarter: The Peasant, 701 Pennsylvania, and Bice. The new neighborhood is critical to achieving PADC's goal of a downtown with 7-days-a-week vitality.

Toward this end, PADC also actively programs the parks and plazas along the Avenue. With an appropriation from Congress of \$100,000 a year, PADC presents a variety of festivals, cultural performances, athletic events, and education activities designed to bring liveliness downtown. About 200 events are programmed throughout each year, often in cooperation with corporations, foreign embassies, businesses and schools, agencies of the District and Federal Government, charitable institutions, arts organizations, hotels, and restaurants.

In August 1987, with the passage and signing of the Federal Triangle Development Act (Public Law 100-113), Congress and the President gave PADC the authority to develop the 11-acre parking lot fronting on Pennsylvania Avenue and 14th Street for the Federal Triangle/Federal Office Building/International Cultural and Trade Center [FOB/ICTC]. The complex will contain 3.1 million gross square feet of space, with 500,000 occupiable square feet for the ICTC and 1,350,000 occupiable square feet for offices for various Federal agencies, including the Woodrow Wilson International Center for Scholars. When completed, the project will be the second largest Federal building in size after the Pentagon and will complete the Federal Triangle, begun in the 1920's.

The center will assemble in one convenient place the full range of activities dealing with international trade and cultural exchange. It will include chancery annex offices, State and local agencies dealing with trade and tourism, retail establishments, and performing arts spaces.

During the construction phase, the project is expected to employ 3,600 to 4,000 people in numerous building trades. At least \$71.7 million is expected to flow to minority businesses during the construction period; an additional approximately \$5.25 million will go to minority firms for architecture and engineering professional services.

The master lease with the developer was signed by GSA in September 1990. The rental rate to the Federal Government of this \$656 million project will remain constant for the 30-year term of the lease. At the end of the lease, the Government will own the building at no additional cost.

Much important work remains to be done on the various, still-undeveloped blocks within PADC's area. In March 1991, PADC issued the prospectus for the development competition for Square 457-C, the western half of the block bordered by 6th, 7th, D, and E Streets. The site is planned to have a minimum of 230 residences, 35,000 square feet of retail space, 5,000 square feet of arts space, and either office space or a hotel, or both. The deadline for submission of proposals is September 16, 1991.

PADC and the owners of Square 406, situated just south of the National Portrait Gallery between 8th, 9th, E, and F Streets, are examining future development options. Mixed use, including housing, is contemplated. Several important historic buildings located on the north side of the site are to be rehabilitated.

PADC is working with the District government on guidelines for Square 491 for a major new structure to replace the D.C. Department

of Employment Services Building. The site is located at 6th Street, adjacent to the Canadian Embassy.

Refurbishment of other properties is planned. PADC is discussing various improvements with owners of the Harrington Hotel at 11th and E, the owner of 406 7th Street, and the owners of Union Hardware on D Street. On nearby Indiana Avenue, owners of three 19th-century structures—the Artifactory, Dutch Mill Restaurant, and Litwin Furniture Store—are analyzing options for restoration of their historic exterior with PADC's assistance.

PADC is designing extensive improvements to the sidewalks and plazas adjacent to future development. This additional public improvements work will make the public spaces inviting and enjoyable to pedestrians and fulfill the Federal Government's commitment to work cooperatively with private developers.

The work of the Pennsylvania Avenue Development Corporation is an outstanding example of the private-public partnership concept. PADC's investment of approximately \$130 million has generated more than \$1.5 billion in private commitments to date.

The Corporation has received numerous awards recognizing its achievements, including two of the most prestigious: The 1987 Urban Land Institute Award for Excellence for Rehabilitation, for the Willard Hotel and Office Building complex; and the 1988 Presidential Award for Design Excellence, for the Pennsylvania Avenue Plan and its implementation. Other awards received are from: American Society of Landscape Architects, National Capital Area Chapter of the American Planning Association, American Association of Nurserymen, D.C. Building Industry Association, International Downtown Association, and the AIA 1990 Citation for Excellence in Urban Design.

In his weekly column in the Washington Post of May 18, 1991, architecture critic Benjamin Forgey had high praise for two PADC projects, Market Square and Market Square Park/Navy Memorial, at Pennsylvania Avenue and 8th Street. He said:

Combining the architectural talents of the New York firm Conklin Rossant for the Navy Memorial and Washington's Hartman-Cox for the two buildings framing the memorial, Market Square is quite simply one of the more exciting and successful urban spaces to be completed anywhere in the last quarter century * * *

[Neither] would have happened without help from governmental rulemakers. At Market Square the Pennsylvania Avenue Development Corporation established the basic urban form and requirements for ground floor retail and upper floor residential uses.

Market Square and Market Square Park represent the thoughtful, imaginative approach that is working for all of Pennsylvania Avenue. The ingredients for success include: An entrepreneurial public agency, with a creative board and staff, establishing guidelines for development and providing a quality public environment; private developers and investors who are committed to building projects of long-lasting excellence; architects and landscape architects providing the best in contemporary design; and enlightened tenants, residents, restaurateurs, and merchants who recognize the opportunity to be a part of this new urban neighborhood.

All Americans can take enormous pride in Pennsylvania Avenue and in the renewal of the Pennsylvania Avenue area that, when complete, will portray the best of American planning, design, and development—a successful model for other areas of Washington and for cities throughout the world.

The Pennsylvania Avenue Development Corporation has proven that an urban landscape need not be a grim and seamless expanse of concrete.

And it has proven that a partnership between the public and private sectors can work, really Mr. Speaker, that government can work and most of all it proves that function and beauty are compatible in America's great cities.

INTRODUCTION OF LEGISLATION ON CABLE TELEVISION DEREGULATION

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. DONNELLY. Mr. Speaker, today I am reintroducing legislation I sponsored in the 101st Congress to repeal a provision of the 1984 Cable Communications Policy Act (Public Law 98-549), legislation which deregulated the cable television industry, and which has caused enormous problems for many local communities across the country.

Mr. Speaker, the provision I am referring to is apparently being interpreted as allowing cable companies to abrogate the terms of contracts which they had executed with communities prior to enactment of the 1984 law. Specifically, section 625(d) of the act provides that cable companies operating in communities whose rates are deregulated are permitted to "rearrange a particular service from one service tier to another, or otherwise offer the service * * *". Cable companies have evidently taken the position that this subsection gives them a nearly unrestricted ability to delete service tiers or restrict the ability of homeowners to subscribe to certain service tiers—in direct contravention of contracts which they have executed with local communities.

Frankly, Mr. Speaker, this is an outrageous abuse of the deregulation legislation. In 1984, I believed that Congress was deregulating rates—no more, no less. We were not giving cable companies carte blanche authority to do what they felt like doing. To the extent that cable rates were previously set in contract negotiations, the 1984 act impaired those existing contracts, something that States are proscribed from doing under article I of the Constitution. Although the Federal Government may apparently impair the obligation of contracts, it is a step taken cautiously and with deliberation. I do not believe that Congress should have gone further than rate deregulation in 1984. My bill, therefore, conforms the 1984 act to what I believe the intent should have been.

My legislation is effective as of the date of enactment. It is my understanding that there may be some litigation outstanding that may be affected by my legislation. No inference

should be drawn by the introduction of this bill as to the proper interpretation of section 625(d) of the act. In addition, I recognize that this effective date may have to be further clarified in the legislative process. I plan to work with the authorizing committees toward that end as my bill moves through the legislative process.

H.R. —

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

SECTION 1. AMENDMENTS.

Section 625 of the Communications Act of 1934 (47 U.S.C. 545) is amended—

- (1) by striking subsection (d); and
- (2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 are effective on the date of the enactment of this Act.

IN RECOGNITION OF JON BICKFORD

HON. THOMAS H. ANDREWS

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. ANDREWS of Maine. Mr. Speaker, I rise today to commend and congratulate Mr. Jon Bickford of North Yarmouth, ME, who today receives the National Letter Carriers National Hero Award. Mr. Bickford courageously risked his own life to rescue the driver of an overturned chemical tanker truck on his way to work last March.

In the predawn hours on March 13, 1990, Jon Bickford came upon an overturned tanker truck carrying over 2,000 gallons of hydrochloric acid. It was a morning that in Jon's words was "like a science fiction movie with fog so thick" he barely could see the blinking red lights of the vehicle in front of him. He stopped and rushed with a flashlight to the cab of the leaking truck to discover both the driver, Cynthia McCallum, and her dog trapped inside. Jon Bickford was able to pull Ms. McCallum out from the vehicle and lead her to the safety of his own vehicle. Moments later the acid began to vaporize and envelop the surrounding area in toxic fumes. Arriving on the scene, paramedics credited Bickford with saving McCallum's life.

Mr. Speaker, Jon Bickford endangered his own life to save the life of another. He is truly a hero. While he believes that anyone would have done the same, he performed an exceptional feat that is a model for all of us. In the everyday routine, he saw someone in need and jumped right in to help them. I know I speak for all Maine citizens when I express my pride and appreciation for Jon Bickford's heroic rescue.

RESOLUTION TO SUPPORT AMERICAN BUSINESSES AND WORKERS IN THE RECONSTRUCTION OF KUWAIT

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. VISCLOSKY. Mr. Speaker, without the assistance of the United States, Kuwait and its people would probably still be held by Saddam Hussein as the 19th Province of Iraq. To recognize the contribution of the United States and the American people in the liberation of their country, Kuwait has indicated its intention to award a substantial majority of the contracts for the rebuilding of its infrastructure and industrial base to United States businesses.

Today, I am introducing a resolution to support American businesses and workers in the reconstruction of Kuwait. This resolution, which has the support of 72 of my colleagues as original cosponsors, urges United States businesses engaged in the rebuilding of Kuwait to use American subcontractors and all available United States goods and services. It also calls upon the Commerce Department to monitor and encourage the implementation of this policy.

It is currently estimated that the reconstruction of Kuwait will generate \$25 billion in business contracts over the next 5 years. The Commerce Department has developed a policy of strongly encouraging United States businesses awarded contracts for the rebuilding of Kuwait to ensure that the intended benefits of the Kuwaiti policy extend to the awards of subcontracts to United States businesses and the procurement of United States goods and services.

Unfortunately, prime contractors, including the U.S. Corps of Engineers, are not required to source their subcontracted products or services from U.S. companies. For example, steel products have already been ordered from Japan and Venezuela. These and other subcontracts could—and should—have been sourced by U.S. companies. We must do everything possible to ensure that American industry and workers benefit from the reconstruction of Kuwait.

In addition to wide, bipartisan support in the House of Representatives, this important resolution has also been enthusiastically received by U.S. industry. It is strongly backed by the American steel industry, including the American Iron and Steel Institute [AISI] and the Steel Service Center Institute, and the United Steelworkers of America. Of course, the use of American subcontractors and all available United States goods and services to rebuild Kuwait would benefit a multitude of American companies.

American men and women risked their lives to liberate Kuwait from Saddam Hussein. Further, American taxpayers financed the massive military initiative in the Persian Gulf. Now that the war is over and war-ravaged Kuwait is being rebuilt, it is imperative that our Nation reap the maximum benefit from the situation. I urge you and the rest of my colleagues to support this resolution.

EXTENSIONS OF REMARKS

TRIBUTE TO COL. DENIS R. NIBBELIN

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. MICHEL. Mr. Speaker, I take this opportunity to congratulate Col. Denis R. Nibbelin on his retirement from the Air Force and for his many years of dedicated and devoted service to our country.

Colonel Nibbelin, a Peoria, IL, native, graduated from my alma mater, Bradley University, and entered the Air Force on active duty in 1961. Currently the Director of Information Management, Headquarters, Air Force Systems Command, at Andrews Air Force Base in Maryland, his assignments have brought him to the far reaches of the earth—the Philippines, Germany, Crete, and Washington, DC, among others.

His tenure in the Air Force has been marked with professionalism, courage, and dedication. He is the recipient of the Defense Meritorious Service Medal, the Meritorious Service Medal with two oak leaf clusters, the Joint Service Commendation Medal, and the Air Force Commendation Medal with three oak leaf clusters.

I extend to Colonel Nibbelin and his family my congratulations and best wishes. Given his splendid accomplishments in service to our country, I know Colonel Nibbelin will continue to serve his community and country in his retirement.

SALUTE TO DR. MICHAEL S. GOTTLIEB

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. ROYBAL. Mr. Speaker, on June 5, 1981, the Centers for Disease Control published in its weekly Morbidity and Mortality Weekly Report a short study by a young and little-known doctor at UCLA.

The study was entitled "Pneumocystis Pneumonia—Los Angeles." In the study, the doctor reported his discovery of a strange and baffling new disease—an immunological deficiency, marked by the appearance of a rare form of opportunistic pneumonia, that he had found in five homosexual males in Los Angeles.

Few Americans noticed this study. Fewer realized its significance. However, the disease that the doctor described in this study would change our country forever. The author of the study is now the world-renowned Dr. Michael S. Gottlieb, and the illness that he reported is now America's most terrifying public health threat. This disease is now known as AIDS.

Mr. Speaker, I rise on the 10th anniversary of the discovery of AIDS to salute Dr. Gottlieb, who is a resident of my congressional district in Los Angeles.

Dr. Gottlieb is truly deserving of our sincere appreciation and our utmost respect. His laurels do not rest on his role as the first to tell the world of AIDS. More importantly, he is the

June 5, 1991

world's pioneer AIDS researcher and crusader, and he has remained at the forefront of clinical research and public activism in the fight against AIDS.

Dr. Gottlieb's tireless efforts to combat the AIDS epidemic through research, publicity, and fundraising are known worldwide, and have been written about extensively. One of the most poignant descriptions of his work and of his role in the AIDS crisis can be found in what is the definitive history of the first 5 years of AIDS, Randy Shiits' "And The Band Played On." He is also a central figure in two other bestsellers about the AIDS epidemic, "Beyond Love", by Dominique Lapierre, and "In the Absence of Angels", by Elizabeth Glaser and Laura Palmer.

Dr. Gottlieb is recognized today as an innovative clinical researcher, immunologist, and AIDS healer; as one of the first to use the now-common drug AZT in treating people with AIDS; as the author of numerous research studies on AIDS, and the editor of several leading AIDS journals; and as a cofounder, with Elizabeth Taylor, of the most prominent private group which funds AIDS research, the American Foundation for AIDS Research [AmFAR].

However, perhaps he is best known to us as one of America's leading AIDS activists. As an advocate and lecturer, and as the doctor to many famous AIDS patients, including Rock Hudson and Elizabeth Glaser, he has played a key role in helping America to understand this frightening disease, and to acknowledge that those among us who courageously struggle with the affliction of AIDS deserve our sympathy, our respect, our consideration, and our help.

Dr. Gottlieb was only 32 when he spotted the disease that would change his, and our, lives. He had just completed his post-doctoral work at Stanford University in clinical immunology, and had moved to UCLA to take up a challenging post as an assistant professor of medicine.

He sought to cover new ground in immunological research. "I wanted to generate new knowledge," Gottlieb declares. "I can't say I was looking to find a new disease, but I had a deep down feeling that everything under the sun in the clinical arena had not been described."

In his quest for something new, Dr. Gottlieb spread the word among UCLA's residents that he was interested in unusual cases related to the immune system.

In November 1980, he was notified of a patient with a strange array of symptoms including the rare Pneumocystis carinii pneumonia that would become significant in the diagnosis of AIDS.

Within 5 months, he had seen four patients with similar symptoms. The patients all were previously healthy, homosexual men who developed ongoing fevers, severe weight loss, and mysterious infections. Then a fifth case showed up, and Gottlieb became alarmed. A deadly epidemic appeared to be gathering force.

Recognizing the urgency of getting the word out quickly and frustrated by the long wait to publish a scholarly paper in a prestigious medical journal, Dr. Gottlieb sent his story to the Centers for Disease Control. On June 5, 1981, the

the CDC published the study in the weekly report. The uncertainty of its importance was signaled by its placement on the report's inside pages, and his study's simple title, "Pneumocystis Pneumonia—Los Angeles."

That was the beginning. He began to receive phone calls from doctors around the country. They, too, were beginning to see patients with similar symptoms. Soon, Dr. Gottlieb says, "the telephones rang off the hook." In December of that year, Dr. Gottlieb published the first detailed study of AIDS in the *New England Journal of Medicine*.

Since then, Dr. Gottlieb has become one of the most celebrated and published AIDS researchers in the world. He has lectured on AIDS in Europe and Asia, has published more than 70 research papers, articles, and reviews on the affliction, and is the senior medical editor of the journal, *AIDS Patient Care* as well as editor of the *AIDS Clinical Digest*. He has directed clinical trials of many experimental treatments for AIDS. As a physician, Dr. Gottlieb has treated several thousand people infected with the AIDS virus.

But with fame came controversy. Gottlieb was the first doctor to conduct clinical trials of AZT on the west coast in 1986 and helped prove its effectiveness. His academic superiors were lukewarm in their approval.

"There was an urgency to find treatment for people who were dying and I felt the university hierarchy would appreciate that urgency," he says. "But their thinking was that it was the job of drug companies to develop drugs, and that the work I was doing in testing drugs was of secondary importance."

Unwilling to play academic politics, Dr. Gottlieb left the university staff in 1987 to go into private practice. He now heads the Gottlieb Medical Group in Los Angeles, and is the medical director of the Immune Suppressed Unit at Sherman Oaks Hospital and Health Center.

"I've taken some lumps along the way," Dr. Gottlieb says. "Where I've come to is older and wiser."

As a doctor who views patients as his top priority, Gottlieb has endured the anguish of having many die of AIDS while experiencing the elation of helping many survive far longer than they might have hoped.

"I do get attached to my patients and there's great sadness with the death of people I've treated for years," he says. "But I also feel I've helped people a great deal. The key to my ability to continue this work is the satisfaction of helping people live with AIDS and have quality time with their families and loved ones, more time than they would have had without my attention."

As we begin the second decade of our struggle to confront and defeat AIDS, Dr. Gottlieb says that we must have a "national war plan for AIDS" for this next 10 years. It must be, he says, "one that is as powerful as the one we employed against Saddam Hussein."

Dr. Gottlieb says, "The Public Health Service currently estimates that 1 million Americans are infected with the human immunodeficiency virus [HIV], including 80,000 women of childbearing age. The Centers for Disease Control estimates that by the end of 1993, there will have been between 285,000 and 340,000 deaths from AIDS in this country

alone. It's estimated that in each year of the 1990s, at least 2,000 babies will be born infected with the AIDS virus."

Dr. Gottlieb is calling on President Bush to name a senior advisor at the White House level to act as the administration's point person on AIDS.

Just as America has a drug czar, Dr. Gottlieb says, there must be someone in the White House who has a comprehensive understanding of the AIDS epidemic, and of the organization of the Federal AIDS effort, who will work full-time on this health emergency. This person should be assigned the task of working with the National Commission on AIDS to develop and implement a national plan to win the war against AIDS.

Dr. Gottlieb also believes that we must achieve a number of other goals during this second decade of AIDS. Among these are the following:

We must halt the spread of AIDS and make it a zero-growth epidemic through aggressive prevention and public education.

We must reinforce safer sexual practices and work to prevent the spread of AIDS among drug users and to their sexual partners and babies. This must include overcoming our squeamishness and instituting clean needle exchange programs. We must also expand access to methadone programs and basic health care for this poor and disenfranchised population.

We must ignite a more general AIDS response movement, extending beyond particular risk groups, and further dispel the myth that AIDS is a gay disease.

We must emphasize AIDS and HIV as a women's issue, and alert and educate women to the methods of self-protection. We must also alert the African-American and Hispanic communities to the insidious spread of HIV in their populations, and accelerate education programs among these groups.

We must increase access to prenatal care and testing for the estimated 80,000 women of childbearing age who are infected with the AIDS virus.

We must address the prevention and treatment of pediatric AIDS, and decrease the number of babies born with HIV infection.

We must expand funding for research programs to find treatments and vaccines.

We must support the Food and Drug Administration in its efforts to speed access to effective drugs, but to also protect an eager public against AIDS drug fraud.

We must improve patient care and access to services, such as skilled nursing facilities for people with AIDS, and reduce the costs of AIDS medical care without sacrificing quality.

Lastly, we must work to train medical professionals in safety techniques that will minimize their exposure to HIV through puncture accidents that occur while providing patient care.

Mr. Speaker, 10 long years have passed since the discovery of AIDS. In that time, we have taken substantial steps in our understanding and treatment of this baffling, terrifying disease.

However, no cure for AIDS is yet on the horizon, and deployment of a vaccine could take another 10 years. Faced with the severity of the AIDS epidemic and its threat to America's

health, we continue to devote relatively and pathetically little in the way of funding, time, and resources to winning the war against AIDS.

We can do more. We must do more. The heroic efforts of Dr. Gottlieb and those like him—and the courage of those among us who battle daily with AIDS—demands no less of us.

WETLANDS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, June 5, 1991, into the CONGRESSIONAL RECORD:

WETLANDS

Every week I hear from farmers, developers and private landowners who say that government regulation of wetlands is too restrictive, and from others who maintain that wetlands are being lost and that protection measures are insufficient. This controversy has spurred debate on wetlands protection policy.

VALUE OF WETLANDS

Wetlands are broadly defined as land containing watery vegetation and soils, and surface or underground water for prolonged periods. They can include swamplands, marshes, bogs and prairie potholes. Much of the wetlands in the continental U.S. is concentrated along coastlines. Three quarters of the country's wetlands are privately owned.

The decline in wetlands has been dramatic. In the late 18th century there were an estimated 221 million acres of wetlands in the lower 48 states. By 1990 wetlands acreage has been reduced by more than half, to 104 million acres. That means that the lower 48 states have lost an average of 60 acres every hour over the last 200 years. Indiana and nine other states have lost 70% or more of their original wetland acreage. Nearly 86% of the wetlands in Indiana has been drained or filled.

In recent years the traditional view of wetlands has changed. Since colonial times, wetlands were considered wastelands to be drained and filled, and put to productive use as cropland or sites for new houses and roads. Today wetlands are no longer considered a nuisance, but rather an invaluable resource. While accounting for only 5% of the total land area in the continental U.S., wetlands play a critical role in improving water quality through trapping and filtering sediment, serving as a natural flood control system, and preventing shoreline erosion. They also provide essential habitat for fish and wildlife, including nursery and spawning ground for 60% to 90% of U.S. commercial fish catches.

WETLANDS PROTECTION

The importance of wetlands and their protection is widely acknowledged. The issue now is on the effectiveness and costs of protecting wetlands, rather than preserving them. Many states and localities have developed programs to protect wetlands, but Indiana has no state wetlands program. In 1988 President Bush pledged support for a national policy of "no-net-loss" of wetlands. Specific practices for implementing this pol-

icy have not been approved, but a "no-net-loss" policy would aim to keep total wetlands acreage constant by creating a new acre of wetland for each acre that is developed.

Federal participation in wetlands protection spans thirty years, and includes a wide variety of laws. Some laws regulate wetlands by protecting wildlife habitat or by generating funds for wetlands acquisition. The "swampbuster" provisions of the 1985 farm law make farmers who drain and cultivate wetlands ineligible for price support payments. The 1990 farm law relaxed "swampbuster" sanctions by exempting producers from the sanctions when draining a wetland would have only a minimal effect, permitting the use of lesser sanctions for inadvertent wetland conversions, and allowing producers to mitigate the conversion of farmed wetlands by returning an equivalent area to wetland status. The strongest and the most controversial protection law, Section 404 of the 1972 Clean Water Act, protects wetlands by requiring landowners to obtain a permit from the Army Corps of Engineers before filling in a wetlands area.

PROBLEMS

The number and diversity of wetlands protection programs have created confusion among farmers, landowners, and developers. There is as yet no clear federal policy on wetlands protection. Consequently, federal, state and local governments have had only limited success in coordinating their programs, and federal regulators have often been working at cross-purposes with one another and with their counterparts at the state level. Only in 1989 did the four federal agencies involved in wetlands protection agree upon a definition of what constitutes a wetland, and this definition is still controversial.

The administration of existing laws has also been chaotic. The confusion arises because there are many kinds of wetlands, and because various agencies have differing interpretations, authority and responsibility. Landowners contend that wetlands regulators have been overzealous in enforcing the laws. Environmentalists counter that wetlands laws should be more rigorously enforced in order to prevent any further loss of wetlands acreage. Landowners have also criticized the delay and uncertainty in obtaining section 404 permits. Some have faced delays of two to three years to obtain wetlands permits, and others have proceeded with development activities only to discover that they have violated state or federal protection laws. Many landowners maintain that existing laws are an intrusion on private land-use decisions.

FEDERAL RESPONSE

The confusion and controversy surrounding wetlands policy necessitate urgent reform of the current system. The President is expected to issue an administrative order soon that would narrow the definition of a wetland. This order could have the effect of opening hundreds of thousands of wetlands acreage to development. Many farmers and developers support this change, while conservationists oppose it. Congress will soon review the application of section 404 during consideration of a bill to reauthorize the Clean Water Act. Bills have already been introduced that would narrow the scope of the protection program by classifying wetlands for their ecological value. Another bill, which could cost taxpayers billions of dollars, would require that compensation be paid to landowners prevented by the pres-

ence of wetlands from developing their property.

CONCLUSION

A wetlands policy must aim to preserve and restore quality wetlands, while providing for appropriate private land-use. I support efforts to narrow the scope of the protection program. My impression is that federal wetland enforcers have overstepped a common sense interpretation of the regulations, and widened the definition of wetlands to include land that is only marginally "wet." The protection program needs fine-tuning, not elimination. Wetlands are, of course, a vital part of our environment and should be protected. Efforts must be made to manage wetlands, educate people about their importance, and add incentives for their protection and enhancement.

BOY SCOUT TROOP 1: 75 YEARS OF PREPARING BOYS FOR THE CHALLENGES OF TODAY'S WORLD

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mrs. LOWEY of New York. Mr. Speaker, the Boy Scouts are a very special organization. All over this country, they help parents in the challenging task of bringing boys up right, and they help boys in learning, growing, and having fun. In Bronxville, NY, Boy Scout Troop 1 is entering its 75th year of providing these important services.

For 75 years, Bronxville boys have learned about themselves and learned to care and to serve their country and their fellow human beings through their participation in this organization. For 75 years, Bronxville boys have grown to adulthood in the Boy Scouts. Many of them have remained in Westchester County, contributing to its vitality and its values. Others have moved on to other places, which they enrich with the lessons and values that they have learned in Troop 1.

A Boy Scout, according to their code, should be trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent. These are qualities that any society looks for in its young people. We are fortunate indeed to have an organization that focuses specifically on passing these virtues on to our sons.

"Be prepared," Boy Scouts are taught, and when the time comes for them to leave the Scouts, they are much better prepared to face the challenges of the world in which they live. For this, I salute the Boy Scouts of America, and particularly Bronxville's Troop 1. I congratulate them on their 75 years of service, and wish them many more years of helping the youth of our community to thrive.

RETIREMENT TRIBUTE TO THOMAS H. CASIELLO, ASSISTANT SUPERINTENDENT-DIRECTOR, PATHFINDER REGIONAL VOCATIONAL TECHNICAL HIGH SCHOOL

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. NEAL of Massachusetts. Mr. Speaker, today I would like to share with you and the other Members the story of a man whose achievements and outlook in the field of education made a difference to the hundreds of students whose lives he touched for the better. That man is Thomas H. Casiello, assistant superintendent-director of Pathfinder Regional Vocational High School in Palmer, Massachusetts, who is retiring after serving 15 years at his beloved school.

Mr. Casiello's career in teaching began after working as a printer in Springfield at Trade Composition. He worked there until 1964 when he became a teacher of Graphics Arts at Holyoke Trade High School. He went on to Pathfinder High School in 1975.

Throughout his 15 years at Pathfinder, Richard Casiello always put his students ahead of any ambitions or personal aspirations. Maybe the most significant contribution he has made to the students was the introduction of the personal computer to the Pathfinder community. This has improved the curriculum at the school as well as made the administration more efficient.

Beside his work at Pathfinder, Tom has been a visiting lecturer at Westfield State College, where he taught Fundamentals of Vocational Education for a period of over 10 years. He was also active in interscholastic athletics both at Holyoke Trade and Pathfinder.

Mr. Speaker, with the ever-changing economy demanding new vocational training almost daily it is an honor to recognize someone like Tom who truly gave his best to his students. To Tom, his wife Lillian, their children, Brian, Andrew, and Ann Marie and his five grandchildren please accept my best for a healthy and joyous retirement.

YOUTH SUMMER CAMP AND CONSERVATION ACT OF 1991: PROVIDING OPPORTUNITIES FOR LOW INCOME CHILDREN TO ATTEND SUMMER CAMP AND TO INCREASE FUNDING FOR THE YOUTH CONSERVATION CORPS

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. KOSTMAYER. Mr. Speaker, today I am introducing a bill on behalf of the youth of America. More than 22 million children in the United States today come from low-income households. These children can't afford to go to Yellowstone or Yosemite National Parks to appreciate the Nation's natural heritage. In fact, most of them live in cities where nature

is a small urban park with concrete sidewalks and manicured lawns, and outdoor recreation is playing ball in the street, pitching pennies on the sidewalk, or cooling off with the neighborhood fire hydrant.

In addition, many of the teenagers in these families will be unable to find summer employment and will be at loose ends in our Nation's cities this summer. For example, here in our Nation's Capital, Mayor Dixon has estimated that the summer jobs program will have only half the number of job opportunities this summer as it has had in past years. Unfortunately, teenagers who can't find work this summer will also be hard pressed to find many of the organized summer youth activities they might have otherwise enjoyed. Tough economic conditions in America's cities may mean the closure of summer recreation facilities and public pools or, at the very least, limited hours at these facilities. In response to this need, today I am introducing legislation that will enable thousands of youths to enjoy the Great Outdoors and to learn about our country's natural resources.

My bill provides a simple and direct means of giving low-income children the opportunity to visit our national parks and national forests or otherwise enjoy the wonders of the natural world—an opportunity they might never have. The way the bill would work is this: the Secretaries of Interior and Agriculture would contract with private, nonprofit, youth organizations—such as the Boy Scouts, Girl Scouts, Camp Fire Boys and Girls, and YMCA—to send children from low-income families to summer camp in healthy, outdoor locations around the country. Actually, some of these are in national forests or near State parks. The children would be able to attend these camps for a minimum of 14 days. At the camps, they would engage in outdoor recreation activities such as swimming, hiking, and canoeing, as well as, learn about aspects of nature and the environment. My bill would provide funding that would send up to 20,000 children to camp.

This legislation also provides summer employment opportunities for teenagers in healthful outdoor settings. By increasing the funding for the Youth Conservation Corps, more teenagers will have the opportunity for summer jobs in our national parks and national forests. Not only will they earn a minimum wage, but they will also learn about our Nation's natural resources and the agencies that manage them. Participants in this program perform various outdoor jobs, including trail maintenance, fence repairs, reforestation, landscaping, and construction of interpretive facilities and stream improvement structures. The Federal Government has been authorized to spend up to \$60 million on the YCC program, but it has not been funded at that level since 1980. Once my legislation is fully enacted, the YCC program would receive an additional \$6.5 million, doubling the current funding level.

The funding for these programs would come from an additional fee charged to those concessioners of the National Park Service and special use permittees of the Forest Service earning more than \$2 million per year. These concessioners and permittees would pay an additional 2 percent of their gross receipts into a special fund in the Departments of Interior

and Agriculture which would manage these programs.

Nothing is more important than the youth of America. The future of our country depends on them. But many of these children will not have any experiences in the out-of-doors beyond zoos, city parks, and vacant lots. If we are to have environmentally aware voters 10 or 20 years from now, we must take steps to ensure that our youth appreciate, enjoy, and understand the wonders of our Nation's natural heritage. The future protection of our national parks and public lands depends on an informed voting public. Let's do something to ensure that ALL of our youth have the opportunity to develop a love for these jewels of nature. I urge all my colleagues to join me as a cosponsor of this legislation.

TRIBUTE TO CHERYL KRYSIAK

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. BONIOR. Mr. Speaker, today I have the distinct privilege of honoring a very close and personal friend. After deeply touching the lives of countless students at Mount Clemens High School, Cheryl Krysiak is being honored by her peers as Teacher of the Year.

Cheryl has taught social studies at Mount Clemens for over 20 years. Her students will tell you she excites their desire to learn—the highest tribute of all. She understands the individual needs of students and reaches them through her sense of humor and healthy approach to life and learning.

Believing grades are often only a measure of behavior rather than a measure of achievement, Cheryl emphasizes the worth of each individual student. She recognizes that the growth of self-esteem will encourage an interest in the pursuit of knowledge and the development of each student's full potential and talent. Colleagues, too, recognize the success of her methods and look toward her example to motivate their own students.

While a dedicated professional, Cheryl Krysiak is equally committed to the life of her community. Among the many activities that make her an outstanding leader and citizen is her work with the Mount Clemens/Clinton Township League of Women Voters, the Macomb County Committee for Economic Opportunity, the Michigan Department of Education, and the Macomb County Community Services Agency.

And, each year, my staff and I look forward to working with Cheryl on a variety of projects that bring the processes of democracy within closer reach of our young people. She has encouraged many students to travel to Washington as congressional pages, interns, or participants in the Close-Up Foundation program. Her enthusiasm and expertise helped shape my annual congressional student leadership summit into a top-notch program that allows young people to learn first hand what the legislative process is all about.

Mr. Speaker, although Cheryl has unsparingly shared her artistry as a teacher with her students and her compassion for people with

her community, she has somewhere found reserves of enthusiasm, time, and interest for her friends, as well. I look forward to her visits to Washington with great eagerness. Over breakfast or lunch together in the House of Representatives Dining Room in the Capitol, we always have animated conversation about education or government or politics. Twenty years ago Cheryl was my first volunteer. Through the years, there has been no one more loyal or steadfast. I am personally grateful for her friendship.

Cheryl Krysiak is in many ways a touchstone to all of us who have had the privilege to know her. I am extremely proud of my good friend. Her dedication to excellence has enhanced all of our lives. I ask that my colleagues join me in saluting Cheryl Krysiak for her fine record of civic and professional accomplishment.

THE INTRODUCTION OF THE NEW COLUMBIA STATEHOOD ACT—H.R. 2482

HON. ELEANOR HOLMES NORTON

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Ms. NORTON. Mr. Speaker, I am proud to announce that on May 29, 1991, I fulfilled one of the strongest mandates given to me by District of Columbia voters in introducing H.R. 2482, the New Columbia Statehood Act of 1991. Among D.C. residents there is a passion for full democracy that can be satisfied only when hometown D.C. becomes the 51st State. This passion is rooted as well in the desire of District residents to match the full obligations of citizenship they have assumed with the full rights of citizenship thus far denied them. We have met all the tests and then some—service in all wars, including the Persian Gulf, where we were fifth per capita; the second highest in the Nation in taxes paid per capita and \$1 billion annually to the Federal treasury; provision of protective and other vital services to the Congress and the Federal Government.

Yet, my constituents are denied rights that the constituents of other Members take for granted. Congress reviews every law our democratically elected city council passes. You attach appropriation riders that the Congress rather than District residents desire. You overturn the democratically enacted laws of the D.C. Government.

These actions contradict the democratic standards of our country and of this esteemed body. It is simply not your way and we cannot believe it is your will.

As we begin floor debate on an historic civil rights bill, let us also count the introduction of the New Columbia Statehood Act as the beginning of another democratic quest. Let the Congress mark May 29, 1991, as the day this body began to move in earnest to fulfill one of the last remaining promises of democracy in America.

THE CIVIL RIGHTS BILL

HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. LEWIS of Florida. Mr. Speaker, over the past 2 days the House of Representatives has considered a number of civil rights proposals. The focus of each of these proposals is to offer protection against employment discrimination based on race, color, religion, sex, or national origin. However, the vast difference between each is the manner in which to provide these protections.

The Michel substitute amendment, in my view, provided the best balance brought forward between protection against the intolerable circumstance of employment discrimination without bringing current business industry to a standstill. Make no mistake, the Michel substitute penalized those who discriminate but does so by strengthening existing protections and remedies.

Unlike the Michel amendment, H.R. 1, the Democrat's civil rights bill, allows for unlimited compensatory and punitive damages. This legislation would also lead to quota hiring. A system of quota hiring will inevitably result because employers will be forced to hire employees based on population numbers or face bankruptcy defending their hiring practices in court. These practices will erode the very fabric of the business community by threatening financial bases, discouraging expansion, and ultimately damaging the work force we are trying to protect.

During the past 2 days, debate also focused on caps for damages in sexual harassment cases. I oppose caps and ceilings for remedies and damages directed toward a particular segment of our society. A true civil rights bill protects not only the rights of sexual harassment victims but everyone's rights on an equal basis.

The Democrat's so-called civil rights bill passed by the House of Representatives today was nothing more than an example of ill-conceived legislation. This type of shoe-string governing is unacceptable in any situation. It is particularly appalling when it affects an issue as vital to our Nation as civil rights.

If this Congress wants to get serious about passing a civil rights bill this session, we need to put aside the rhetoric and politics to pass legislation that will hold true to the spirit of civil rights. Today's action was neither civil nor right.

ETHEL PAYNE, JOURNALIST,
PASSED

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. DELLUMS. Mr. Speaker, a majestic voice in the history of American journalism has been stilled—and America is a poorer Nation, both intellectually and morally, because Ethel Payne is dead.

For almost four decades Ethel Payne was a major contributor to my life's learning experi-

ence. As a young man Ethel Payne's news stories and syndicated columns exposed me to a wider world beyond the confines of the Bay Area—and to the injustices perpetrated by the powerful against the powerless at home and abroad. Hers was a voice of sustained moral outrage, speaking out against the inequities and injustices of our society—in the school room and the court room, in the workplace and the community at large. She was one of the first to educate me on the complex problems of the emerging nations in the Third World, as they struggled to shake off the shackles of racist imperialism.

When I first came to the House of Representatives in 1971, one of my most memorable moments was my initial meeting with Ethel. This led to a personal friendship that endured for more than 20 years—a friendship that is cherished more than ever because of her passing.

Throughout those 20 years Ethel was a constant source of intellectual inspiration and stimulation on a wide range of problems, both domestic and foreign. She was the spiritual godmother of the Congressional Black Caucus, and a driving force in urging us to take an aggressive leadership role on the critical life-and-death matters of poverty, health care and education. She educated me and a host of others on the legislative background history of civil rights legislation that she said was so necessary to undo the civil wrongs inflicted on minorities and women in this society since the Nation's inception.

Ethel was a constant source of encouragement and commitment on the need for legislating sanctions against the racist regime in South Africa to help end the obscenity of apartheid in that land. She was in the forefront of the effort to make all America more aware of the desperate hunger crisis throughout much of sub-Saharan Africa, and the moral imperative to shift this Nation's priorities toward that region from arms sales to food and health-care assistance.

Ethel was a fighter—in the best sense of the term, but one with an inbred sense of compassion and humor. She was a national treasure—and she will be a treasured memory of mine for the rest of my days. It was a privilege and an honor to have known you, my sister.

A TRIBUTE TO THE ABBEY ETNA
MACHINE CO.

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. GILLMOR. Mr. Speaker, it gives me great pleasure to take this opportunity to pay tribute to the Abbey Etna Machine Co., which celebrates its 90th anniversary on June 10.

It is difficult to overstate the value of companies that fulfill a commitment to quality and to their communities over a great many years. A business that digs its roots firmly into an American city, contributes to its employment, its prosperity, and its overall well-being. There is no doubt that the Abbey Etna Machine Co. has made this kind of contribution to Perrysburg, OH.

Mr. Speaker, we live in a time when many Americans are deeply concerned about our ability to compete in the international marketplace and endure. We need to look no further than Abbey Etna and its showcase of machinery. It is a showcase of American quality and ingenuity, proof of what we are capable of accomplishing as an enterprising people.

As they celebrate the company's beginnings in 1901, I wish the people of Abbey Etna the very best, and commend them for their good work.

THE SECOND ANNIVERSARY OF
THE TIANANMEN SQUARE MAS-
SACRE

HON. LOUISE M. SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Ms. SLAUGHTER of New York. Mr. Speaker, today in this country, civil rights are very fresh in our minds. The human rights abuses in China, however, seem to be forgotten.

Tuesday, June 4, is the second anniversary of the Tiananmen Square massacre. The courageous men and women who are imprisoned or executed for peaceful dissent must be remembered. Their cries for freedom must pave the way to a freer China.

I am honored to sign the proclamation that asks for the release of all prisoners of conscience and for information on over 1,000 Chinese citizens whose names are listed and who have been detained or are unaccounted for.

Two years after Tiananmen Square massacre, President Bush still contends that the extension of unconditional most-favored-nation trade status for China provides an incentive for that government to improve its human rights record. However, according to the administration's own documentation, the human rights situation in China has not improved.

Ours is a nation which champions democracy, freedom, and human rights on all fronts. We can not ignore the thousands of Chinese citizens who are still imprisoned under harsh conditions for peaceful demonstration.

The world's interests are best served by peaceful cooperation. China's response to the conflict in Cambodia is not peaceful negotiation but to supply arms to the Khmer Rouge, who are responsible for killing a quarter of the Cambodian population over the past 15 years.

We must not forget the 40 years of tyranny and oppression in Tibet.

The Dalai Lama, in his acceptance speech for the Freedom Award said, "Without freedom, humanity's creative nature cannot be utilized fully. Therefore, without utilizing creative human nature, there is no progress."

Supporters to renew China's MFN trade status point out the economic importance of our relationship. However, the relationship clearly favors China. The United States buys much more, \$15.2 billion in 1990, than it sells, \$4.8 billion.

The People's Republic of China does not give protection to United States intellectual property rights, a failure that leads to the reproduction of bootlegged software and other properties inside China and exported from

China. American exporters did not get the same unrestricted and fair access to the Chinese markets that President Bush proposes to give to Chinese exports in our markets.

The granting of most-favored-nation trade status would send a powerful message to repressive nations that human rights abuses and prison labor are acceptable as long as we demand their products. Never let it be said that the United States values economic gains more than human rights. We should not grant MFN status to the People's Republic of China.

A TRIBUTE TO ELLEN W. JONES

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. STUDDS. Mr. Speaker, on Monday, June 10, 1991, residents of Cape Cod, MA—which I am privileged to represent in this House—will gather to pay tribute to an outstanding woman who has worked tirelessly on behalf of all Cape Codders. It is with great pleasure that I join in expressing my profound appreciation for Ellen W. Jones of Chatham, a founder and first chairperson of the Barnstable County Health and Human Services Advisory Council.

On June 10, Ms. Jones will retire as chairperson of the advisory council after successfully guiding the council through its first formative years. Under her leadership, the council has become a strong advocate for Cape Cod's coordinated human services system. As one of Massachusetts' foremost public health and human service activists, Ellen has been instrumental in raising public awareness about many issues of great importance to those of us who live and work on Cape Cod.

Ellen has always believed that the best services can be provided to those in need through cooperation of providers; ensuring that no one slips through the proverbial cracks by bringing together all the resources available within the community.

Those of us in Congress who care deeply about all people, especially those in need—the very young and the very old, the homeless and the jobless, the working poor and the uninsured—recognize the importance of having active organizations like the Barnstable County Health and Human Services Advisory Council and people like Ellen W. Jones hard at work in our districts.

It is to Ellen's great credit that as she retires, she leaves behind a much more enlightened and active constituency. While she will be missed as chairperson, we are pleased that she will continue as a member of the council. I join her many friends and colleagues in saying thank you and wishing her the very best on this special occasion.

TRIBUTE TO JAMES P. COX

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. SKELTON. Mr. Speaker, I would like to recognize the outstanding contributions and fine public service of James P. Cox, retired chief executive officer of Still Regional Medical Center in Jefferson City, MO. During the annual president's banquet last April, the Distinguished Service Award from the Missouri Association of Osteopathic Physicians and Surgeons was given to James P. Cox in recognition of over 15 years of dedicated service to the osteopathic profession.

Mr. Cox's career in the health profession demonstrates a real commitment to the improvement of health care systems in Missouri. He has served as a spokesman and advocate for the association's impaired physician program as well as the assistant administrator and director of the substance abuse program at Still Regional Medical Center.

Mr. Speaker, the achievements of James P. Cox and his many contributions to the osteopathic profession are literally too numerous to mention. I ask that you join me and our colleagues today in recognizing this selfless and dedicated man. His 15 years serving the osteopathic profession certainly make him worthy of recognition by the House of Representatives.

MICHEL AND PAULINE BOUCHARD BECOME AMERICAN CITIZENS

HON. DICK SWETT

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. SWETT. Mr. Speaker, I rise before you today to congratulate Michel and Pauline Bouchard of Concord, NH, who today fulfilled a long-held dream when they became naturalized as U.S. citizens.

Michel and Pauline left their native Canada 27 years ago to come to work in my district. They knew no English. They had never been to America, and they knew no one in the area. But they did know that America was the land of opportunity, where hard work, dedication, and the support of loved ones could bring a rewarding and fulfilling life.

The American Dream came true for Michel and Pauline many years ago, but there has always been one thing missing—their United States citizenships.

Mr. Speaker, I ask my colleagues to join me in paying tribute to Michel and Pauline Bouchard on this day that they proudly became U.S. citizens.

TRIBUTE TO MR. DAVID TAUB

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. PAYNE of New Jersey. Mr. Speaker, it gives me great pleasure to share with my colleagues the achievement of Mr. David Taub of Hillside, NJ as he becomes Man of the Year by the Boxing Hall of Fame this Sunday, June 9. Mr. Taub was elected to the New Jersey Boxing Hall of Fame in 1985. During Mr. Taub's fighting career with the Newark Athletic Club, he earned 21 consecutive wins. In 1931, fighting as a middleweight, he was a finalist in the State championships.

At the age of 84, Mr. Taub is well known for his community involvement. He boasts more than a 40-year involvement as an active member of both the Hebrew Club and B'nai B'rith, and 60 years as a member of Hillside Elks Lodge No. 1591. He has also committed countless hours at the Sinai Recreation Center in Hillside, NJ, structuring organized boxing for boys, and developing contenders for the Golden Glove competitions and national challenges. He is to be commended for his work as we all know the importance of helping our youth keep fit in both the mind and body, not to mention how far his work goes to keep our youth off the streets and out of trouble. The giving of one's self and asking nothing in return, as Mr. Taub has done continuously throughout his life, serves as an example for everyone to follow.

Mr. Speaker I am proud of everything Mr. Taub has done and am honored to be a friend of his. I again ask that my colleagues join me in congratulating him on his achievements.

IN PRAISE OF MRS. DEBBIE HORMEL

HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. CUNNINGHAM. Mr. Speaker, while with one breath we give thanks for the heroes of the war in the gulf, with the other we should take note of other heroes, who stayed home to take care of the families of the men and women our Nation sent abroad.

One such hero is Mrs. Debbie Hormel, the ombudsman for the 711 sailors of the U.S.S. *Okinawa*, based in San Diego.

As a Navy ombudsman for the past 12 years, Mrs. Hormel has been a lifesaver for thousands of Navy families. She is involved with Navy families when their needs are greatest—when there are financial problems, family emergencies, or children born while a parent is at sea. She leads seminars for Navy families, helping them help themselves while their active-duty spouses are at sea. Her outstanding work has helped make her president of the San Diego Ombudsman Council, and president of the Amphibious Group 3 Council, overseeing 45 local Navy commands and the work of 67 ombudsmen.

Most remarkably, Mrs. Debbie Hormel is a volunteer.

Let me tell you about some of the things she did while the U.S.S. *Okinawa* was at sea, during Operations Desert Shield and Desert Storm.

During that cruise, 62 babies were delivered; 47 were delivered locally, in San Diego. She was present and assisted with three; and with one, Mrs. Hormel, who served as a Navy nurse in Vietnam, became a midwife and delivered the child herself. In between all these, Mrs. Hormel visited every one of these new Navy mothers to make sure everything was okay.

Here is another example. While an Okinawa sailor was at sea, leaving his pregnant wife and 2-year-old child at home, their house burned down. In that time of extraordinary need, Mrs. Hormel helped obtain housing for the family, coordinated volunteers to help meet their needs for food and clothing, and replaced necessary household items, and helped the mother deliver her second child.

These examples of her day-to-day heroism for Navy families do not even begin to describe her long service to San Diego Navy personnel, or her 2-plus years serving the sailors of the U.S.S. *Okinawa*.

Without a doubt, Mrs. Debbie Hormel is a true hero to the families she helps and to the Nation she serves.

Therefore, let the good works of Mrs. Debbie Hormel, Navy ombudsman of San Diego, CA, be commemorated forever in the CONGRESSIONAL RECORD, the permanent journal of the U.S. House of Representatives.

COMMUNICATIONS COMPETITIVE-
NESS AND INFRASTRUCTURE
MODERNIZATION ACT

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. OXLEY. Mr. Speaker, I'm pleased to join with my House colleague Congressman BOUCHER of Virginia and my colleagues from the other side of the Capitol, Senator CONRAD BURNS and Senator AL GORE as we introduce today the Communications Competitiveness and Infrastructure Modernization Act.

We are at the beginning of the information age, which will probably be more important than the Industrial Revolution. I'm excited about the introduction of this bill, because it shapes the future of telecommunications in this country.

We want a sound telecommunications system by the year 2015 that will connect everyone in America with each other and with the world. We want the rural areas to have the same access as the urban areas. We want to keep the cost reasonable for consumers so that middle and lower income Americans can fully participate in the great age of information. The development of the broadband system will be as important to American life as the advent of radio and television.

Those who would say this is a cable-bashing bill are not taking the long view, in my opinion. You have to consider how forward-thinking, how progressive this legislation is.

Competition is integral to our system, it drives the engine of American success. There is every reason to apply that time-honored concept to the emerging telecommunications industry. There is every reason to believe that competition will improve cable TV for everyone and result in lower cable rates, and more and better program choices, better service in hard-to-wire areas. I know the cable system is strong enough to handle the competition, and I know the consumer will ultimately benefit.

All the great advances in this country have created faster, more efficient, more convenient ways to move. We move freight easily from manufacturer to consumer. We use the highway system, the airline system to move ourselves around the country. Radio and television waves deliver programming. And now we are exploring the possibilities of fiber-optic technology, which holds limitless opportunity as a way to move information.

This bill encourages the infrastructure, the fiber-optic roads we need to move information. To give us access to what we want to learn and the means to communicate what we have to say.

I look forward to the passage and enactment of this bill, but more importantly, I look forward to a new era of telecommunications.

DELIVERING NUCLEAR POWER'S
MESSAGE

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. YOUNG of Alaska. Mr. Speaker, As Congress continues its discussion on national energy policy at an unprecedented pace, the center of debate will turn to the critical issue of licensing reform for new nuclear energy plants.

By ensuring a stable, fair and predictable licensing environment for nuclear energy plants—a necessary element in any legislative effort on energy policy—Congress can promote an objective that benefits all Americans.

I would like to commend to my colleague's attention the following statements from the 1991 Nuclear Power Assembly, held recently in Washington, DC. Foremost, President Bush acknowledged the nuclear energy industry's commitment to the Nation's environmental and energy security goals by developing and implementing its strategic plan for building new nuclear energy plants. The plan, which includes the goal of an order for a new nuclear energy plant by the mid-1990's, contains several provisions similar to omnibus energy bills being considered in this Congress and will provide the Nation with economic, environmental and energy security benefits.

Additionally, I hope my colleagues will take a moment to read a keynote address by NORMAN LENT, ranking minority member on the House Energy and Commerce Committee, which provides Members of Congress with an overview of two issues vitally important for the expansion of nuclear energy—licensing reform and high-level nuclear waste disposal.

As all of us know, NORM LENT is a national leader in the effort to develop a diversified en-

ergy future for America. I commend him for his leadership in this vitally important issue to our nation.

I insert the aforementioned items in the RECORD in their entirety:

THE WHITE HOUSE,
Washington, May 14, 1991.

I am pleased to send greetings to all those gathered in our Nation's Capital for the 1991 Nuclear Power Assembly.

The theme of your conference, "Nuclear Energy: The Power of Independence," is timely and corresponds with one of the major goals of our National Energy Strategy—to reduce America's vulnerability regarding foreign oil and to enhance our energy security. As you know, safe, reliable, and environmentally sound sources of nuclear power can play an important role in meeting our Nation's energy needs.

It is encouraging that your industry now has a "Strategic Plan for Building New Nuclear Power Plants," which complements our National Energy Strategy. Implementing the National Energy Strategy is essential, not only to our national security, but also to our economic productivity and competitiveness. This strategy calls for developing more economical, safer nuclear technologies. I welcome your cooperation in building public confidence in this effort.

Barbara joins me in wishing you a successful conference.

GEORGE BUSH.

REMARKS OF THE HON. NORMAN F. LENT

Good morning. Thank you for inviting me to speak this morning on the topic of "Delivering Nuclear Power's Message."

As the ranking Republican member of the House Committee on Energy and Commerce, I feel well-qualified to address the topic of nuclear power's message. The Energy and Commerce Committee has looked at nuclear power many times, and as you remember, I led the fight against the Markey emergency planning amendment in 1987, a victory that enabled us to preserve the nuclear industry's ability to provide about 20 percent of the Nation's electricity. More recently, nuclear power has been resurrected as an answer to problems as diverse as clean air, global warming and energy security. Under the administration's leadership nuclear power is once more being advanced, this time as a key component of a national energy strategy.

President Bush is to be commended for having had the foresight in July of 1989 to instruct his administration to develop a new national energy strategy, long before the Iraqi invasion of Kuwait put energy back on the front page. The recommendations in the N-E-S announced earlier this year should be considered by Congress as carefully as they were prepared by the Secretary of Energy and others in the Cabinet.

I was honored to join the President in the Oval Office on February 20th with Admiral Watkins and leaders from the House and Senate Energy Committees to discuss the N-E-S before its release later that day. We also discussed how to proceed on the package in this Congress.

I was also pleased to join Chairman John Dingell as the sponsor, by request, of H.R. 1301—the National Energy Strategy Act. This bill contains the legislative component of the overall N-E-S, which is one-quarter of its total recommendations. The President's proposal is a solid foundation on which to act on energy; it is now up to the Congress to muster the political will to act responsibly.

The national energy strategy should be a real boon to the nuclear industry, because it strongly supports nuclear power. To quote: "Nuclear power is a proven electricity-generating technology that emits no sulphur dioxide, nitrogen oxides, or greenhouse gases. Virtually every nuclear power plant in the free-market countries has operated safely. Nuclear power is a plus for 'energy security' because it does not rely on fuel whose supply is threatened by depletion or cut off."

The national energy strategy includes four key goals for nuclear policy. An overriding theme behind these goals is to remove undue regulatory and institutional barriers to the use of nuclear power for generating electricity in the United States. These include barriers to constructing new nuclear power plants, extending the life of existing generating units, and disposing of power plant radioactive waste.

Let me turn now to what the Energy and Commerce Committee is doing concerning the legislative language. Presently, the Energy and Power Subcommittee is in the midst of 14 weeks-worth of hearings on various components of that bill. I predict the committee will put together a comprehensive energy bill in July with subcommittee markup occurring in September. I do not think Congress will finish working on a comprehensive energy bill before the end of the second session, but I do predict that we will pass such legislation. My prediction that Congress will send a comprehensive energy bill to the president does rest, however, on the Senate sending a bill to the House. If at any point movement of a comprehensive energy bill slows down in the Senate, then that could well stop progress in the House.

There are two important nuclear issues that could and should be addressed in the comprehensive energy bill put together by the Committee. These are nuclear power plant licensing reform and high-level radioactive waste disposal. I believe the National Energy Strategy Act's provisions on licensing reform and on waste act reform will be very beneficial to the nuclear industry's goals of getting these problems solved. Resolution of these two issues is very important to the continued vitality of the nuclear power option in America.

With regard to licensing reform, I know many of you will remember that the Republican members of the committee have long been strong supporters of licensing reform. In fact, we successfully moved a true one-step licensing reform amendment through the Subcommittee on Energy and Power on the 1989 N-R-C reauthorization. As we put together a comprehensive energy bill this year, I am hopeful that we will be able to continue to assist the nuclear industry in its efforts to streamline the licensing process.

With regard to statutory reform of the waste disposal act, that is, of course, an issue that is very difficult to deal with. It raises the old question of States' rights versus national policy when disposing of high-level radioactive waste in a permanent geologic repository. It may be that provisions such as those sought by the Department of Energy will be included in the comprehensive energy bill put together by the committee later this year. It is a little early to be able to predict, but, as always, the Republicans on the Energy and Commerce Committee will do what we can to help the nuclear industry.

Nuclear power is a necessary precondition for—and component of—an energy secure, economically robust, and environmentally clean America. I know I am not alone in

reaching this conclusion and I believe that Congress, assisted by the administration, is ready to begin a reevaluation of the nuclear option. I hope that the nuclear industry will work with us as we try to get past some of the distrust and fear that invariably accompanies the word "nuclear." And I hope that the industry will be creative and forward-looking and will lead us as it once did when nuclear power was the hope of many American policymakers.

Thank you very much. I look forward to working with you, hopefully on the rebirth of the nuclear option.

WHO TO HELP

HON. WILLIS D. GRADISON JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. GRADISON. Mr. Speaker, the collapse of totalitarianism in Eastern Europe and the glimmer of hope from "perestroika" in the Soviet Union created unwarranted euphoria in the West. The economic transformation to capitalism is proving to be much more difficult than the political transformation to democracy. At issue is whether the fragile new democracies can survive the trauma of economic transformation. It is in our best interests, and the best interests of free peoples everywhere, that they do.

A recent issue of "The Economist" [May 11-17, 1991, p. 11] contains a sobering editorial. Entitled "From Marx to the market", it reminds the reader of the most basic fundamentals of capitalism. Namely, market-based prices do not ensure a market economy; capitalism without capitalists is impossible, so private ownership of assets is also essential. This means privatization, and the faster the better. And while there are no guarantees, "it is the only approach not guaranteed to fail."

There is no painless way to make the transition from Marxism to Capitalism. Even in the former German Democratic Republic (East Germany), the recipient of massive assistance from the Republic of Germany (formerly West Germany, severe economic and political disruptions have appeared and are expected to worsen. Despite all this assistance, for example, unemployment in the former GDR may reach 50 percent this summer. Other countries trying to convert to capitalism are not so fortunate as to have a rich brother willing and able to help.

The obstacles to economic transformation are monumental. Industrial sectors were grossly inefficient, poorly organized, and terribly managed; machinery is from another era. The service sector was largely nonexistent to begin with. Workers did not "work" as we normally think of that term (as the saying goes, "they pretended to pay us and we pretended to work"); changing old habits, and attitudes, is never easy and will not happen overnight. Pollution and environmental degradation from past practices is not only despicable, but hazardous and costly as well. Property rights, so essential to capitalism, are confused at best. And, by and large, assets remain in state rather than private hands.

Clearly, expectations must be lowered; it may well be decades before these countries achieve the standards of living of their Western neighbors. But no less clear is that the Free World is faced with an historic window of opportunity that may not remain open forever. The question is not whether to help, but how, and who.

While keeping in mind that there is no painless way, we can begin by recognizing that the most important ingredient for making a successful transition to a market economy is the true desire to do so. And while desire is necessary, it is not sufficient. Leadership, too, is essential. It is in our best interests to help those countries who demonstrate the desire and whose leaders show the commitment to see it through. We should eschew countries that fail this criterion.

In my view, the Soviet Union fails to pass the test. Without a clear demonstration of its desire and commitment to move to a market economy, it would be shortsighted to provide aid to the Soviets. Absent a clear demonstration of desire and the commitment, we would be pouring scarce resources down the proverbial rat hole. Better to help those who have a fighting chance of making it.

"Pick your enemies carefully", an English general once said. We should pick our friends very carefully as well.

ST. LAWRENCE PARISH CELEBRATES 125TH ANNIVERSARY

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. HERTEL. Mr. Speaker, I rise today to pay tribute to the St. Lawrence Parish of Utica, MI, on its 125 anniversary. St. Lawrence Catholic Parish was established in 1866 as a mission of the Sacred Heart Parish in Utica Junction, now known as Roseville. The mission served the faith, social, intellectual, and cultural needs of the Irish, German, and Belgian Catholics who settled in the village of Utica and the surrounding farm community of Macomb County. On August 15, 1874, Bishop C.H. Borgess dedicated St. Lawrence Parish's first church; 4 years later, a cemetery was consecrated 1/2 mile north of the church. In 1904, a fire swept through Utica, destroying the church. Parishioners resorted to worshipping in homes and renting halls until a new church was built in 1908.

The St. Lawrence Parish has served persons of all nationalities throughout its history, and continues to serve and nurture Catholics within its boundaries after 125 years. Generations later, many of the original church families still continue their lives as members of the parish, and have blended their faith lives with many newcomers of all walks of life. The St. Lawrence Parish complex now includes the beautiful Spanish-Romanesque church—built in 1951—the rectory, convent, and school as well as the original cemetery. The present neo-Romanesque church was designed by Detroit architect DesRosiers. The broad nave seats 800 people, and the parish remains the oldest religious community in Utica.

Mr. Speaker, I stand today to offer my warmest congratulations to the St. Lawrence Parish church congregation on their 125th anniversary. I would also like to ask all of my colleagues to join me in honoring this parish, which has, for so many years, strongly devoted itself to the service of its community.

TRIBUTE TO STORRER FAMILY

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. CAMP. Mr. Speaker, it is with great pleasure that I rise today to recognize a truly outstanding family in mid-Michigan, the Storrer family of Owosso, MI. This recognition is in honor of their 100th year of service to the community.

In 1891, Frederick J. Storrer, known to some as the "hustling clothier", became a member of Wicking and Storrer Clothing. Three generations later, Storrer's Clothing still stood as one of Owosso's finest clothing stores. The store officially closed in February 1986, under the presidency of John Storrer, grandson of the founder. However, James Storrer, another grandson, and his wife, Fayenne, plan to open a men's specialty store soon and to continue the tradition that began in 1891.

Over the years, several members of the Storrer family have served in the three branches of the U.S. armed services with one member, Robert L. Storrer, serving as a Golden Eagle in World War I and a Captain in the Civil Air Patrol in World War II.

The members of this family have not only served their country but also their community in a manner which deserves recognition. Many have been members of the Shiawassee Shrine Club, American Legion Post 57, Owosso Elks Lodge 753, Rotary International, and the Chamber of Commerce.

The third generation of this family has also been very active in community and professional organizations. James has been the president of the State Exchange Club, and a member of both the National Exchange Board of Education and the National Board of Trustees of the National Exchange Club.

This family's dedication to their community is summed up best in a quote from Robert L. Storrer. He once stated that the desire of Storrer's Clothing is to "do something for the city in which we live. Not in the form of a benefactor, but as an improvement to the downtown area. We live here and our interests are here." Later, after having decided to open the new shop, James Storrer referred to his father's words and added "it's about time we have another Storrer as the hustling clothier."

Mr. Speaker, I know that you will join me today in commending the Storrer family on their 100 years of service to mid-Michigan. We all wish James and Fayenne Storrer well and continued success in reopening this historic establishment.

MILTON BRUNSON: A PIONEER OF COMMUNITY CHOIRS

HON. BEN ERDREICH

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. ERDREICH. Mr. Speaker, it is with great pride I welcome to Jefferson County one of the Nation's foremost choral directors, bass soloists, and ministers, the Rev. Milton Brunson. I know I speak of all of Jefferson County in giving Reverend Brunson and enthusiastic and appreciative welcome to the 75th Anniversary of the Apostolic Overcoming Holy Church of God.

During his remarkable music career spanning 43 years, Reverend Brunson developed and organized dozens of community choirs, including the renowned Thompson Community Singers. Named for the late Rev. Eugene Thompson of St. Stephen's Church, the Thompson Community Singers grew from an ensemble of 48 to more than 200 voices. The Thompson Community Singers became a legendary fixture on Chicago's West Side, with many distinguished alumni rising from their ranks. Thanks to Reverend Brunson's commitment, the Thompson Community Singers celebrate their 33d birthday this year.

Reverend Brunson's talents led to his selection as a director of a 1,000 voices chorus at Cominsky Park. His active radio ministry launched the "Gospel Sounds" programs.

Reverend Brunson's contributions have not been limited to music. He has counseled at-risk young people, worked with Dr. Martin Luther King in the formation of Operation Breakfast, and been active in Chicago school crisis-solving for more than 15 years.

Reverend Brunson has also donated his considerable talent to Operation Breadbasket and Operation PUSH. He served as chairman of the Garfield Organization and the West Side Ministers' Coalition.

Reverend Brunson, through his dedication to music, ministry and community, has touched our lives and improved our world. We are truly honored to welcome him to the Magic City.

INTRODUCTION OF CONCURRENT RESOLUTION RECOGNIZING COAST GUARD FOR ROLE IN PERSIAN GULF WAR

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. GEJDENSON. Mr. Speaker, since the 100-hour war against Saddam Hussein ended, Americans have rightfully been proud of the brave men and women of the Armed Forces. Americans have appropriately recognized and honored their courage, skill, and expertise for a job well done.

We have praised the Air Force for the unrelenting air campaign, which crippled Saddam Hussein's forces. We have praised the Navy for their role in the air campaign and for subduing the Iraqi Navy, making them an insignifi-

cant force and allowing the allies to focus troops and supplies on other areas and we have praised the Army for their success in the ground campaign.

Unfortunately, one branch of the service, the U.S. Coast Guard, has mostly gone unrecognized for its contribution. That is why I am introducing a resolution recognizing the valuable role of the U.S. Coast Guard in Operation Desert Storm and Operation Desert Shield.

Without the Coast Guard, the operations of the U.S. military may not have been so smooth, efficient, or decisive. This resolution will bring attention to the Coast Guard's contribution and will honor the brave men and women, the active personnel and the reservists who were called up and immediately went to work, facilitating the smooth handling of Operation Desert Storm and Desert Shield.

Mr. Chairman, though many may not realize it, more than 950 Coast Guard reservists were called up to participate in Operation Desert Shield and Desert Storm serving in vessel inspection units, port security units in the gulf, and in supervising the loading of munitions and hazardous military cargoes.

It is important to recognize that the Coast Guard monitored the offloading and shipment of more than 4 million tons of cargo bound for the troops in the gulf, with no significant accidents.

The unique expertise of the U.S. Coast Guard law enforcement detachments, with their expertise in maritime sanctions enforcement, vessel boardings, and vessel inspection, led the United Nation's sanctions enforcement forces in more than 60 percent of the nearly 600 boardings in support of the international maritime interception operations in the Middle East. In addition, the U.S. Coast Guard also provided training to others to enable the maritime interdiction forces to be able to effectively and safely enforce the U.N. sanctions.

More than 550 Coast Guard reservists served in port security units deployed in the gulf to provide port security and waterside protection of ships offloading essential cargo in the gulf. This enabled crucial military and other support cargo to safely be brought into the theatre of operations, be safely offloaded, and put into operations.

After Saddam Hussein created this massive oilspill into the Persian Gulf, the U.S. Coast Guard, through its environmental response program, headed the international interagency oil pollution response team at the request of the Saudi Government. Coast Guard Falcon aircraft with oilspill aerial surveillance and mapping capabilities were deployed in the area and quickly assessed the size and depth of the problem.

The Coast Guard Research and Development Center located in Groton, CT, developed a deployable differential global positioning system capability for use with the explosive ordnance disposal search detachment. Their successful development of this equipment improved the efficiency and effectiveness of the minesweeping and ordnance countermeasures operations in the gulf, saving thousands of dollars in direct operations costs, and the inestimable savings in lives and equipment that could have been lost had this Coast Guard system not been developed.

Mr. Chairman, in addition to their direct gulf activities, Coast Guard personnel also played a critical role in the successful outcome of Operation Desert Storm and Operation Desert Shield by facilitating the safe transport of cargo, and facilitating the approval of Ready Reserve vessels to be able to carry important cargo to the Gulf. The Coast Guard vessel inspection program conducted the required inspections of 73 Sealift vessels, primarily activated Ready Reserve force vessels brought into service because of this operation. Additionally, the activation of a large number of reserve vessels, as well as the significant increase in military vessel traffic resulted in a vast increase in marine casualties requiring Coast Guard personnel actions and investigations. As a result, some field units have seen more than 300 percent increase in their investigative work load. Many of these investigations will continue for months.

The increased marine traffic and the necessity to move huge amounts of equipment and supplies also required the Coast Guard to develop a flexible Merchant Marine manning and licensing program to facilitate bringing reserve vessels into action and to ensure that ship crews were adequately trained to secure maximum safety.

U.S. Coast Guard personnel served in the joint information bureau combat camera and public affairs staff.

Coast Guard personnel served in various joint command and control staffs in the gulf theatre of operations.

The U.S. Coast Guard Intelligence Coordination Center provided support, monitoring, reviewing, and evaluating of political, terrorist, military, and intelligence activities related to Desert Shield/Storm. Specifically, Coast Guard intelligence forces were deployed to determine threats to Coast Guard forces, overseas and port security units. This was also expanded to provide intelligence support to the National Oceanic and Atmospheric Administration oil-spill team which was deployed at Coast Guard headquarters.

Mr. Chairman, I believe that we must recognize the important role of all of our Armed Forces in the Persian Gulf. As the summer proceeds and we honor our troops in parades and celebrations throughout the country, it is my hope in introducing this resolution that all Americans recognize and appreciate the important role of the U.S. Coast Guard in the Persian Gulf war. I urge my colleagues to join me in cosponsoring this resolution.

ALTERNATIVE FUELS/HIGHWAY BILL INTRODUCTORY STATEMENT

HON. PHILIP R. SHARP

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 5, 1991

Mr. SHARP. Mr. Speaker, today I am pleased to introduce, on behalf of myself and several of my colleagues, a bill that will stop penalizing States for using alternative motor fuels. Unfortunately, under current law, several States that are leaders in the sale of alternative motor fuels are losing millions of dollars in Federal highway funds as a result of that

leadership. Yes, believe it or not, in these times when the Congress is hard at work developing incentives and mandates to increase alternative fuels, we are stuck with a highway fund allocation formula that is tantamount to a penalty for using alternative fuels.

One important blow that Nation has struck for energy independence and clean air is the widespread use of ethanol as a gasoline additive. A major force driving the use of ethanol blends has been the exemption of gasohol from part of the Federal excise tax on gasoline.

Natural gas and electricity are also exempt from highway taxes, and many States are moving aggressively to increase their use.

The formula for allocations from the highway trust fund, however, is based on taxes paid in each State. States furthering our national energy security and air quality goals through the use of tax-exempt or tax-reduced alternative fuels are thus penalized by the loss of highway funds.

My bill simply requires that allocations from the highway trust fund be calculated based upon what a State's contribution to the fund would have been if all motor fuels had been taxed at the same rate as gasoline. This will correct a significant unintended consequence of the current highway allocation formula.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, June 6, 1991, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JUNE 7

9:30 a.m.

Armed Services

Projection Forces and Regional Defense Subcommittee

To hold hearings on S. 1066, authorizing funds for fiscal years 1992 and 1993 for the Department of Defense, focusing on antisubmarine warfare programs, including attack submarine programs.

SR-222

Governmental Affairs

To hold hearings on the nomination of Preston Moore, of Texas, to be Chief

Financial Officer, Department of Commerce.

SD-342

Joint Economic

To hold hearings to review the employment-unemployment situation for May.

SD-562

JUNE 11

2:00 p.m.

Energy and Natural Resources

Mineral Resources Development and Production Subcommittee

To hold hearings on S. 433, to provide for the disposition of certain minerals on Federal lands, and S. 785, to establish a Commission to study existing laws and procedures relating to mining.

SD-366

2:30 p.m.

Appropriations

Foreign Operations Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1992 for foreign assistance, focusing on security assistance programs.

S-126, Capitol

Environment and Public Works

Toxic Substances, Environmental Oversight, Research and Development Subcommittee

To hold hearings to examine electric and hybrid vehicle technologies.

SD-406

JUNE 12

9:00 a.m.

Armed Services

To hold a briefing on the Persian Gulf War.

SH-216

Select on Indian Affairs

To hold hearings on S. 962, and S. 963, bills to confirm the jurisdictional authority of tribal governments in Indian country.

SR-485

9:30 a.m.

Energy and Natural Resources

Business meeting, to consider pending calendar business.

SD-366

Governmental Affairs

Permanent Subcommittee on Investigations

To hold hearings to examine certain issues relating to conventional weapons trade.

SD-342

Veterans Affairs

To hold hearings on S. 775 and S. 23, to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain disabled veterans, sections 111 through 113 of S. 127, and related proposals with regard to radiation compensation, and proposed legislation providing for VA hospice-care.

SR-418

10:00 a.m.

Finance

Taxation and Debt Management Subcommittee

To hold hearings on miscellaneous tax bills, including S. 90, S. 150, S. 267, S. 284, S. 649, and S. 913.

SD-215

Judiciary
Constitution Subcommittee
To hold hearings on proposed legislation authorizing funds for the Civil Rights Commission. SD-226

2:00 p.m.
Armed Services
Strategic Forces and Nuclear Deterrence Subcommittee
To hold hearings on S. 1066, authorizing funds for fiscal years 1992 and 1993 for the Department of Defense, focusing on the safety and restart issues. SR-222

Judiciary
Patents, Copyrights and Trademarks Subcommittee
To hold hearings on S. 654, to revise Federal patent law to provide for the patentability of certain processes along with a machine, manufacture, or composition of matter with which they are associated, and S. 756, to revise Federal copyright law to provide an automatic copyright renewal system for all works copyrighted before January 1, 1978. SD-226

JUNE 13

9:00 a.m.
Commerce, Science, and Transportation
To hold hearings on the nominations of Carolyn R. Bacon, of Texas, Martha Buchanan, of Texas, and Sheila Tate, of Virginia, each to be a Member of the Board of Directors of the Corporation for Public Broadcasting. SR-253

9:30 a.m.
Commerce, Science, and Transportation
Communications Subcommittee
To hold hearings to review revenues from additional radio spectrum allocations. SR-253

Environment and Public Works
Environmental Protection Subcommittee
To hold hearings on proposed legislation on municipal pollution control, including S. 1081, authorizing funds for water pollution prevention and control programs of the Clean Water Act. SD-406

Governmental Affairs
Oversight of Government Management Subcommittee
To hold oversight hearings of enforcement of anti-dumping and countervailing duties. SD-342

10:30 a.m.
Armed Services
To hold hearings on the nominations of Gen. Gordon R. Sullivan, USA, to be Chief of Staff of the Army, and Lt. Gen. Carl E. Mundy, Jr., USMC, to be Commandant of the Marine Corps. SR-222

Commerce, Science, and Transportation
Foreign Commerce and Tourism Subcommittee
To hold hearings to examine national tourism policy. SR-385

1:30 p.m.
Judiciary
Constitution Subcommittee
To hold joint hearings with the House Committee on Judiciary's Subcommittee on Civil and Constitutional Rights on certain issues relating to DNA. 2226 Rayburn Building

2:00 p.m.
Armed Services
Strategic Forces and Nuclear Deterrence Subcommittee
To continue hearings on S. 1066, authorizing funds for fiscal years 1992 and 1993 for the Department of Defense, focusing on chemical defense and chemical demilitarization issues. SR-222

Foreign Relations
To hold hearings on the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, with Annex, signed at Washington, June 1, 1990 (Treaty Doc. 101-22). SD-419

JUNE 18

9:30 a.m.
Governmental Affairs
Permanent Subcommittee on Investigations
To resume hearings to examine efforts to combat fraud and abuse in the insurance industry. SD-342

10:00 a.m.
Judiciary
To resume hearings on legislative proposals to strengthen crime control. SD-226

JUNE 19

9:00 a.m.
Select on Indian Affairs
To hold oversight hearings on the National Native American Advisory Commission. SR-485

9:30 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings to examine dairy supply management options. SR-332

10:00 a.m.
Foreign Relations
European Affairs Subcommittee
To hold hearings to examine the future of the Soviet economy. SD-419

1:30 p.m.
Agriculture, Nutrition, and Forestry
To continue hearings to examine dairy supply management options. SR-332

2:00 p.m.
Commerce, Science, and Transportation
Communications Subcommittee
To hold hearings on proposed legislation authorizing funds for the Corporation for Public Broadcasting. SR-253

Energy and Natural Resources
Energy Regulation and Conservation Subcommittee
To hold hearings on S. 933, to provide fair funds to consumers of natural gas who are found to have been overcharged. SD-366

JUNE 20

9:30 a.m.
Commerce, Science, and Transportation
Communications Subcommittee
To hold hearings to review broadcasters' public interest obligations. SR-253

JUNE 26

9:30 a.m.
Governmental Affairs
Permanent Subcommittee on Investigations
To resume hearings to examine efforts to combat fraud and abuse in the insurance industry. SD-342

Veterans' Affairs
Business meeting, to mark up pending calendar business. SR-418

2:00 p.m.
Select on Indian Affairs
To hold hearings on S. 362, to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama. SR-485

JULY 16

9:30 a.m.
Commerce, Science, and Transportation
Surface Transportation Subcommittee
To hold hearings on proposed legislation authorizing funds for rail safety programs. SR-253

CANCELLATIONS

JUNE 20

9:00 a.m.
Select on Indian Affairs
To hold oversight hearings on the Navajo-Hopi relocation program. SR-485

POSTPONEMENTS

JUNE 6

9:30 a.m.
Governmental Affairs
Oversight of Government Management Subcommittee
To hold hearings on enforcement and administration of the Foreign Agents Registration Act (FARA). SD-342