SENATE—*Thursday, June 6, 1991*

(Legislative day of Monday, June 3, 1991)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable CHARLES S. ROBB, a Senator from the State of Virginia.

PRAYER

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

Let us pray:

But he that is greatest among you shall be your servant.—Matthew 23:11.

Eternal God, we celebrate with gratitude and profound appreciation the many men and women who serve the public servants in the U.S. Senate. When we contemplate their faithful, dedicated service we realize the Senate could not do its work without them.

We ask Your blessing upon the food service people, those who maintain buildings and grounds, the office and committee staffs, the wonderful young people who are pages, those who provide security—uniformed and plainclothes—the doormen and floormen, the staffs in the Cloakrooms and the officers of the Senate. And as we remember them, we also remember their families. Thank you, Lord, for this multitude who labor behind the scenes and help those up front look good.

We pray in the name of Him who was the Servant of servants. 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 6, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHARLES S. ROBB, a Senator from the State of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader, Senator MITCHELL, is recognized for 7½ minutes.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning the time for the two leaders has been reduced to 7½ minutes each. Immediately following the time for the two leaders, there will be a period for morning business not to extend beyond 11:45 a.m. during which Senators may speak. The hour from 10:15 a.m. until 11:15 a.m. will be under the control of the Republican leader or his designee.

Mr. President, as I have previously indicated on several occasions, it is my hope that we can proceed to consideration of the surface transportation bill and then the crime bill as soon as possible.

I believe that these two important measures warrant the attention of the Senate, and I hope that all Senators will cooperate in permitting us to proceed to them as soon as possible. I recognize that both are complex and controversial in nature and that many Senators will have amendments that they wish to offer. That is appropriate and understandable. But, obviously, no one can offer an amendment until we get to the bills. So I hope we will be able to get to those bills as soon as possible, begin debating them, voting on amendments, and ultimately dispose of them as the Senate decides.

Mr. President, I reserve the remainder of my leader time and yield to the distinguished Republican leader.

Mr. DOLE. Mr. President, if I might respond to the majority leader, I know there is a meeting of a number of Senators on both sides, who have different views on the highway bill, particularly on a formula, I guess. They are meeting either late this morning or early afternoon. So I do not think there is any effort to not move to it. If they can work it out, we can save a great deal of time. I will cooperate with the majority leader in an effort to get the bill before the Senate. If not, at least they ought to be, maybe, discussing it on the Senate floor.

Mr. MITCHELL. I thank my colleague and look forward to early consideration and debate on that measure.

CAMPAIGN FINANCE REFORM

Mr. DOLE. Mr. President, last month, the Senate passed legislation that described itself as campaign finance reform.

Republicans resisted the bill, claiming that it was proincumbent, antipolitical party, and a soak-the-taxpayers welfare program for politicians.

Well, Mr. President, Republicans are not just grinding a partisan ax when leveling these criticisms.

In two articles that recently appeared in the Washington Post, columnist and political observer David Broder uses a single word to describe S. 3—the word "bogus."

According to Mr. Broder, if we are really serious about helping challengers, if we are really serious about improving competition in politics, then we ought to be strengthening—not weakening—the one institution in America that has a vested interest in removing incumbents—the political parties, Democrat and Republican.

Mr. President, party building was one of the key recommendations of the bipartisan panel of campaign finance experts, appointed last year by the majority leader and myself.

And it has been one of the key ingredients of the Republican campaign reform strategy from the very beginning.

But, unfortunately, S. 3 clamps down on legitimate party activities, while putting no clamps on illegitimate—undisclosed—nonparty influence.

It makes it tougher for political parties to engage in their bread-and-butter activities—like get-out-the-vote and voter registration—but makes it easier for special economic interests to dump enormous sums of undisclosed, unregulated cash into the coffers of favored incumbents.

As Mr. Broder points out, S. 3 flunks the procompetition test.

And it will ultimately restrict—not enhance—citizen participation in the very process that we are trying to reform—the process of financing congressional campaigns.

So, Mr. President, if Congress is to pass meaningful campaign finance reform legislation this year, it is my hope that my colleagues on the other side of the aisle will realize that political parties are not so bad after all.

Political parties help challengers. They increase citizen participation in politics.

And they should be strengthened—encouraged—in any proposal that bears the name reform.

Mr. President, I ask unanimous consent that both Washington Post articles be printed in the RECORD immediately after my remarks.

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

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

[From the Washington Post, June 2, 1991]

BOGUS CAMPAIGN FINANCE REFORM

(By David S. Broder)

In 1990, the Ford Motor Co. sold more than 3.5 million vehicles in the United States and spent $735 million on advertising—an average of about $208 per customer. General Motors and Chrysler appear to have spent at least as much—maybe more.

I tell you this not to make some point about auto advertising but to provide the context for the debate about political campaign financing. When I asked Washington Post researcher Mark Stencel to run these numbers, I had just finished reading the five days of debate that preceded last week's Senate passage of a campaign finance bill. That bill was designed to curb what one Democrat after another called "the money chase" that now supposedly makes a misery of senators' lives.

Sen. David Boren (D-Okla.) repeatedly warned that "the amount of money [needed] to run successfully for the House and the Senate has been escalating at an alarming rate. . . . Spending per voter [in Senate races] last year continued to climb, going up from the rate of $1.41 per voter spent in 1988 to $1.87 per voter in 1990."

Even at that higher figure, it is less than 1/100th of what any of the Big Three auto companies spends on persuasion for each sale. The comparison is not irrelevant. One reason the cost of campaigns is rising is that candidates are competing, not just with each other, but with all the other products and services being marketed to the American public. Why should a society that tolerates an avalanche of auto, soft drink, beer and cold remedy advertising choke on a relatively small amount of political persuasion?

The answer, we are told, is that senators are forced to engage in a nonstop pursuit of contributions, diverting them from their real work as legislators. Well, as Sen. Mitch McConnell (R-Ky.) pointed out, more than $80 of every $100 senators raise is collected in the final two years of their six-year terms. They could, with minimal risk, give themselves a complete vacation from fund-raising for two-thirds of their terms. If they don't, it's because they don't want to, not because they have to.

I dwell on these points to illustrate what is so maddening about the way Congress deals with campaign finance reform. The bill the Senate passed and the one the House is likely to pass in the next couple months are based on public perceptions the members of Congress know to be false. They are tailored to satisfy an agenda set largely by editorial writers and by Common Cause. The members of Congress use the camouflage provided by these well-meaning reformers to skirt the most serious problem in the way campaign funds are raised and distributed.

The Senate bill caps campaign spending and (in a move of every doubtful constitutionality) abolishes political-action committees (PACs), the convenient symbol of special-interest influence. It was passed amid knowing winks, after being loaded with other feel-good "reforms," like a purported ban on virtually all outside income. Senators were read a letter from President Bush saying he would certainly veto it because of his objection to spending limits and public financing.

Bush can match anyone when it comes to phony arguments on this issue. Although he has happily accepted taxpayer financing in his past presidential campaigns, he argues that it would be indecent for congressional races to enjoy a similar subsidy.

There is a widespread view on Capitol Hill that the provisions of the House and Senate bills don't matter, because the real measure—if there is to be one—will be written in a House-Senate conference, with the bipartisan leaders of both bodies negotiating with each other and with the president.

One has to hope so. The bills taking shape deal unsatisfactorily with the crucial problem. That problem is the financial starvation of challengers, especially in the House but significantly in the Senate as well.

Competition—the lifeblood of democracy—is drying up, because challengers have been almost shut out of the fundraising game.

The Senate bill addresses this crucial problem only indirectly. It uses voluntary spending ceilings to rein in free-spenders, who are mainly incumbents. It also offers candidates who accept spending limits partial public financing and reduced TV rates. But it distributes these goodies with fine impartiality, evenhandedly rewarding cash-starved challengers and cash-rich incumbents—with their government-paid staffs, offices and mailings, and their easy access to contributors. It does not give challengers one compensatory break.

The House bill will also likely rely on a combination of ceilings and subsidies. But on neither side of the Capitol are the Democrats prepared to do the one thing that might really help challengers—ease the restrictions on fund-raising and spending by the political parties, the only institutions in America that have an intrinsic interest in electing non-incumbents to office.

Indeed, the Senate bill (and likely the House version as well) threatens new restrictions on state parties, limiting the contributions they can accept for coordinated registration and get-out-the-vote campaigns. These efforts are at the heart of electoral democracy, but Congress is threatening to clamp down on them. To call this an improvement takes a greater leap of faith than I can muster.

[From the Washington Post]

POWER TO THE PARTIES

(By David S. Broder)

Perhaps because he came to office as an unelected president, perhaps because he had been so close for so many years in Congress to his own western Michigan constituents, Gerald Ford worried even more than most politicians about staying in touch with grass-roots America.

The secretary of health, education and welfare in his administration, former University of Alabama president David Mathews, shared Ford's understanding of the importance of being connected to Main Street thinking. As president of the Kettering Foundation, he has kept his focus on the damaged links between the governed and those governing in this republic.

The foundation has just published the latest and most important in a series of reports on that topic, called "Citizens and Politics: A View From Main Street America." It is so right on so many fundamental matters that its silence on one vital topic is all the more astounding.

The body of the report is a summary and analysis of 10 focus groups, with cross-sections of people, held in scattered cities across the nation. Six were held in the middle of last year; four others, this spring. But the Harwood Group, which conducted the sessions, found no significant shift from prewar to postwar attitudes on politics.

In both time periods, and in all 10 sessions, those interviewed expressed a disdain and distrust for politics so deep that Mathews is well-justified in saying that "the legitimacy of our political institutions is more at issue than our leaders imagine."

That view is amply confirmed by the experiences I have had in the last five years when interviewing voters for The Post. Those interviews also bear out two other points emphasized in this report that contradict some of the conventional wisdom.

First, the problem is not voter apathy—but frustration. Citizens "argue that politics has been taken away from them—that they have been pushed out of the political process. They want to participate, but they believe there is no room for them," the report says.

Second, fears that this generation of Americans has become selfish, self-centered and devoid of concern for community and country are unfounded. On the contrary, millions of people are actively involved in neighborhood or community efforts. These require political skills (organizing, agenda-setting, negotiating), but they sharply separate them from the politics they despise. At the level at which they are personally involved, they see a possibility of change and accomplishment. Politics—which to them means mostly national and state government—is beyond their influence and, therefore, they believe, beyond redemption.

"Politics," said a Los Angeles woman, "is rules, laws, policies. This has nothing to do with why I am involved in my community."

All that, from my experience, is on target and has important implications. It means, among other things, that good-government reforms like public financing of campaigns or a ban on politicans' honoraria address only symptoms, not causes, of public disillusionment.

The root cause is that people have lost their belief that, as individuals they can influence the distant decison-makers in Washington or the state capital. "They believe they have been squeezed out," the report said, and the system they should control has been usurped by "politicians, powerful lobbyists and the media," who communicate and negotiate with each other but ignore the concerns the citizens want addressed.

The report suggests a variety of ways that the shattered connection between citizens and governments might be rebuilt. But, astonishingly, its analysis does not even mention that in the last 40 years, we have seen the steady decline of the political party organizations that once functioned as the links between local citizens and governments at all levels.

Do elected officials no longer hear or heed what citizens think? It is largely because the political networks, from precinct captains to county and state chairmen, that once carried those messages, no longer exist.

Do interest groups and political action committees now dominate the governmental process? It is largely because aspiring candidates and elected officials no longer can look to their parties for financial and grass-roots organizational support.

Do the mass media now play an exaggerated role in promoting or crippling political careers and in setting the issues agenda? It is largely because communication moves almost exclusively through the media, not up and down the party networks from precincts to Capitol Hill and the White House.

Disillusioned citizens are right in thinking that individuals are nearly powerless in a mass society's politics. This report tells us, sadly, that they have entirely forgotten that

parties existed to inform, to mobilize and to empower them—the very thing they want but no longer know how to get.

The report correctly emphasizes that American democracy can only be rebuilt from the bottom up. Now someone needs to remind people that we don't need to invent a solution. We need only to remember what it was like when Republican and Democratic precinct captains worked and organized neighborhoods across America.

H.R. 1: OUT OF TOUCH WITH AMERICA

Mr. DOLE. Mr. President, yesterday the House of Representatives passed H.R. 1, the quota bill vetoed by President Bush last year.

Mr. President, H.R. 1 has a civil rights label, but it is a label, and nothing else.

H.R. 1 is not about equality of opportunity.

It is about equality of results.

It is not about restoring our historic civil rights laws.

It is about transforming title VII into a national tort law that will keep the American Trial Lawyers Association in business for decades to come.

So, Mr. President, the bad news is that the House of Representatives has voted for time-consuming lawsuits, for high-priced lawyers fees, for quotas in every workplace in America.

But the good news, believe it or not, is that the quota bill has failed to garner the necessary 290 votes to override President Bush's sure-to-come veto.

The quota bill has now passed the House. And it will probably pass the Senate later this year.

But, fortunately, the quota bill will not become law, because the President will save Congress from itself.

President Bush has proposed the real McCoy in this debate—a fair, responsible, tough civil rights bill—that will guarantee equality of opportunity for all Americans.

With the President's package, we can have a Rose Garden signing ceremony.

We can have a strong, meaningful civil rights bill.

But, Mr. President, my colleagues on the other side of the aisle must first extricate themselves from the quota quagmire and come back to America—where equality of opportunity is a shared value, but where equality of results—quotas—are as popular these days as Saddam Hussein.

Mr. President, I reserve the remainder of my time.

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 11:45 a.m. with Senators permitted to speak therein.

The Chair recognizes the Senator from Wyoming [Mr. WALLOP].

Mr. WALLOP. Mr. President, is the understanding of the Senator from Wyoming correct that there is to be a period of time reserved for the Republicans after which time there is a period of time reserved for Democrats?

The ACTING PRESIDENT pro tempore. Under the previous order, the time between 10:15 a.m. and 11:15 a.m. is controlled by the Republican leader.

Mr. WALLOP. I thank the Chair.

MISSILE DEFENSE

Mr. WALLOP. Mr. President, the great political philosopher Edmund Burke once said that governing obliges one to make choices—and that often the choice lies between the disagreeable and the intolerable. On many occasions I have reminded my colleagues that the art of government is the art of making choices.

In our representative democracy, the people govern themselves through their elected legislators and magistrates. It is simply not possible for 100 million voters to make their choices individually and directly on every question. They delegate that task to their elected officials, who then must choose between competing courses of action for them.

In this regard we are their fiduciary agents. The word fiduciary comes from the Latin fiducia, which means trust. As fiduciaries we accept the special trust, confidence, and responsibility the American people repose in us. We are entrusted to carry out their public obligations, to enact good laws, to spend public moneys wisely; in sum, to safeguard their interests. Standing in for the people, we study, reflect, debate, and wrestle with the difficulties and exigencies of public policy on their behalf. But when all that is done, the moment finally arrives in which we must earn our pay and justify our office. Then we must choose.

Nowhere is this responsibility more evident, or more crucial, than in the realm of national security. Our fiduciary responsibility demands above all that we ensure the security of the American people. We might fall short in other legislative functions—and in my opinion we often fail miserably in our stewardship of the taxpayers' hard-earned money. But we can survive most such failures. What we cannot survive is the failure of the Congress and the executive branch to meet threats to national security, indeed to America's survival.

Mr. President, no issue dramatizes the heavy responsibility we have assumed than does missile defense. And yet the basic choices we profess to make are obscured by the 1972 ABM Treaty. The Reagan administration built the SDI Program upon a fundamental contradiction: The logic of the ABM Treaty and the logic of missile defense. The propositions are antithetical, but the Congress and two successive administrations have been unwilling to face up to this fundamental contradiction.

I might say that the Senator from Virginia, the colleague of the Senator in the Chair, posed that question to the Senate this year. For reasons political rather than strategic we failed to act and failed to make that choice, but he has promised we will return to that. I hope we will and indeed trust that we shall.

What happens is the Members of Congress say, "Well, we don't have to worry about the ABM Treaty for a long time to come. Let's avoid dealing with that now." But it is a problem now, and has been from the beginning. In building our missile defense program upon such a vast contradiction, it allows all acting as America's fiduciary agents to avoid responsibility.

Mr. President, if there was a lesson in the gulf, and lots of people are drawing all kinds of lessons, and one of the lessons will be on Saturday downtown as we celebrate the triumph of America's forces and her allies, but the one principal lesson ought to be clear to everyone who looks at it at all is that we cannot find and cannot neutralize mobile missiles. It cannot be done. With all the sophistication that we demonstrated in every other element of warfare, we could not find the Scuds; we could not destroy them. And now to our dismay we are finding there were many more left than we had supposed.

The second lesson followed from the first. That even an inadequate defense, a Patriot missile designed and devised to defend against aircraft was vastly to be preferred than no defense at all.

So, Mr. President, I find it totally inexcusable, totally wrongheaded, of the House of Representatives to refuse to provide for Americans what we willingly provided to Israel and Saudi Arabia, a defense against missiles.

We proved in the gulf that even something designed as an air defense missile mechanism can hit a ballistic missile. Sure, the Scud is an old missile, and sure the Patriot is not part of the strategic defense, but Americans now believe that you can in fact hit a missile with a missile, that you can defend against these weapons of death, weapons of terror, things that threaten.

But we refuse to supply them to Americans, or at least the House of Representatives does. There is, Mr. President, one armament in the world demonstrably that now threatens Americans and that is missiles, Third World missiles, or Soviet missiles, accidently or intentionally, as terror or as acts of war. These are things that we know take place. These are things about which we in this country can do nothing because we refuse to act.

Twenty countries more or less are said to be going to have missiles within

the rest of this century. Some will be nuclear. Some can be chemical. All can threaten America in one way or another, or our allies. Yet what the House of Representatives has done was to say that does not matter, Americans, these things that we provide to the Israelis and Saudis, we will not provide for you.

Mr. President, I think that is dead wrong. The one thing now that separates the Soviet Union from inadequate Third World status are its strategic forces. Mr. President, the array upon array of missiles that can hit and destroy America as we know, more of them mobile than last year, more next year than the year before, we learned that we cannot find them. B-2 or no B-2, we cannot find mobile missiles.

So what are we to say to Americans? Even though we know how to protect you from these things in the most part we are not going to provide that. That is what the Democratic majority in the House of Representatives has done. They have said it does not matter, Americans, that we have this technology, we are simply not going to provide it.

The Soviet strategic armaments include strategic defenses and includes significant amounts of work on it. I might say, Mr. President, that as yet we have not dismantled Krasnoyarsk. As yet we have not got either a House of Representatives, a Senate, or even an administration willing to take the Soviets at their words that this was a violation and in fact its purpose had been to complete the ring of strategic defenses around the Soviet Union.

Mr. President, the House action was irresponsible; it is my hope that the Senate does not follow in it. Acting as America's fiduciary agent, the U.S. Senate consented to the 1972 ABM Treaty, as stipulated in article II, section 2 of the U.S. Constitution. In effect, we the Senate, along with the executive branch, committed the American people to a contract with the Soviet Union in the form of this treaty.

Responsible fiduciary agents should frequently ask themselves, on behalf of their clients, "How is this contract working out? Is the other party carrying out its terms? Even more important, is this contractual arrangement still in our clients' interest, or have conditions perhaps changed? Is the contract bringing about the conditions our clients desired? Is it living up to the promise which led us to enter into it in the first place?"

The answer, Mr. President, has to be no.

To ignore or neglect this kind of periodic examination of a binding obligation is a supreme act of irresponsibility on the part of a fiduciary. And the treaty, the contract itself, recognizes that that must take place because the means by which it can be terminated or renegotiated are patently clear within the terms of the treaty.

Mr. President, however others of my collleagues may feel, I feel very keenly my responsibility as a fiduciary for the people of Wyoming who elected me, as well as to the American people as a whole. Consequently, I and my colleagues speaking with me today insist that this body begin asking questions on behalf of our clients, the American people: Has the ABM Treaty lived up to its promise? Have the conditions upon which we consented to this treaty been met?

Fortunately, Mr. President, there is a record of these conditions and the promise which induced the Senate to agree in 1972 to a treaty that intentionally left America defenseless, vulnerable as a matter of policy, to the most terrifying weapons ever created by man.

Most discussions of the treaty focus on its prohibition of defensive weapons. But Mr. President, the ABM Treaty paradoxically was created not merely to eliminate defensive weapons, but to eliminate offensive nuclear missiles. In 1972 the primary concern was the Soviet heavy ICBM, the SS-9, and submarine-launched ballistic missiles. The Soviet revolution in military affairs was rushing forward, and our strategic planners accepted the arcane, academic theory that mutual vulnerability would bring a halt to the massive increase in the Soviet nuclear arsenal.

Listen to the language of the treaty itself:

The preamble states that the parties agreed to the treaty on the basis of the following reasons: "* * * That effective measures to limit antiballistic missile systems would be a substantial factor in curbing the race in strategic offensive arms. * * * And proceeding from the premise that the limitation of ABM systems * * * would contribute to more favorable conditions for limited strategic arms."

This rationale is reinforced by the U.S. unilateral statement appended to the treaty which says that the U.S. objectives of were to "constrain and reduce on a long-term basis threats to the survivability of our respective strategic retaliatory forces. * * *" It states further that if such limitations in strategic forces were not achieved in 5 years. "U.S. supreme interests could be jeopardized," and that would constitute grounds for withdrawal from the treaty, as allowed in article XV.

The Senate clearly accepted this rationale. Members believe the promise that giving up our means to defend ourselves would somehow lead to a reduction in offensive nuclear missiles, and that the Soviets would have no incentive to continue building them, or developing new types of nuclear weapons. This promise of a mutual reduction in offensive missiles constituted the primary terms of the contract, and codified the doctrine of mutual deterrence, appropriately dubbed MAD, or mutual assured destruction, into U.S. law—and for an unlimited duration.

Senator Hughes's analysis of the treaty was an uncompromising statement of the MAD dogma: "By approving the ABM Treaty we can end our MAD and elusive search for some device that gives us only a false sense of security and settle instead for what has so rightly been called a delicate balance of terror."

The Senate debate in August 1972 makes it abundantly clear that Senators were willing to give up our right of self-defense only in exchange for getting major reductions in Soviet nuclear weapons. Senator Percy said that the treaty would "halt the momentum of Soviet offensive missile programs." Senator McIntyre claimed that the agreement would "slow down the arms race and move us toward a more peaceful world."

Time does not permit me to cite additional such speeches. Senators are free to read the record. But without a doubt, only the promise that the treaty would lead to a reduction in Soviet offensive forces justified its ratification. Senator Buckley, one of two who voted against the treaty, even tried to incorporate an understanding into the resolution of ratification spelling out this fundamental rationale more forcefully and explicitly. He quoted from Secretary of State Rogers' letter of transmittal of the treaty, which contained language similar to the unilateral statement of treaty negotiator Ambassador Gerard Smith:

> If * * * more complete strategic arms limitations were not achieved within 5 years, U.S. supreme interests could be jeopardized * * * constituting a basis for withdrawal. * * *

Senators Mansfield and Javits, leading supporters of the treaty, appealed to Senator Buckley to withdraw his amendment on the grounds that such an understanding was superfluous. They asserted that the Senate position was in full accord with the Rogers/Smith statement, that an additional understanding to that effect was unnecessary, and that U.S. rights to withdraw from the treaty under article XV could be invoked if the promised offensive reductions did not occur.

Mr. President, has the ABM Treaty lived up to its promise? Has it met its own criterion for success, spelled out in the treaty itself? Has American vulnerability to Soviet nuclear missiles led to a reduction, or even a leveling off, in the production in those weapons since 1972?

Sadly, Mr. President, the answer is a resounding "no." Not only has the treaty failed to bring about a reduction in Soviet nuclear missiles, but the huge Soviet strategic arsenal has actually increased many times since the signing of the treaty.

Since 1972, the U.S.S.R. has built and deployed 30 new types of ICBM, SLBM,

cruise missile, or modifications of existing weapons. This extraordinary strategic modernization program includes the mammoth SS-18 and highly threatening mobile ICBM's, the SS-24 and SS-25. In the same period Soviet ICBM and SLBM nuclear warheads grew from slightly over 2,000 to just under 10,000 in 1990. By contrast, American strategic weapons in the treaty-covered period include only a few systems, the C-4 SLBM, the D-5, SLBM, the ALCM, and the MX Peacekeeper. We have no mobile ICBM's, nor are we likely to ever deploy any.

Mr. President, there is only one thing in the world today that can truly threaten to destroy the United States, and that is the Soviet nuclear arsenal. Senators may argue that the Soviet Union is not a benevolent entity, that with Mikhail Gorbachev on his way to Stockholm to pick up his Nobel Peace Prize, the U.S.S.R. no longer threatens us.

I devoutly hope this proves to be so, Mr. President. But who will dare base the security of the American people and the survival of our Nation on hope. The fiduciary agents of United States security are morally obligated to respond to the concrete fact that the Soviets continue, despite glasnost and perestroika, to build and field new nuclear weapons.

Twenty years ago, the Senate said to the American people, "We want you to give up any opportunity to defend yourself against weapons of mass destruction. In exchange for becoming nuclear hostages, we guarantee you that the weapons you fear the most will wither away as a result of rendering yourself naked to them. We further guarantee that if the promised reduction does not occur, we will, as the agents of your security, insist on withdrawing from the treaty and finding some other means of safeguarding you."

Mr. President, our moral responsibility to the American people compels us to admit that our ABM Treaty contract has failed to deliver. In failing, it has left us vulnerable to an overwhelming Soviet nuclear capability, a growing capability that cannot be dismissed simply by attributing peaceful intentions to Soviet leadership.

We can no longer avoid the basic question that the ABM Treaty obscures. The question before us now is not "are you for or against SDI?" The straightforward choice both the Congress and the administration must face is this: "Are you for or against defending the American people from nuclear-armed ballistic missiles?" If we are in favor of defending the American people, Mr. President, then the broken contract, the failed, violated, and outmoded relic of MAD, the ABM Treaty, must be consigned to the dustbin of history where it belongs.

Mr. President, I note that my colleague from Idaho is here and is wishing to speak on this. I would yield to him such time as he may use.

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

The Chair recognizes the Senator from Idaho [Mr. CRAIG].

ABM TREATY

Mr. CRAIG. Mr. President, I thank my colleague for yielding but most importantly I thank him for bringing this important debate to the floor of the Senate.

The question of whether we will vigorously promote the research, development and deployment of a system to defend the United States and our Armed Forces against ballistic missile attack is long overdue. And, at the heart of the debate rests the 1972 ABM Treaty.

Mr. President, without a doubt the focus of the ABM Treaty has consistently been toward the Soviet Union and a handful of other countries. After all, in the early seventies, there were few countries that possessed nuclear weapons.

However, in the 1980's and 1990's, we have seen a rapid increase in the proliferation of ballistic missile technology to Third World nations, placing ourselves in greater peril than the previous two decades or at least as we understood it. It is no longer a threat from just the Soviet Union.

As William Webster, the Director of the Central Intelligence Agency, said in recent testimony, by the end of this century between 15 and 20 developed nations will possess the capability to deploy some form of ballistic missiles.

Furthermore, Senator WARNER was quite correct in his analysis earlier this year of potential global threats to the United States. We cannot, with any degree of certainty, determine the long-term political climate of several countries, that will ultimately become involved. The constant turmoil and instability south of our borders, within the Soviet Union's own borders, throughout the Middle East, and the increasing capability of several countries in ballistic missile technology, should give the United States tremendous cause for concern.

Mr. President, the debate on this issue is not about the technical or legal issues surrounding the ABM Treaty.

Rather, it is about our policy, or lack thereof, to defend our citizens and Armed Forces similar to our ability to defend the citizens of Israel and Saudi Arabia.

Because of the ABM Treaty, we have restricted ourselves from testing and deploying a missile defense system to protect our citizens. The policy is sound, and to a degree, proven in the gulf war. Out of 42 Scud missile launches by Iraq into Israel and Saudi Arabia, 41 were intercepted by our Patriot missiles.

Mr. President, we can defend our troops and citizens from a ballistic missile threat. The question is: Do we have the will and the desire? But if we cannot continue our research, development and eventual deployment of a missile defense system because of restraints imposed by the ABM Treaty, we can do nothing to further our own security or that of our allies. I think that is the question.

To me, it is quite simple. Let the American public, through their elected representatives, determine if it is in our national interests to move toward our own collective security in the strategic defense initiative.

In that regard, I want to share with this body two polls that were taken some time back on this very issue.

In a Los Angeles Times poll, individuals were asked: Should the United States develop SDI even if it violates the ABM Treaty? Sixty-five percent said "yes," while 29% said "no."

I guess what that says, Mr. President, is that we all really do believe in protecting ourselves in trying to preserve our country.

An ABC-Washington Post poll asked: Are you in favor of the strategic defense initiative even if the United States would have to abandon or violate the ABM treaty? Again, 63 percent "yes," while only 32 percent said "no."

I think the answer is clear whether the poll was taken a year or two ago or whether it is today, specially today, after the Persian Gulf war and the success of the Patriot.

Mr. President, I think we should move rapidly with our testing and development of a strategic defense initiative. I am pleased that we can again debate this topic on the floor of the Senate where it ought to be thoroughly discussed and I look forward to the Senate's consideration of SDI funding levels as we are going to consider them in the 1992 Defense authorization bill.

This is a fundamental debate about national security. It ought not be a philosophical debate. It is basic to the well-being of our citizens and our defense forces.

I thank my colleague for yielding, and I yield back the remainder of my time.

Mr. WALLOP. Mr. President, I thank the Senator from Idaho. Clearly, I agree with his statement. This is something that ought to be debated. It ought not to be shunted out for political reasons. Americans are entitled to hear this issue discussed.

A ballistic missile defense is clearly within the technological reach of America. It has clearly not been within the political reach of America and that is the simple distinction between where we are and where we could have been.

Way back in the Carter administration—and they were opposed to it then

openly—they said that we could have had a laser ballistic missile defense boost phase, using chemical lasers, deployed, Mr. President, by 1990 for the sum then of some $28 billion, which would have included all of the research and development, testing and deployment cost of the system.

Would it apply 100 percent protection? No. Do we need 100 percent protection? No. Was it desirable? Of course. But to wait for perfection is to lose the lesson of the Gulf War.

We did not have perfect defenses for the Israelis or for the Saudis. But, Mr. President, I dare anyone to state for the record that the Israelis and the Saudis would have preferred to have been without the defense that they had rather than waiting for the perfect one. that is the question. Logic tells you that there is no means by which mankind can guarantee perfection under all sets of circumstances.

And to deny ourselves adequate defenses in the hopes of perfection is a little bit like saying, well, why would I have eaten breakfast this morning, I am only going to be hungry by lunch; or at lunch, when I am only going to be hungry by dinner. Or to say that, well, I am not going to eat either because it is not going to satisfy me for the rest of my life by eating one is to say the same thing that the House of Representatives just said to the people: America, it is idiotic for you to want to be defensive.

We are not going to do it. The Democrats in the House of Representatives simply said that.

Some of us met with the President yesterday, and his message was that a missile defense was his top priority. He stated it last year at Lawrence Livermore Laboratories, and again just last week at the Air Force Academy. In his view, Mr. President, he has almost compromised enough by going to GPALS and dropping the full up phase I—GPALS, global protection against accidential launches.

Americans know in their hearts that their technology can provide them greater protection than the Congress so far has been willing to give them. Secretary of Defense Dick Cheney, my old colleague from Wyoming, said it was extraordinarily important, his top priority, and that the House action was devastating.

What do Americans have to do to get their Congress to debate these things honestly; not using closed rules and the domination of a fews committee gurus, not using the rules of the Senate to deny us the opportunity to debate whether or not the ABM Treaty is still of service and use to the United States? We do it by facing these questions honorably. For all their difficulty and all their disagreeability, they are there.

I would just say one thing to my colleagues from Idaho, who has left. We need not violate the treaty. The treaty provides for us to give notice, it provides for withdrawal, it provides for the means of renegotiating its provisions.

The Senate of the United States shortly will have the opportunity to face the issue whether or not the American people should be defended. It is the one thing upon which isolationists and globalists alike can agree, that a defense against the missiles of the world is in the interests of the Nation and its people.

I yield to my colleague from Indiana such time as he may desire.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Indiana [Mr. COATS].

BALLISTIC MISSILE DEFENSE

Mr. COATS. Mr. President, I rise today to reiterate my strong support for the development and deployment of a ballistic missile defense system to protect American citizens and soldiers at home and abroad and to afford a measure of defense for key allies and friends. This effort, in my view, is one of the most important national security challenges facing the United States today.

Mr. President, Iraq's use of ballistic missiles in the gulf war underscored the importance and feasibility of missile defense. This experience demonstrated that deterrence is not enough to prevent the use of ballistic missiles, even when threats of retaliation are harsh and credible. It showed that ballistic missiles are likely to be Third World weapons of choice in the future, even when other more conventional means of delivery are available. It also demonstrated how difficult it is to track and destroy mobile missiles before they are launched, a lesson we learned after diverting thousands of air sorties from their original missions. The list of lessons goes on, but these are sufficient to illustrate the fact that the base for missile defenses, both strategic and tactical, has been substantially strengthened by our experience in the gulf.

The world witnessed firsthand how the Patriot antimissile system came to the rescue and virtually neutralized Saddam Hussein's one means of threatening U.S. forces deployed in the gulf. The Congress now owes the American people concrete assurances that it will build on this success by moving vigorously to provide a modern and effective system to defend our troops overseas and American citizens at home.

Although I am hopeful that a consensus will soon be formed in Congress on the importance of theater and strategic missile defenses, I am disappointed that some Members seem intent on severely limiting the scope and effectiveness of a deployable system. While there is almost universal agreement that a robust theater missile defense system is needed as soon as possible to protect U.S. forces deployed overseas, there is a lack of support for strategic defenses—those needed to actually defend the United States. Unfortunately, nobody has adequately explained why we should deploy robust defenses for our forces and friends overseas and yet deny most Americans a similar degree of protection at home.

Certainly the short-range ballistic missile threat overseas is more immediate, and in this sense our most urgent ballistic missile defense requirement is apparent. But there can be no denying that the trend in ballistic missile proliferation is toward long-range, more accurate systems that will soon threaten the United States itself. We should also not ignore the potential for unauthorized or accidental launches of intercontinental missiles currently targeted on the United States. While the likelihood of such a launch may be low, the consequences of not being prepared in the event that the unexpected should happen are grave indeed.

Over the years numerous criticisms have been leveled at the strategic defense initiative—some legitimate but most ill-founded or intentionally misleading. The passage of time and the advance of technology have provided satisfactory answers to all legitimate questions. This progress demonstrates that there is no compelling reason for failing to proceed with President Bush's SDI program to provide global protection against limited strikes. The GPALS program is balanced, technologically realistic and affordable. Most important, it addresses a very real and growing threat to the United States and is vital for U.S. national security. It reponds to all serious criticisms that were raised in last year's Senate debate over SDI.

Why then have so many Members refused to endorse the President's GPALS Program? There are various reasons, but three in particular are worth addressing.

First, some Members simply regard SDI as a political issue and have staked their reputations on attempting to discredit the concept of strategic defense and the strategic defense initiative organization. Members who hold this view are unlikely to favor strategic defense no matter how effective and affordable they are. The existence of this attitude helps explain the House's decision to split theater missile defenses, which they support, from SDIO, which they wish to see fail.

Second, I believe some Members who support limited defenses of the United States are opposed to Brilliant Pebbles or any other spaced-based weapons. This view is based on the concern that, while space has played a military role for decades, it would be provocative and unwise to deploy weapons there. Unfortunately, this artificial distinction between the militarization and the weaponization of space is not compelling and has more-or-less been over-

taken by events. Air Force Secretary Rice and Chief of Staff McPeak both characterized Operation Desert Storm as "The first space war in history" when they testified before the Armed Services Committee earlier this year. Space has become an integral part of our military planning in every sense. Moreover, if we want to talk about "weaponizing space we need to look first at the Iraqi Scuds that used space as a medium for attacking their targets in Israel and Saudi Arabia. Finally, it should be pointed out that even ground-based interceptors engage their targets in space; in the case of the Soviet ABM system with nuclear weapons.

The third reason why support for GPALS has not been stronger has to do with the AMB Treaty, which will need to be revised to accommodate even the ground-based part of the program. It is my firm belief, however, that the AMB Treaty in its current form impedes U.S. national security more than it enhances it. The ABM Treaty was designed to regulate United States-Soviet relations but now prevents the United States from addressing problems that have nothing to do with the Soviet Union.

There is no compelling reason why we should not now move beyond the current ABM Treaty regime to one that permits more comprehensive development, testing, and deployment of missile defense technologies. This can be done cooperatively with the Soviet Union in the defense and space talks. In my view, we should seek to modify the treaty to lift any restriction on research, development and testing, and focus limitations solely on the deployment of weapons. Within these limits we should seek relief from the treaty to permit the deployment of the GPALS architecture.

Of course, as long as the Soviets see a lack of U.S. congressional support for SDI, they have no incentive to seriously negotiate in the defense and space talks. For this very reason the Senate should fully support the President's GPALS Program and reconsider Senator WARNER's sense of Congress amendment on the ABM Treaty, which calls for a 2-year deadline for negotiating amendments to the ABM Treaty. I commend Senator WARNER for his leadership in this area and encourage my colleagues to support his initiative. Passage of the Warner amendment would immediately breath life into the defense and space talks.

Mr. President, before I close I would like to make several comments on the House's decision to gut the SDI Program in the fiscal year 1992 Defense authorization bill. My sentiments were closely reflected in a recent Wall Street Journal editorial entitled "General Aspin's Pork Army." According to the Journal:

The House is acting as if nothing much happened in Iraq, as if Scuds never flew and all future threats have vanished. For all the rethinking in Congress, the Pentagon might as well have lost the war.

It is my hope that the Senate will not follow this irresponsible lead of the House.

In looking at the House's treatment of SDI and their decision to effectively kill the B-2 bomber program, I am concerned that pressure will now build to restore the B-2 at the expense of SDI. Such an outcome would be tragic. I say this as one of the strongest supporters of the B-2 in the Senate. If we learned anything from operation Desert Storm it is that stealth technology and missile defenses save lives. We need both, not one or the other. In my view, any Defense bill that does not adequately support both SDI and the B-2 should be promptly vetoed.

Mr. President, in closing I would like to thank the Senator from Wyoming, Senator WALLOP, for his unfailing leadership in this important area. The American people have been denied a defense against ballistic missiles for too long. This is a vulnerability that will be perpetuated or eliminated according to Congress' will. I hope my colleagues make the correct choice.

I thank my colleague for yielding the time.

Mr. WALLOP. I thank the Senator from Indiana, and I yield such time as he may consume to the Senator from Mississippi [Mr. LOTT].

The ACTING PRESIDENT pro tempore. The Senator from Mississippi is recognized.

STRATEGIC DEFENSE INITIATIVE

Mr. LOTT. Mr. President, I would like to thank the distinghished Senator from Wyoming for his leadership in having this discussion today about this most important issue. I also want to say that I know there are other members of the Armed Services Committee, particularly our ranking member, Senator WARNER of Virginia, who will be working on this issue this year.

I think that we are going to have to be more aggressive and really speak up more on this whole question of strategic defenses if we are going to get the proper attention and the proper funding that the President's program needs.

In fact, in trying to get some information that I could use in my statement today, I was told much of that is still classified. It is going to be very difficult for us to explain to the American people really how important this program is if we cannot get more information out to the general public about what is actually involved.

My question today for my colleagues in the Senate and the American people is fundamentally: Did we not learn anything from Desert Storm? Is it already ancient history? Did we not learn that our military investment in the eighties, the sophistication, the high-technology weapons that we developed worked; that it saved lives? It gave us an astronomical success in that conflict that we could not have achieved if we had not invested in the military to build up our capability.

And did we not learn anything from that conflict about dangerous missiles, that even very unsophisticated missiles can be extremely dangerous and damaging to buildings and to lives? Have we forgotten the Scuds and the Patriots already? Have we forgotten that some 28 military men and women from America lost their lives when one Scud got through and struck a building where our military personnel were located? And have we forgotten that in 1987, the Congress would have jettisoned the Partriot missiles as some high-technology scheme: claiming it would not work and was too costly.

So it is beyond me that we are already looking at Desert Storm and the lessons we learned just a few weeks ago like it is ancient history. There is no question that a land-based defense alone is not enough.

How do we explain to the American people that while the Patriots were great in knocking out incoming Scuds, that we could have had, with proper funding and aggressive support of strategic defense, the capability to knock out those Scuds before they even got in their descending trajectory? With the President's program we would not have had to worry about parts of the Scuds falling on people in Israel and on our troops. We could have knocked them out shortly after they were launched. So there is no question in my mind that the President's program is very important for the future defense against ballistic missiles, like the Scuds.

I am very concerned about what I have seen happen in the Congress year after year. Every year that we have had debate on the stratgegic defense initiative, Congress would say, well, Congress was afraid not to fund it because the Amercian people kept saying, "Wait a minute; we have the capability to develop a nonnuclear conventional defense against these terrible weapons of destruction. Why would we not do that?" The people understand but the Congress did not understand.

I look at what happened in the House again, like we have done year after year. Not only have we cut back and held back SDI, but now the House has gone even further and would, frankly, prefer to gut the strategic defense initiative completely.

So I am very worried about what is happening with this. It is important that we fund research on the strategic defense initiative at a maximum level so that we can move forward with the capability we can develop in this area.

Some people say, well, we may have to modify the ABM Treaty. So be it. Once again, I think the American peo-

ple look at the ABM Treaty and wonder how did we ever get into this mode? Mad: What a proper description for our defensive postures of mutually assured destruction.

I think the American people feel like we can develop a great capability with the President's strategic defense program and it is going to be up to this body to reverse the mistakes that are being made in the House of Representatives this year. We have to go back and correct what was done by the House on SDI and on the B-2 bomber.

Talk about military pork, we are all guilty of that. I want every military base, every military installation, every military man and woman in Mississippi to stay there. I do not want anything cutback. I think we are making a tragic mistake in what we are doing to our defense overall; cutting it back 25 percent over 3 years. We are going to regret it. We are going to lose our capability.

We have this crazy system of eliminating bases in the United States while we have new bases overseas. It makes no sense at all. We all would like to have military installations in our States. I am a very active proponent of strong reserve components, National Guard units. I like National Guard buildings. It gives our people a place to meet and to train. But when you cut funds or programs like B-2 and SDI to put it over in 200 new armories across the country, I have to scratch my head and wonder where are our priorities.

I think that it is time that the Congress, the Senate, lead in this issue. Let us have a full debate and let us have some votes. Who won Desert Storm? What should we be doing about these dangerous ballistic missiles against which we don't have any defenses? We have a choice now. We can plow this ground or we can let the weeds grow. I am afraid that the Congress is moving toward letting the weeds grow.

We have to talk about what the risks are and what we can do with the strategic defense initiative. If we fail to provide for the common defense of our country, we have failed to meet a fundamental responsibility we have as Senators, and certainly as members of the Armed Services Committee.

I hope we will have this continuing discussion of SDI and that we will recognize what can be done with proper funding. I look forward to continued debate.

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. 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.

Mr. WALLOP. Mr. President, I thank the Senator from Mississippi. He states quite clearly the problem. I say to the people who may be watching, I say to the Senate, and I say to the Members of the House, who did what they did to the strategic defense initiative funding, that they stopped the defense and space talks in their tracks. The Soviets had made some final tiny modicum of movement in there, which we were discussing. In a pawn seeing the vote of the House, the Soviets stopped, withdrew those, figuring that the Congress would do the negotiating for them. They had no further obligation.

Mr. President, I have a letter dated yesterday, the 5th of June, signed by one of the heroes of the American military, the Chairman of the Joint Chiefs of Staff, Colin Powell. I ask unanimous consent that this entire letter be printed in the RECORD.

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

JOINT CHIEFS OF STAFF,
Washington, DC, June 5, 1991.

Hon. JOHN WARNER,
Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR WARNER: The refocused Strategic Defense Initiative (SDI) and the military requirement for ballistic missile defense have been subjects of considerable congressional interest. Consequently, I want to provide you the position of the the Joint Chiefs of Staff on these important issues.

The Joint Chiefs of Staff fully support the President's decision refocusing SDI to provide global protection against limited strikes (GPALS). It is a clear and correct response to the threat posed by the proliferation of ballistic missiles. In DESERT STORM, we vividly witnessed the impact ballistic missile defenses had in bolstering the coalition arrayed against Iraq. Today, 20 nations have ballistic missiles. In the not-too-distant future, there is the potential for very accurate missiles with mass destruction warheads to be available to numerous Third World nations. Ultimately, some of these missiles could have the capability of directly attacking the United States. Providing protection against limited ballistic missile attacks for our deployed forces, friends and allies, and the United States should be a top national priority.

The President's decision to refocus SDI is totally consistent with JCS requirements. First, for strategic defense, specific requirements set out in our 1987 requirements document include high defense effectiveness against limited ballistic missile attacks, man-in-the-loop control, survivable systems, and the ability to destroy specified percentages of warheads during a major Soviet attack. Meeting these requirements is important because Soviet offensive and defensive strategic forces continue to be modernized. In a post-START world, the Soviet Union will remain the only nation capable of destroying the United States within 30 minutes. Second, the related issues of theater missile defense was addressed by the Joint Chiefs of Staff in 1988 when we established the requirement to protect US forces from an increasingly sophisticated threat. At the time, the threat was primarily based on Warsaw Pact and Soviet capabilities. Now, the situation has changed.

The end of the Cold War and the proliferation of theater missile capabilities outside Europe, graphically demonstrated in DESERT STORM, are redefining the threat. We are reviewing requirements in light of the new situation, but it is clear that defense against theater ballistic missiles will be even more imperative in the future. GPALS is a very positive step in the right direction and one we support on its own merits. In addition, the SDI program should continue to develop the technologies and systems needed to make an informed choice for proceeding with a more robust missile defense should the geopolitical environment warrant.

In short, the Joint Chiefs of Staff fully support the President's decision refocusing SDI to provide global protection against limited strikes and urge the Congress to do so as well. This decision is in full consonance with military requirements, and it preserves our ability to expand the system to meet a much larger threat should a decision be made to do so in the future.

Sincerely,

COLIN L. POWELL,
Chairman, Joint Chiefs of Staff.

Mr. WALLOP. Mr. President, let me focus on a couple of points he makes. He said:

The Joint Chiefs of Staff fully support the President's decision refocusing SDI to provide global protection against limited strikes (GPALS). It is a clear and correct response to the threat posed by the proliferation of ballistic missiles. in DESERT STORM, we vividly witnessed the impact ballistic missile defenses had in bolstering the coalition arrayed against Iraq. Today, 20 nations have ballistic missiles. In the not-too-distant future, there is the potential for very accurate missiles with mass destruction warheads to be available to numerous Third World nations. Ultimately, some of these missiles could have the capability of directly attacking the United States. Providing protection against limited ballistic missile attacks for our deployed forces, friends and allies, and the United States should be a top national priority.

The President's decision to refocus SDI is totally consistent with JCS requirements. First, for strategic defense, specific requirements set out in our 1987 requirements document include high defense effectiveness against limited ballistic missile attacks, man-in-the-loop control, survivable systems, and the ability to destroy specified percentages of warheads during a major Soviet attack. Meeting these requirements is important because Soviet offensive and defensive strategic forces continue to be modernized. In a post-START world, the Soviet Union will remain the only nation capable of destroying the United States within 30 minutes. Second, the related issue of theater missile defense was addressed by the Joint Chiefs of Staff in 1988 when we established the requirement to protect US forces from an increasingly sophisticated threat.

Mr. President, the letter goes on validating that. As you have already given me permission to insert it in the RECORD in its entirety, let it rest there.

But suffice it to say the American chief military officer is sounding a warning, which Americans can hear and the Congress cannot, that the Soviet Union continues to modernize its

strategic forces; that the biggest percentage of its modernization has been that its missilry is mobile; that we, drawing on the lessons from Iraq, know that we cannot find mobile missiles on the ground.

If we are to protect Americans or our allies we must do it by defenses against missiles. If we are to have a defense against missiles that has any proficiency, any hope of providing Americans real defense, it must have a space element.

It has not been forthright to vote for a program which is research only with the idea in mind that you would never get to the point where we were going to deploy something. It ultimately trivializes it, and politics, as it did last year, begins to result in defense of hometown pork rather than the needs of defending America—it is a design that fails while giving cover for SDI and also supporting it, but do not ask me what I will ever do for you because I have seen to it by design that it will never achieve a defense of America.

Mr. President, I note with pleasure the presence of the Senator from Virginia, the distinguished ranking member of the Senate Armed Services Committee, with whom I am proud to serve, and I ask him if he would have some comments.

But let me just say that the Senator from Virginia [Mr. WARNER] correctly phrased the debate last February, and we were denied the opportunity to debate that. He promised to return to it, and I guarantee that I will be by his elbow. This Senate will debate that some time this year.

I yield to the Senator from Virginia.

The ACTING PRESIDENT pro tempore. The senior Senator from Virginia [Mr. WARNER].

THE ABM TREATY

Mr. WARNER. Mr. President, I thank my distinguished colleague from Wyoming, and I thank those who appeared here today.

The Senator from Wyoming has led this debate for many, many years in the Senate. I appreciate his acknowledgment that earlier this year I did initiate the dialog, which I will continue, along with others, addressing the need to look at the ABM Treaty in the context of our defenses today and 10 years hence.

Repeatedly, the President has said and the Secretary of Defense and others have said that the legacy that we—that "we" is a bipartisan we; that "we" is our President—must leave for the next generation is to take now the steps needed to provide, within the capabilities of technology and within the capabilities of the arms control arrangements, the initiatives that will lead to defenses against ballistic missiles, both long range and tactical, 10, 12 years hence when the proliferation across this world will be frightening in proportion.

The Senator from Wyoming touched on one point which I wish to allow, and that is lessons learned in the gulf. The Patriot system was put together in just the nick of time; that is, the adaptation from an air defense to a missile defense, for this conflict. That time could be measured in weeks and months. The convergence of the technology to transform it into a generation of missile defense was only arrived at on the eve of this unanticipated gulf military operation. It did work. It was effective.

But that effectiveness was heavily dependent on assistance from space, the warning time that was necessary. That issue has been addressed.

But I also commend my colleague from Wyoming in mentioning the fact that we could not find, in many instances, as quickly as we hoped those mobile missiles in Iraq and that the ability of the Soviets at some future time—given that their whole trust now is to go to mobile—could pose an unacceptable threat to us in view of their mobility and our ability to track that.

We now learn from the analysis of the gulf operation that we had to divert a disproportionate amount of particularly our air and other resources to that tracking operation away from other operations. We were not confronted in the gulf with a serious air threat. We had air superiority. But had we not had that, we would still have had to allocate a disproportionate amount to the tracking operation, and we could have had a very serious situation.

So I thank my colleagues for bringing forth this debate today. We still renew it and renew it until this body conscientiously and objectively, and I hope in a bipartisan way, addresses the solution for the future.

I thank the Chair.

Mr. WALLOP. Mr. President, I thank Senator WARNER, and I want to lay some statistical impetus upon what he said about the pending and growing Soviet threat.

The Defense Intelligence Agency, in open session, testifying in front of our committee, said that by the time of the implementation of the new Strategic Arms Reduction Treaty, the START I, 80 percent of Soviet missilry would be mobile.

If that is not coffee to wake up and smell, I do not know what it will take to provide the impetus for this Congress to act.

Mr. President, I yield the floor to Mr. COCHRAN for as much time as he may use.

AN EFFECTIVE BALLISTIC MISSILE DEFENSE SYSTEM

Mr. COCHRAN. Mr. President, let me congratulate the distinguished Senator from Wyoming [Mr. WALLOP] for his leadership in bringing this issue to the attention of the Senate today, and also the leadership of the distinguished Senator from Virginia [Mr. WARNER] who is our ranking Republican member of the Senate Armed Services Committee. His leadership has been important in many areas of national security and, certainly, in this area he will be a very forceful and influential Member of the Senate.

I hope that the Senate will start looking very closely at the options that we may have before us this year in this important area, and I think that is why we take the floor today, to discuss some of these concerns and views.

When we talk about other issues or areas such as education, health care, civil rights, family planning, and other issues that are current and being debated in one committee or the other, or on the floor of one body or the other, they all seem to be put in a different perspective when we look to the issue of national security and, particularly, missile defense. It makes an impression on me, Mr. President, that our highest priority as an institution is to make sure that the decisions we make on national security issues are correct, well-reasoned, and carefully considered, because the lives and the security of the citizens of the United States are at stake and are affected by our decisions.

When Her Majesty, Elizabeth II, was here, she publicly commended our President for his clarity of vision and firmness of purpose in dealing with the challenge that the aggression of Iraq posed to the free world in the Kuwait theater of operations. I hope it is that same clarity of vision and firmness of purpose that this institution can bring to bear in the decisionmaking process about whether or not this Nation uses its technology, its scientific know-how, its ability to get things done, to develop an effective ballistic missile defense system.

It shocks Americans when they hear and realize that in spite of all of our power as a militarily capable nation, we do not have the capability to protect our population centers, or our Armed Forces, or military installations, from attack by ballistic missiles.

We have had underway a research program trying to develop understanding of how we might be able to develop a system and protect ourselves from that kind of an attack. The fact of the matter is, in this modern era, when you see missiles being developed by Third World countries, such as Iraq, with the capability of sending those missiles long distances to Israel, to Riyadh, Saudi Arabia, and maybe to points beyond, it brings home to you the fact that we are living in a very dangerous world, and that danger is exacerbated because of the technology of some of the developing nations in being able to deliver ballistic missile warheads containing chemical agents and containing nuclear weaponry.

So we should now bring together the power that we have in the scientific community and the understanding we have gained from recent experiences in the Persian Gulf, and our space technology that has advanced so impressively in many areas, and try to make sure that we utilize these assets and resources in a way that provides our country with the best possible, most effective defense we can develop, fund, and deploy to guarantee the safety and security of the citizens of this great Nation.

It worries me that we may concentrate our efforts and energies in other directions, talk about the nuances, legal and otherwise, of existing treaty relationships, get bogged down in a legal tangle and forget to do what we ought to be doing right now, and that is: Making sure we understand all of the scientific facts and possibilities that may be available to us to provide the best possible security for our country in this era.

I read reports that China is selling, or had contracted to sell, an M-9 missile to Iran. I read about the fact that the British intercepted a newly created weapon system that was destined for Iraq just before the Persian Gulf war that some said might have been capable of sending artillery shells or warheads of one kind or another long distances across borders.

Look at the State of Libya, led by a zealot, Qadhafi, who would just as soon fire a missile at you as look at you, who will look you in the face and tell you a lie. There are people as predictable and dangerous all over the world, such as in North Korea; there are hostile groups in El Salvador and in Cuba, very near our shores.

It is about a thousand miles from this Capitol to Biloxi, MS. It is about that far from Biloxi, MS, to El Salvador. It is 600 miles from Gulfport, MS, to Havana. These are not long distances, and certainly in the hands of hostile neighbors, a ballistic missile could do grave damage to the people of the United States.

So I hope that we look at how we can develop an effective, a robust, a workable ballistic missile system. The President has requested in his budget the funding for activities, research, and the development of systems that will move us forward in this direction. I hope we can support that budget request and that we can convince the majority of the Senate that the time to act is now, this year, that further delays may very well jeopardize the security and the livelihood and well-being, indeed the very existence of the people of this great country.

THE NEW STRATEGIC DEFENSE INITIATIVE

Mr. KASTEN. Mr. President, some domestic and foreign policy issues perennially capture the attention of almost every Member of this body. The recent flood of floor statements and op-ed pieces indicates that the strategic defense initiative is one of those issues. Immediately following the President's announcement of his plan to refocus the SDI Program, the opponents of SDI launched a barrage of criticism. Unfortunately, many commentators ended up firing harmless Scuds—because they opened fire before adequately understanding the true extent of the changes planned for the SDI Program.

As if almost by reflex, a few made the point that there was no connection between the success of Patriot and SDI. They were quick to point out that Patriot was an Army program going back some 20 years, that the Strategic Defense Initiative Organization [SDIO] had for years resisted spending substantial sums on antitactical ballistic missile defense, and that no inferences should be drawn from the success of Patriot for the more challenging task of intercepting missiles of intercontinental range.

To these arguments I respond that missile defense technology—of which Patriot is an example—is a critical component of modern warfare.

I understand that the new direction for SDI, now termed GPALS, or Global Protection Against Limited Strikes, was being considered in the spring of 1990 and that GPALS was approved by the Secretary of Defense in November 1990—well before the first Scud strike. We cannot ignore some important lessons from the Patriot-Scud duel in the Persian Gulf war.

First, ballistic missile proliferation must be taken seriously as a military and geopolitical problem. It is now clear that countries possessing ballistic missiles—albeit of short or medium range—are serious about their use, despite the inaccuracy of the missile or the prospect of retaliation. In addition, it is apparent that despite the Scud missile's ineffectiveness in a tactical military sense, its employment against Israel could have had enormous strategic consequences had it precipitated Israeli retaliation. Instead, the Patriot helped Israel to withstand the Scud barrage and, in so doing, helped preserve the Arab coalition poised against Iraq.

Another lesson derived from our experience with Patriot is that the technology necessary to defend against ballistic missile attacks is in our grasp. Of course, I understand that intercepting an ICBM is a much more daunting task than our recent success against the Scud. But recent flight tests have demonstrated that the technology is in hand for this more challenging task. Patriot is at the bottom rung of the technology SDI is developing. The success of Patriot in its first wartime role, however, augurs well for the potential of ballistic missile defense technologies.

I state the above points, not necessarily to make the case for SDI, but to offer supporting arguments for a very important principle; that protection against limited ballistic missile strikes is a prudent goal or obstacle for national policy. Evidence of this principle is found in the fiscal year 1991 Defense authorization bill, which created a separate program element for SDI entitled "Limited Protection System." To be sure, there are few in this body today that would disagree that ballistic missile defense has arrived. Now that it is here, the question is, what are we going to do with it?

While many people agree on the principle of protection against limited ballistic missile strikes, there is disagreement over how much protection is needed, and against what kind of ballistic missile threats. This year's SDI debate should therefore focus on three central questions: First, what is our best estimate of the future ballistic missile threat; second, what is the level and type of defenses needed to hedge against the existing and potential threat; and third, how much do we want to pay for a particular level of capability? Inextricably linked to these broad questions are issues associated with the ABM Treaty, offensive arms reductions, Soviet reactions, technological capability, ground versus space-based interceptors, and cost tradeoffs associated with other components of the defense budget.

While we await the administration's case for GPALS, I hope SDI opponents will keep an open mind and not reach reflexively for the old, standard arguments against SDI, many of which no longer remain valid in the context of GPALS. I am not suggesting that there may not be new arguments leveled against GPALS, only that many of the old arguments won't do anymore.

One such argument was that deterrence stability would be upset by the deployment of robust defenses. In particular, it has been suggested that the presence of defenses might provoke the Soviets to strike first during a crisis, when its effectiveness against United States defenses is greatest. However, GPALS is designed to defend against only several hundred ballistic missiles or warheads—rather than thousands. The focus on protection against limited strikes, rather than outright deterrence of a Soviet first strike, renders previous deterrence arguments moot.

The same can be said for the arms control arguments against SDI. As it becomes apparent to the Soviet Union that it, too, can benefit from protection against limited strikes, the likelihood of a cooperative deployment of defense becomes greater. The ABM Treaty, which was intended to be a "living document," can be amended to reflect this shared interest.

In concluding, Mr. President, I would return to the principle mentioned above, and which I hope is agreed upon by all. Namely, that protection against

limited ballistic missile strikes ought to be a laudable and timely goal of our U.S. national security policymakers. Those that support only theater missile defenses on grounds that "the danger from long-range missiles is in the distant future," are, I am afraid, being terribly shortsighted.

I believe that a consensus is building—including both the executive and legislative branches—on the need to explore options for a missile defense system designed to provide protection against limited ballistic missile threats of all ranges. I support this emerging consensus, and note that it is the result of truly evolutionary thinking on the part of both critics and supporters of ballistic missile defense.

Mr. WALLOP. Mr. President, I issue one counsel to military commanders of the United States, that they heed the call of their Commander in Chief. I speak particularly of General Hammond, commander of the Army Strategic Defense Command, and ask him and others not to put the interest of the service beyond the interest of the United States.

Mr. President, I yield to the Senator from South Carolina [Mr. THURMOND] for such time as he may consume, and say that I am expecting Senator SEYMOUR and Senator SMITH.

THE ABM TREATY

Mr. SMITH. Mr. President, I join with my distinguished Republican colleagues today to focus attention on a growing national security liability: the 1972 Antiballistic Missile Treaty, better known as the ABM Treaty.

Mr. President, the United States is walking a dangerous tightrope. For 18 years, we have blindly adhered to an arms accord which hamstrings critical technology development and fundamentally undermines our national sovereignty. Our unquestioning compliance with the ABM Treaty, which prohibits nationwide defenses against strategic missiles, has opened a dangerous window of vulnerability to Soviet and emerging Third World missile threats. Alarmingly, this acquiescence has relegated strategic defense policymaking to a collection of arms control attorneys rather than expert military and civilian elected officials.

I have no doubt that President Nixon's arms control negotiators truly believed that an ABM Treaty would enhance superpower stability and prevent an expensive and dangerous missile/antimissile race. Yet, it is clear that the fundamental assumptions upon which the treaty was premised are simply not valid. For instance, contrary to expectations of treaty supporters, the accord failed to produce deep Soviet offensive force reductions, and failed to reduce threats to the survivability of retaliatory forces. Instead, the Soviets continued to aggressively modernize and stockpile advanced offensive forces, including the SS-18 heavy ICBM, whose accuracy and hard target capability increased, rather than decreased, the vulnerability of United States forces.

Eight years ago, President Reagan unveiled the strategic defense initiative to develop an effective defense against ballistic missiles. Since then, congressional opponents have consistently sought to kill, underfund, restructure, and perpetually delay development and deployment of strategic defenses. These critics selectively disregard technological progress, and now scoff at legitimate analogies between tactical missile defenses such as the Patriot and strategic missile defenses. They instead cower behind the ABM Treaty, and the obsolete and dangerous policy of mutual assured destruction to justify their skepticism.

But the American people know better, Mr. President. With the success of the Patriot missile in Desert Storm, they have seen the practical application of what has been erroneously characterized by SDI opponents as an unworkable, valueless theoretical concept. The fact is, missile defense works. SDI works. It saved countless civilian and military lives in the Persian Gulf. And it can provide an effective defense for America as well. In fact, just last January an ERIS ground-based interceptor successfully destroyed a mock ballistic missile warhead which had been launched more than 4,500 miles away in a test. Let there be no doubt, the technology to protect America exists today. The question is, Does the Congress of the United States have the courage to implement that technology?

But what also exists today is a rapidly changing security environment in which the United States is confronted by numerous enduring and emerging ballistic missile threats. For instance, the Soviet Union is virtually bankrupt, yet continues to vigorously upgrade and enhance its strategic arsenal. This robust modernization program includes an advanced version of the SS-18, along with new rail mobile SS-24 and road mobile SS-25 missiles. Remember how difficult it was to find Scud launchers in the barren desert of Iraq? Imagine how tough it would be to locate these highly accurate mobile missile systems in the mountains, valleys, and urban centers of the Soviet Union. It is a scary thought, especially since some of those missiles may be in the hands of anarchists at some point in time.

Perhaps even more disturbing is the simultaneous global proliferation of ballistic missile and chemical, biological, and nuclear weapons technologies. Currently, it is estimated that some 18 nations—a conservative estimate—possess ballistic missile capability. By the year 2000, the number of countries with deployable ballistic missile systems could exceed 25. Without an effective missile defense, the United States and our forward deployed military forces will become increasingly vulnerable to these uncertain, volatile threats. This is a vulnerability that I, as a Member of the U.S. Senate, cannot and will not accept.

The United States must now ask itself: "Is a deterrent posture based on mutual assured destruction suitable to the evolving Third World threat and the tyrannical fanaticism of Saddam Hussein, Mu'ammar Qadhafi, and Kim il-Sung?" Clearly, it is not. The knowledge that we could obliterate the Nation of Irag failed to deter Saddam Hussein's terrorist aggression, nor did it deter his willingness to go into a combat situation with the United States of America. And it will not prevent future incursions of the same type.

The United States has within its grasp the capability to rapidly develop and deploy a limited defense against strategic ballistic missiles. However, the burdensome and restrictive ABM Treaty is hamstringing our ability to operationally test, refine, or deploy promising ABM systems and components. Our excessive preoccupation with compliance causes unnecessary program delays and cost increases. This important point has been repeatedly reinforced by witnesses testifying before the Senate Armed Services Committee this year.

Furthermore, the treaty permits only the protection of Washington, DC, or, alternatively, a single intercontinental ballistic missile launch site. Thus, American people are left thoroughly vulnerable and defenseless, while those inside the Washington Beltway can be blanketed by up to 100 ABM interceptors. It is tragically ironic that Congress, who would benefit most by a treaty compliant capital defense, is so adverse to extending the umbrella of protection to its constituents.

What is so sacred about the ABM Treaty that could possibly justify the vulnerability of our citizens? Frankly, I see nothing. The treaty negotiators had no way of anticipating what type of revolutionary technological developments the future would hold, nor did they profess to. Instead, they incorporated provisions which established a standing consultative commission to periodically consider questions of compliance, and possible amendments to the treaty. Moreover, article 15 authorizes either party to withdraw from the treaty in the interest of national security after a 6-month notice and wait period.

Mr. President, this debate is not about the broad versus narrow treaty interpretation. It is about whether Congress will fulfill its constitutional obligation to provide for the common defense. In essence, we must choose between protecting the American people,

or protecting an ambiguous, obsolete arms accord. The status quo simply will not do. Either we protect the United States, or we protect an outdated scroll of paper.

The time has come for Congress to lay Washington politics aside and truly represent the people of America. Technology and changes in the global security environment have transcended the partisan logic of SDI opponents. The genie is out of the bottle. In the Persian Gulf war the American public saw firsthand the immense value of missile defenses, which saved hundreds if not thousands of lives in Israel and Saudi Arabia.

Now justifiably the American people are saying, "Hey, what about us over here?" So here we are, unilaterally disarming ourselves based on what we perceive to be the intentions of the Soviet Union. I emphasize what we perceive to be the intentions of the Soviet Union rather than what we know are the capabilities of the Soviet Union and we know are the capabilities of some of the other emerging nations.

The current strategic equation is alarming. Let me state why.

No. 1, we are shutting down, as we speak, our only hot ICBM line, intercontinental ballistic missile line. We are shutting down the MX Peacekeeper, our missile to help us in the case of mutual assured destruction; shutting it down.

No. 2, we do not have any mobile missiles, none, zero. We do not have any deployed. Some will say we have mobile missiles. We have it on the drawing board, we have it in the plan, we have it as an option, but we do not have any mobile missile deployed.

Mr. President, the Soviets are deploying two new mobile missiles, the rail mobile SS-24 and the road mobile SS-25, and if the great Scud hunt in the Persian Gulf is any indication, we cannot find them.

We are severely curtailing our airborne strategic command and control operations which provide the vital link with our nuclear forces, and we have no strategic defense system to protect our citizens against hostile missile attacks. We are moving from a policy of mutual assured destruction to assured self-destruction.

Mr. President, we are gambling with national security based on perceived intentions rather than current realities. The ABM Treaty has clearly become a national security liability, and it has to be addressed. We can no longer jeopardize our freedom and security to protect an outdated arms accord. Now is the time to develop and deploy strategic defenses.

In the wake of the most brilliant, successful military operation in history, it would be a crime to allow the ABM Treaty to tie the hands of our military and prevent them from defending themselves and the American people.

Mr. President, I ask unanimous consent that the remarks of Senator WALLOP be included in the RECORD.

STRATEGIC DEFENSE INITIATIVE

Mr. THURMOND. Mr. President, I want to say a few words on the SDI situation, and I want to speak on the crime bill in a few minutes.

I want to take this opportunity to commend the able Senator from Wyoming for his leadership in this matter. Senator WALLOP has done a fine job, as has the ranking member, Senator WARNER, along with Senator COCHRAN, Senator LOTT, and Senator COATS, who spoke here, also.

Mr. President, I just want to say this: What the White House did on SDI was entirely inaccurate. We have to do more than they did. We have to go forward with SDI. I happen to be the ranking member on the Strategic Subcommittee on Armed Services and I can tell you this: The Soviets have not slowed up with strategic matters. They are going forward; they are going forward every day to become stronger from a strategic standpoint.

And it has been very difficult to get them to reduce their conventional weapons. Efforts have been made along this line for a long time.

Mr. President, there is no question about it. Research is necessary to continue this important work on SDI. We will be foolish if we do not do it. We must do it. National defense demands we do it. The freedom and security of this country demands we do it. If we are going to retain our freedom in this country we have to maintain a strong defense and to do that we need to go forward with the SDI, we need to go forward with the B-2 and other matters that will protect this country.

THE STRATEGIC DEFENSE INITIATIVE

Mr. SIMPSON. Mr. President, with regard to SDI, or the strategic defense initiative, if the gulf war taught us anything at all, it taught us that the superpowers no longer have a monopoly on ballistic missiles. We found that out in a frightening way. More and more countries around the world are developing and manufacturing and procuring these extremely dangerous weapons. All of us, and it has been mentioned many times on this floor, saw the Patriot missiles streaking into the night sky to intercept Saddam's Scud missiles. The performance of the Patriots showed that the missile defense is possible. But I think it also demonstrated that we need to improve this technology very dramatically in the future.

The threat to the United States in the coming years will be of two different types. While obviously we have better relations with the Soviets these days, we must also recognize they are very much capable of striking a devastating blow to the United States' strategic systems. We do not know for certain what the future holds, obviously, for United States-Soviet relations. It is my personal hope that that will proceed apace, as it has in the last months and years. It is very important, the relationship of our country with the Soviet Union; yet, we must be prepared for all scenarios.

The second type of threat, I think, comes from smaller countries that could attack U.S. troops employed in foreign lands or at home with ballistic missiles. We can expect ballistic missile capabilities to improve in the coming years in all countries, and we must be able to blunt this increasing and very real threat.

From a strategic and theater perspective, the ABM Treaty, as we observe it, seems to handcuff the United States with regard to the development of the new antiballistic missile technologies. For this reason, I think we have to reexamine this treaty and its effect on our defensive programs. That will be controversial, but I think it is very critical.

From a strategic perspective I think we need to continue research and development on defensive systems, and we should consider testing of certain key components. I certainly believe the President's proposal for global protection against limited strikes, colloquially known as GPALS, should be fully funded and implemented, and from the theater perspective we must continue to upgrade the Patriot system and go forward with new systems such as the Arrow Program being developed jointly with Israel. The American people and U.S. troops deserve the very best protection that Congress and the administration can provide. I am deeply disturbed by some who would try to kill or emasculate our defensive programs that will be critically needed in the decade ahead.

I think what the House of Representatives did with regard to these systems was tremendously in error and inappropriate, because I believe the American public strongly supports missile defense programs because they saw how important they were during the gulf war. They may not understand the arcane intricacies of star wars lingo, like star wars itself, or Brilliant Pebbles, but they certainly understand the threat and the need to neutralize that threat.

So, as we go forward with the DOD authorization and appropriations process in this year, I think the public will be watching ever more closely to see who, and which party, is truly concerned about protecting America and our troops and our citizens in the coming years, with some type of appropriate missile defense system. Let us not call it anything else. I trust we can then develop a solid consensus for a strong strategic and theater defense.

STRATEGIC DEFENSE INITIATIVE

Mr. MACK. Mr. President, I rise today to address a crucial element of our Nation's defense, which may literally determine the fate of our children and future generations. Just beyond today's reach shines the promise of a safer world. The strategic defense initiative means security for Americans and our allies both at home and abroad.

Still, there are those who would have us step back instead of forward, satisfied that what we already have is enough, and willing to bet their lives that they're right. Strangely, many of these are the same people who have howled most loudly about the danger of the nuclear balance of the past 50 years. Finally given the opportunity to begin to make those terrible weapons obsolete, however, they apparently prefer gamesmanship and power politics.

For example, in recent months much debate has taken place about the future of the strategic defense initiative, posing a question of whether to cut the heart out of the space based elements of SDI in order to support further development of the Patriot missile and other ground-based systems. Simply put, the argument itself is specious. It's not a matter of choosing one system or the other in response to a single risk, it's a matter of assessing our needs and guaranteeing our people the greatest degree of safety we can.

Despite warnings from luddite experts that antiballistic missiles couldn't work, during Operation Desert Storm, Americans everywhere marvelled at the sight of Patriot missiles rocketing into the night skies over Israel and Saudi Arabia to defeat incoming Scuds. We revelled in the ingenuity and technology behind "hitting a bullet with a bullet," something others had suggested couldn't be done. The important lesson is evident: Given the opportunity, American technology can and will work. Today's impossibility is tomorrow's reality.

We were told for years that defense missile sytems were destabilizing and dangerous. To the contrary, the Patriot batteries which protected Israeli population centers from Saddam's terrorist Scud attacks, kept the war from expanding.

Similarly, many of those who now tell us the Soviet threat is over also assured us that a ground war in the Persian Gulf would be bloody, protracted, and unwinnable, and that using Patriots to defend against ballistic missiles was a dream. Between the tyrannical past of the Soviet Union and the uncertain future of who will control its nuclear arsenal as its empire crumbles, recent Soviet actions against their own people raise the specter that things may not have changed so much after all. We cannot ignore 45 years of aggression on the mere promise of change. Gambling our very existence on a change of heart is a fool's game.

Some may argue that strategic defense is too costly to pursue without both an immediate threat and a guarantee of short-run success. But to risk our children's security from attack by ballistic missiles cannot be justified on any economic grounds. Technology has never retreated from its inexorable forward path. We must stand ready to meet any threat to our national security and our way of life.

Even as we continue our work on space-based systems, we should not neglect the ground-based ones which have proven so remarkably effective. Patriot is an important system. It has shown its effectiveness on the field of battle, and has saved the lives of Americans and our allies in the Persian Gulf. In the words of President Bush, when the need was at its worst, "Thank God for the Patriot missile." To deny U.S. citizens in their homes the same protection Patriots offered to the citizens of Israel and Saudi Arabia, and our troops in the field, is unthinkable. Abstract theories of deterrence offer little protection when missiles come raining down from the sky.

What we do with strategic defense should not be a matter of partisan politics, but a fundamental issue of statesmanship. We must take the long view. Can we afford to greedily spend a supposed peace dividend before we are utterly certain that the threat has passed? Should we allow budgetary considerations rather than prudent risk assessment to dictate the pace of force reductions in our armed services? Is there any function of government more important than protecting the lives and freedom of its citizens? I suggest that the answer to each of these questions is a resounding no.

Let us face the issue of national defense responsibly. Pitting ground-based against space-based defenses creates an artificial choice. The question is not which to spend our resources on, but how much each will require in order to protect our countrymen, in uniform and out, from the terror of ballistic missiles.

Mr. WALLOP. Mr. President, this morning we have been focusing on the fundamental choices posed by the strategic defense initiative and the ABM Treaty. Missile defense is profoundly important to our national security, but it is vital to remember that this issue does not reside in a vacuum. A sound national policy takes into account all aspects of the nuclear and strategic equation: Strategic offensive forces as well as strategic defenses, and our arms control policy.

The United States and the Soviet Union are headed for a summit meeting this summer which is reportedly to be highlighted by the signing of a new Strategic Arms Reduction Treaty. So today I would also like to call the special attention of Members and the American people to an eye-opening assessment of the proposed START treaty, which I believe is seriously flawed.

The assessment of START, published in the May 4, 1991 edition of Human Events and entitled "Stop the START Summit," is offered by Mr. Sven Kraemer, an expert on defense, arms control, and foreign policy, who was President Reagan's director of arms control of the staff of the National Security Council from the beginning of the Reagan Presidency until 1987.

The article assesses key elements of the proposed treaty—heavy missiles, mobile missiles, bombers, air- and sea-launched cruise missiles, and verification. It clearly demonstrates how each of these elements and the related issues of Soviet treaty violations and START's deadly poison pill, undermine SDI, violate Reagan arms control principles requiring equality, effective verification, and stability.

Mr. Kraemer notes the treaty's flaws, magnified by lessons of the gulf war and the dangerous resurgence of Soviet military hardliners, are fatal. He recommends that President Bush order a top-to-bottom agonizing reappraisal of START's provisions and premises. He calls for a new strategy encompassing: A radically revised START, the accelerated deployment of ballistic missile defense, and increased emphasis on standing with the forces of democratic reform in the Soviet Union.

Mr. Kraemer brings to this assessment the expertise of 25 years in government, including an unparalled 16 years in the NSC with 4 Presidents and 10 national security advisors. He is currently director of policy and research for the American Security Council Foundation in Washington.

Mr. President, I ask unanimous consent to include this article in the RECORD, and encourage all who care about our Nation's security to read it.

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

[From Human Events, May 4, 1991]

STOP THE START SUMMIT

(By Sven F. Kraemer)

A NEW STRATEGY REQUIRED

The Administration is pressing to move ahead with a U.S.-Soviet summit in June and to make a new Strategic Arms Reduction Treaty (START) a summit highlight. Its desire to "lock up" a new agreement with Mikhail Gorbachev and his generals, notwithstanding increasing Soviet unreliability and instability, reflects a deadly policy. It mirrors Secretary of State James Baker's foolish description, at last summer's summit, of START as "shaping up largely on original United States concepts and original United States proposals. . . . In terms of what we have given and what we have taken, we have done very well indeed."

As demonstrated below, the emerging START treaty has a distinctly "emperor's new clothes" quality, and worse. No wonder the chief U.S. START negotiator, Richard Burt, recently left for greener pastures. Its

key elements are fatally flawed by embarrassing concessions that have abandoned the arms control principles of the Reagan Administration. Principles like equality, stability and effective verification. Principles magnified by lessons of the Persian Gulf war and the resurgence of Kremlin hardliners. This START has turned serious arms control on its head and puts the United States at substantial risk. It does not belong on a summit agenda.

START'S FATAL FLAWS

Heavy Missiles.—In support of strategic stability and militarily meaningful arms reductions, President Reagan placed a high START priority on cutting in half the capability of the most lethal strategic systems, the "heavy" intercontinental ballistic missiles that are ideally suited for a first strike. The Soviet Union has 308 such missiles, the infamous "SS-18s," each capable of carrying 10 to 14 or more highly accurate warheads. The United States has none.

But whereas Reagan's START insisted on a 50 percent cut in numbers and a total ban on any modernization of any "heavy" missiles, Bush's START accepts recent Soviet deployments of the SS-18 missile's deadly "Mod-5" upgrade and will reportedly permit some development testing of the even newer "Mod-6." As a result, the Soviet force remaining after a 50 percent cut will likely have a greater first-strike lethality than the total earlier force, a problem further exacerbated by the SS-18's reported ability to carry 40 percent more warheads per missile (14 vs. 10) than ascribed under START.

Mobile Missiles.—Reagan's START provided for a total ban on another major category of intercontinental ballistic missiles (ICBMs), the mobile land-based systems. There were two decisive security reasons for this position.

First, anything short of a "zero" option for mobile missiles (whatever their range) simply could not be verified effectively.

Second, the United States had no realistic future prospects for gaining full funding or deployment of any truly mobile U.S. ICBMs.

Both reasons remain valid today.

Yet Bush's START now accepts deployment of 1,100 warheads on mobile ICBMs, of which the U.S. has none and the Soviet Union has many—the modern road- and rail-mobile SS-25s and SS-24s.

This U.S. concession ignores the lessons of Iraq's hard-to-find mobile Scud missiles and of sustained Soviet cheating on the Intermediate Nuclear Force (INF) treaty, whereby the Soviet military successfully hid scores of banned mobile SS-23 missiles in three East European countries during the late 1980s. It also ignores the Administration's decision to terminate funding for a mobile MX missile and to downgrade development of the potentially mobile Midgetman missile.

Backfire.—The Reagan position was that START must limit the Soviet Union's Backfire bombers, modern long-range aircraft that can attack U.S. territory and U.S. ground and naval forces around the globe. Bush's START, in contrast, permits more than 100 Backfires above the 400 currently deployed, thus ignoring the significant military threat of the 4,000 nuclear weapons that can be used by these aircraft against strategic and theater targets.

Air-Launched Cruise Missiles (ALCMs).—Bush's START proposes new ALCM limits which cannot be effectively verified and which will have a highly adverse impact on important, highly cost-effective U.S. strategic options.

Whereas Reagan's START limited only nuclear-armed ALCMs more than 1,000 kilometers in range, Bush's START sets limits down to 600 kilometers in range, a critical difference which captures most U.S. ALCMs, but excludes virtually all deployed by the Soviets and which may also impact adversely on non-nuclear options in future conventional force negotiations.

Additionally, Bush's START grants the Soviet Union 40 percent more ALCM-carrying "heavy" bombers than the U.S. (210 versus 150).

Sea-Launched Cruise Missiles (SLCMs).—Reagan policy ruled out any START limits on such missiles absent resolution of two important security issues that remain valid today: (1) intractable verification obstacles; and (2) the missiles' exceptional cost-effectiveness and stabilizing deterrent qualities. The Bush Administration, however, has agreed to sign a "politically binding" set of "unilateral declarations" with the Soviet Union pledging significant limits, though none of these can be effectively verified. They are to limit to 880 the number of nuclear-armed SLCMs above 600 km in range, a less than prudent number and range limit, which will constrain most U.S. SLCM deployments, but exempt most Soviet systems.

Verification.—The Administration's extravagant claims for unprecedented verification procedures on START are abysmally unjustified. Inherent monitoring difficulties and a series of U.S. concessions make high confidence in effective verification of START's key provisions quite impossible.

The problem is compounded by START's uncertain data base (reportedly involving possible Soviet deception), adverse counting rules, and a wide range of unresolved verification procedures. Gone is Reagan's "don't trust, verify." Far from providing U.S. assurance or security, START's severe verification problems will encourage Soviet cheating.

Soviet Violations.—A U.S. signature on a START agreement would abandon the last remnants of a principled U.S. compliance policy which insisted on Soviet fulfillment of existing agreements before we would take on new agreements. In President Reagan's words: "compliance with past arms control commitments is an essential prerequisite for future arms control agreements."

Administration pressure for a START agreement also flies in the face of the annual report on Soviet noncompliance sent to the Congress by President Bush on Feb. 15, 1991.

This report details continued Soviet arms control violations and bad faith involving the Anti-Ballistic Missile (ABM) treaty; chemical, biological and nuclear testing conventions; and the two treaties recently signed by Mikhail Gorbachev himself—the INF treaty of December 1987 and the CFE treaty of November 1990.

With regard to the ABM treaty, the report notes that the illegal Krasnoyarsk radar has still not been dismantled and that Soviet military activities raise serious compliance concerns about five additional ABM treaty provisions.

Killing SDI.—START is doubly dangerous, not only in its fatally flawed key elements, but also in involving a deadly "poison pill" designed by the Soviet Union to kill the deployment of advanced ballistic missile defenses under the U.S. Strategic Defense Initiative (SDI). For since a fall 1989 meeting at Secretary Baker's Wyoming ranch, the Soviet Union has linked its future START compliance with continued United States compliance with the ABM treaty.

Although the Soviet Union breached the ABM treaty nine years ago with the Krasnoyarsk radar (acknowledged by former Soviet Foreign Minister Eduard Shevardnadze as a clear violation), our nation's unilateral compliance would thereby be extended indefinitely.

It is a fateful irony that while the Soviet generals are modernizing Soviet strategic offensive and defensive systems with undiminished intensity, they have leveraged our leaders' lust for START and misplaced fealty to a broken ABM treaty into a Faustian no-win deal for the United States.

SALT IN START'S WOUNDS

President Bush would do well to recall the fate of an earlier flawed strategic arms agreement, President Carter's Strategic Arms Limitation Treaty (SALT II).

In 1979, Carter, eager to lock in agreements with a fading Leonid Brezhnev, confidently presented his SALT II treaty to the United States Senate. Though a few recognized its problems, he was cheered on by his Administration, the arms control community and the media, and expected handy ratification.

But then, following a thorough examination, the Armed Services Committee of the U.S. Senate issued an unexpected "blinders-off" report which unambiguously concluded that the treaty "is not in the national security interests of the United States of America."

In words that could readily be applied to today's START, the Committee declared of SALT II that: "the treaty is unequal in favor of the Soviet Union and inconsistent with PL 92-448" (the Jackson Amendment requiring equal strategic levels), and its "constraints on the growing Soviet threat are not militarily significant." It added that "many provisions of the treaty . . . cannot be verified * * * on a strict standard of compliance. * * *"

Such exposure of SALT II's flaws, magnified by Soviet militance at home and abroad, mortally wounded SALT II and the Carter Administration's arms control credibility even before the Soviet invasion of Afghanistan delivered a coup de grace that led to withdrawal of the treaty from Senate consideration.

Today, START's fundamental flaws, magnified by recent events in the Persian Gulf and the Soviet Union, expose the Administration and the nation to even greater embarrassment and risk and urgently require the President's immediate personal attention.

START AT A HISTORICAL CROSSROADS

The current historical crossroads requires the President's leadership to stop START's MAD summit momentum and to order an agonizing reappraisal of START and its broader strategic context in light of recent developments.

Persian Gulf War Lessons.—Several START-related lessons of the gulf war have already emerged. One is that U.S. and allied forces are increasingly vulnerable to missile attack and were lucky Iraq's Scud missiles were unsophisticated and lacked warheads of mass destruction.

Second, anti-ballistic missile defense can work, but the advanced systems of space-based SDI are required against missiles, such as the Soviet ICBMs and expected future Third World threats, that are far more advanced than Scuds.

Third, air- and sea-launched cruise missiles proved cost effective, and such systems, whether conventional or nuclear, should not be limited on our side, especially when we cannot accurately monitor Soviet limits.

Fourth, the war's end game demonstrated the duplicity of Soviet military hardliners who openly pressed for a precipituous cease-fire designed to cut the noose around Saddam Hussein's neck and to preserve his military power for a later day.

START and the Soviet Generals.—The fatal flaws and associated risks of START's key elements are compounded by the recent aggressive actions of Soviet military leaders and their KGB allies. Risks to the United States are mounting as these forces bear out former Foreign Minister Shevardnadze's warnings against their assertiveness, their arms control violations, their anti-reform crackdowns, and their movement toward dictatorial control.

Though facing severe economic crisis and while nominally pledged to defense reform, the Soviet generals, by official Soviet estimates, continue to spend at least 25 percent of the Soviet GNP on military efforts. These efforts include strategic offensive and defensive programs that dwarf ours and are completely unwarranted by any defense standard.

Modern Soviet strategic programs include nine ballistic missile types (six land-, three sea-based), three submarine types, four strategic bomber types, construction of deep command bunkers and tunnels, and a deployed, and improving, ABM system around Moscow.

The United States, in contrast, is in the seventh year of declining defense investment and headed for four more. We are unilaterally ending production lines of MX ICBMs and Trident strategic submarines, cutting back on D-5 submarine-launched missiles and B-2 bombers, keeping SDI budgets and tests far below priority rates, are ending all tank and much aircraft production and are cutting back Army and Navy forces by 25 percent.

A Dangerous Situation.—In a period of rapidly shrinking United States defense budgets and increasingly assertive Soviet generals, U.S. reliance on Soviet good behavior and on Gorbachev's intentions or staying power is fatal to America's security. We must not forget that in possessing 20,000 nuclear weapons, 9,000 strategic, the Soviet Union remains a military superpower, the only nation able to destroy us and our allies.

FOUR STEPS TOWARD A NEW STRATEGY

President Bush should take four steps toward a sound strategy:

1. START and a Strategic Review.—President Bush needs to take a pause, take START off the summit agenda, and order a 90-day, top-to-bottom blinders-off review of START's provisions and premises within the broader global content of threatening developments in the Soviet Union and the Third World. To assure that sound security principles frame this effort, it should be led by the Department of Defense and should include a "Red Team" approach.

2. Put Aside the ABM Treaty.—The review should be free to put aside the artificial limits imposed by the 1972 Anti-Ballistic Missile (ABM) treaty. The treaty has long ago become a destabilizing factor and has been made obsolete by Soviet arms control violations and by historical developments.

History has fundamentally discredited the treaty's assumptions about the technical infeasibility of cost-effective anti-missile defenses and about the continued military, and I would add, ethical validity of nuclear missile deterrence based on Mutual Assured Destruction, a deadly gamble with mutual suicide.

3. Accelerate SDI.—President Bush must not let SDI fall victim to the fatally flawed START treaty, to the broken ABM treaty or to obsolete defense priorities. He should seize the moment and declare accelerated SDI development and deployment, to focus on the technologically promising space-based systems such as "Brilliant Pebbles," to be an indispensable and stabilizing insurance policy of highest defense priority for the American people, America's allies and the world.

4. Have a Soviet Human Rights Policy and Summit.—As part of a principled Bush Doctrine in support of global freedom and democracy, President Bush should direct that, as its single highest diplomatic priority, United States policy firmly support the democratic forces throughout the Soviet Union. This means standing fully with the forces of fundamental political, economic and military change in the republics and cities—dealing as much as possible directly with the freely elected leaders like Yeltsin, Popov and their interregional allies.

It means that if the regime does not immediately cease treaty violations, unwarranted military programs and political crackdowns, the United States will withhold consideration of any summit meetings, arms control agreements, trade or other commercial benefits involving the Soviet Union.

The bottom line of stopping a START summit and starting a new strategy should be crystal clear. It is that START requires radical revision to increase security rather than risks and that rapid United States deployment of SDI and implementation of democracy and self-determination throughout the Soviet Union—not the fatally flawed provisions and premises of the current START—can be the uniquely effective means of securely achieving strategic arms control and stability now and for the decades ahead.

THE SENATE'S NEED TO PASS THE COMPREHENSIVE VIOLENT CRIME CONTROL ACT OF 1991

Mr. THURMOND. Mr. President, I want to speak on the crime bill for a few minutes.

Today, I rise to urge my colleagues to act upon the President's crime bill, S. 635, when the Senate considers crime legislation. This bill, which I introduced along with 26 cosponsors on March 13 of this year, is the toughest antiviolent crime proposal before the Senate. The Comprehensive Violent Crime Control Act of 1991 is vitally important legislation designed to combat the growing problem of vicious, brutal crime. On March 11, President Bush was joined by our Nation's State attorney generals, representatives from law enforcement, and Members of Congress in unveiling this urgently needed legislation. The President called upon Congress to pass his bill within 100 days. I believe this is a reasonable request. Without question, if the U.S. Armed Forces can win a ground war against Iraq in less than 100 hours, Congress can, within 100 days, act upon the President's crime bill. It will provide the President and the States with the weapons needed to mount an all out assault on crime.

Mr. President, the 100-day deadline is steadily approaching. The majority leader has stated his intention to shortly move to a violent crime bill. The Judiciary Committee has held several hearings in recent months on the crime bill. Furthermore, these issues have been debated over and over again, year after year. I rise today to urge my colleagues to realize that it is time for Congress to act upon a tough violent crime bill.

S. 635 is the toughest bill. It responds to what Attorney General Thornburgh has called the first civil right of every American—the right to be free from fear in our homes, on our streets, and in our communities. Title I of S. 635 restores an enforceable Federal death penalty by establishing constitutional procedures for the implementation of a death sentence. The bill also includes language to reform current habeas corpus procedures which will minimize Federal judicial interference with State criminal convictions and deal with common abuses typical of habeas prisoner petitions.

These reform proposals have been endorsed by a majority of our Nation's attorneys general, the National District Attorneys' Association, numerous victims' organizations including Citizens for Law and Order, and numerous police organizations such as the Fraternal Order of Police. All of these organizations realize, as does the Bush administration, that nothing will afford the criminal justice system more force, more credibility, and more integrity, than a Federal death penalty and putting an end to the endless succession of appeals, especially by death row inmates.

Additionally, the President's bill includes a codification of the good faith exception to the exclusionary rule that has been recognized by the Supreme Court. This provision codifies and expands upon a Supreme Court decision by simply providing that when a law enforcement officer acts in good faith compliance with the fourth amendment, any evidence obtained therefrom will be admissible as evidence in a criminal trial.

Mr. President, the President's crime bill also proposes increased penalties for serious gun offenses. It is imperative that we make substantial prison time a certainty for the drug traffickers and other criminals who prey upon the innocent in our society and use firearms to commit their brutal crimes.

In summary, Congress has before it a bill which will substantially help to win the war on vicious crimes. That bill is the President's bill. The American people demand action on the President's crime bill and they demand it now. The Senate should be afforded an opportunity to act upon the President's legislation, not a watered down version which expands the rights of vi-

cious criminals at the expense of the law abiding. We must have real, tough reform.

For this reason, I urge my colleagues to take swift action upon this legislation. I urge my colleagues to permit the Senate to vote—up or down—on the President's bill. There is no doubt that S. 636 encompasses the tough reform America wants and so greatly deserves.

I yield the floor, Mr. President.

Mr. GRASSLEY. Mr. President, apart from the economy, there is no more powerful and emotional issue today than crime.

In poll after poll, crime ranks at, or near, the top of domestic policy concerns. And this is properly so, because there is no more important obligation of government than to protect the lives and property of its people.

Indeed, the right to live in a crimefree and drugfree neighborhood is the first civil right of every American.

But, when government fails to perform this most essential function, the people begin to question its legitimacy—and with good reason. For they have a right to expect that government will fulfill its primary responsibility.

The latest FBI report is evidence that violent crime in the United States presents us with one of our most crucial national security challenges of the last decade of the 20th century.

Mr. President, our national crime strategy must always be mindful that behind the statistics, there are human victims of crime and we must attempt to make them whole as best we can. Unfortunately, that has not always been the case in this country, because scant attention has been paid to the victims of crime.

We've been preoccupied with a suspect's rights, and even a convicted criminal's rights. For over a generation, courts have erected elaborate procedures intended to protect the criminal, often at the expense of his victims. Consequently, criminal proceedings have become less truthseeking devices, but rather obstacle courses that benefit lawyers and criminals.

We need to pass tough, meaningful anticrime legislation.

As we speak on the floor of the Senate today, we are approaching the President's 100-day challenge to Congress to enact anticrime legislation for his signature that offers some means to stem the deadly flow of criminal violence.

I know the American people will be pleased that we will consider crime legislation in the Senate, beginning next week.

Mr. President, there have been many hearings and bills on crime during my years in the Senate and my service on the Judiciary Committee. After reviewing all of this material, I am no longer interested in an academic search for the so-called root causes of crime.

Nor do I believe that the American people are much interested in the root causes of crime.

Instead, the American people are demanding action to stop criminal violence against persons and property, whatever the cause.

The American people aren't interested in more excuses and theories from sociologists. The American people do not want rationalizations for antisocial behavior.

The American people want to stop crime now.

In addition, the American people don't want us to become embroiled in side issues that are exclusive of the issue of real crime control.

For example, the issue of gun control is irrelevant because criminals simply don't care about gun control laws. They never have, and they never will.

Nor should the diversion over guns deter us from a winning anticrime strategy to protect law-abiding citizens. We must aggressively promote that strategy. We must not shy away from political confrontation on the issue, if it is necessary.

The President's comprehensive crime package, sponsored by our distinguished colleague, Senator THURMOND, is a meaningful antidote for our sick criminal justice system.

It includes:

First, stiffer penalties for Federal firearms crimes, tougher laws on juveniles and gangs, beefed-up antiterrorism provisions, simplified prosecutions for sexual violence and child abuse, and expanded drug testing for Federal parolees and probationers;

Second, a relaxation of the judge-made exclusionary rule to allow Federal courts to exclude probative evidence only on constitutional grounds, and admit evidence seized by the police acting in good faith;

Third, a promoting of some sense of finality in criminal cases by limiting Federal habeas corpus petitions, including persons convicted in State courts; and

Fourth, a strengthening of the Federal death penalty by the addition of several new capital offenses, such as attempted assassination, kidnaping resulting in death, murder-for-hire, and murder during hostage taking.

The Bush-Thurmond package is tough on the people it ought to be tough on—those who commit violent crime.

At the same time, it is fair to suspects.

As importantly, it protects law-abiding Americans.

I urge my colleagues in the Senate to accept no substitutes for real, tough, and meaningful anticrime legislation.

Let's get on with the debate.

THE CANCER OF CRIME

Mr. SIMPSON. Mr. President, I want to join my colleagues in expressing appreciation for the manner in which the leadership on both sides of the aisle are trying to meet the President's goal to address the issue of crime, and the highway issue, within the first 100 days of the 102d Congress. I commend the majority leader for his willingness to accept the President's recommendation and move forward.

We have heard a great deal in these past few days about proposals to improve health care. There will be the Democrat's proposal, which is like new wine in old bottles or old wine in new bottles, whichever one you want to call that one, and then there will be the Republican proposal.

All we know is that this system of health care is costing us $670 billion a year and about 85 percent of the people of America are just loving it and about 15 percent of the American people are appalled at their being left out of it.

That is not what I would address in these few moments, but that is what we have talked about lately here. Both parties have their own ideas on improving health care to individuals.

I think we have another serious health problem in our country. I think our society is really very much suffering from a cancer of crime that is growing and threatening our societal well-being. Our city streets are not safe. Some of our neighborhoods are controlled by armed gangs of thugs and hooligans.

Throwing money at the problem, an eternal congressional activity, has not worked. Our strongest statement so far is throwing money at the problem. That has helped to ease the rate of increase, but it has not very effectively deterred crime. So I think we need to turn our attention to deterrence and punishment, if you will—it is not popular to talk about that, but critically important—rapid, swift, certain but fair, predictable, and severe punishment for criminals, strong sanctions for violent crime. We in the Congress need to breathe new life into the old saying, "If you can't do time, don't do the crime."

The crime bill introduced by the ranking member of the Judiciary Committee, our extraordinary and effervescent colleague, STROM THURMOND, of South Carolina, I think is our very best hope for implementing a cure for the cancer of crime that our country is facing. We need to start getting tough with the career criminals and people who kill.

We almost succeeded in getting started on a cure last year with the bipartisan good-faith efforts here in the Senate—and I commend the chairman, JOE BIDEN, and the Senator from South Carolina, STROM THURMOND; they were trying very hard to put together a good package—and we were thwarted in con-

ference. In my 13 years in the U.S. Senate, I have never seen a conference where the conferees of one body actively worked to defeat their own bill. I have never seen that. That is exactly what they did.

Make no mistake about it, Mr. President, the Senate bill sent to conference was already a compromise, and then we got into this extraordinary adventure in the Commerce Committee. Many tough votes were held right here in this Chamber, and we worked very hard to compromise in good faith to at least make a good start toward addressing the problem of violent crime in America.

I think it is long overdue time to enact a tough death penalty. It is time to enact serious habeas corpus reform that will severely restrict the endless and frivolous and repetitive appeals of capital convictions. The administration's proposal introduced by Senator THURMOND will do just that. We need those provisions, and the American people are in wholehearted support of getting serious about serious crime.

There will be some effort to turn the debate on crime, violent and serious crime, solely into a debate on whether or not we should enact additional gun control measures. This is not about gun control, even though that is a passionate area for me and for some of our colleagues.

We should not be diverted by that single issue as we do the crime bill. We need to finally focus on the criminal, not his arbitrary choice of a particular means of wreaking havoc and mayhem on his fellow human beings, but on the criminals. Get them off the street, and it will not matter how many revolvers or handguns are sold in this country. It will not matter how many semiautomatic rifles and handguns are manufactured and sold. The diversionary debate about gun control is just another way, intentionally or unintentionally, of making excuses for criminal acts.

I happen to feel very strongly about gun control. I represent the State of Wyoming where that is a very important part of our ethic. I cannot support the Brady bill, not when I come here and spend the other half of my life in Washington, DC, which has the toughest gun control laws in the United States and is assuredly the murder capital of the United States. Something is twisted.

So I hope we do not have to listen to excuses for criminal acts and get diverted from that. There really is no excuse for cold-blooded murder. There really is no excuse for violent assault. Some people are real animals, and that is the way it is in real life.

We need to reinstate the concept of personal accountability in our criminal law. The criminal should be personally accountable for his criminal acts. He should not be allowed to blame the gun, society, his teacher, his mother, his strict father or the system or the establishment. The system is slanted in favor of the criminal. We need to change that and change that now. The proposal introduced by Senator THURMOND will do much to begin the process of change the American people have been demanding for these many years.

Finally, in closing, for too long now, and I am very careful as I say this, the majority party in the other body, in the House of Representatives, has exercised its power to suppress the administration's proposal and any other thoughtful proposal, including their own, from the House floor. To my knowledge, there has been no action whatsoever on any provision of the administration plan either in whole or in part. The leadership in the Senate, on the other hand, should be commended for having the courage to allow free and open debate on all proposals this session, and I commend the majority leader for that.

It is very troubling for me as a legislator to see these procedural rules used in the other body in a way which prevents the slightest airing of proposals that differ from the agenda of the majority party. That is a fact of life we are going to deal with and live with, but very unfortunate.

That is also an additional reason to work especially hard in this body to see that a really tough crime bill is passed in the Senate. That is the only way both approaches will be fairly and openly aired. The American people should be able to be fully aware as to how their elected representatives are expressing their constituents' concerns about violent crime in America.

I look forward to working in the Senate toward passage of a really tough crime bill. The administration proposal produces a much-needed and long overdue first step toward reducing violent crime, giving law enforcement the tools needed to get criminals off the streets and into the klink where they really belong.

The PRESIDING OFFICER (Mr. KERREY). The Senator from Oregon is recognized. I advise Senators that controlled time has now expired. We are in morning business.

The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I ask unanimous consent that I may yield a minute to the Senator from Minnesota without losing my right to the floor.

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

HEALTH REFORM AGENDA

Mr. DURENBERGER. Mr. President, I thank my colleague from Oregon.

Mr. President, yesterday in my comments I saluted three colleagues of ours who are authors of a very comprehensive health reform bill, and I neglected to mention the one author who has done the most over the last 2 years to seek a bipartisan Senate health reform agenda. Most people know DON RIEGLE as the senior Senator from Michigan. Many people know him as the much admired chairman of the Senate Banking Committee.

In 1989 DON RIEGLE became the chair of a new subcommittee in the Senate Finance Committee, the Subcommittee on Health for Families and the Uninsured. From that time on he hosted dozens of meetings in his personal office over in the Dirksen Building with as many as 20 Republican and Democratic Senators trying to find a bipartisan way to find a comprehensive health agenda on the table. Because the effort failed does not mean he did not try his best in that effort, and I salute him as one of the four main authors of that agenda.

I indicated yesterday I do not agree with a lot of elements in the agenda. But the fact it exists is a tribute to him as much as it is to the other authors. I wanted to make that clear to all of my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon has the floor.

Mr. HATFIELD. I thank the Chair.

(The remarks of Mr. HATFIELD pertaining to the introduction of S. 1228 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SMITH. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator from New Hampshire is correct; we are in morning business. The Senator from New Hampshire is recognized.

CRIME

Mr. SMITH. Mr. President, next week the Senate will deal with the problem of crime in our streets. It will be presented with a choice as stark as any we are likely to face this year. The Senate can choose a crime bill which limits frivolous appeals by convicted criminals, blocks release of dangerous felons for trivial technicalities, and creates a constitutionally acceptable death penalty for heinous crimes.

If this is the route the Senate chooses to take, they will adopt the President's bill. It is the route I hope we take. Or the Senate can adopt a bill which effectively outlaws the death penalty at the Federal level, expands the rights of convicted criminals to lodge frivolous appeals, and makes it easier for dangerous felons to be released on the streets on account of legal technicalities—and which seeks to cover up for all these inadequacies by ample dollops of gun control and, yes, by recklessly throwing away another billion dollars in taxpayers' funds. If this is the route the Senate

selects, it will adopt the crime bill proposed by the Democratic leadership.

Whatever route the Senate selects, it is important to understand one thing: Serious crime is overwhelmingly the product of career criminals who commit serious felonies again and again. Unless we end the criminal justice system revolving door for these career felons, crime will continue to rise.

REGARDING THE CRIME BILL

Mr. SYMMS. Mr. President, there is some good news and some bad news on the crime front. The good news is that the Senate Democratic leadership has responded to the President's March 6 call for a crime bill within 100 days. The bad news is that the leadership has overlooked the fact that what the President wanted was an anticrime bill, not a procrime one.

The travesty masquerading as a crime bill which was introduced yesterday would do nothing to stop the plague of crime and drugs on our Nation's streets. Instead, it would:

Effectively outlaw the death penalty at the Federal level by prohibiting its implementation unless the random pattern produced by jury sentencing complied with precise racial quotas;

Expand the rights of prisoners by overturning six judicial decisions limiting habeas corpus;

Expand the rights of criminals to exclude evidence in their criminal trials; and

Reorganize the Justice Department in a way which the Justice Department believes would be counterproductive in the fight against crime.

Mr. President, some Members of the Senate may have succeeded in fooling themselves, but the American people have not been fooled.

The people of Jacksonville, FL, where the murder rate has risen 84 percent in the past 5 years, are interested in curtailing the rights of criminals to file frivolous petitions, not expanding them, as the Democratic bill would do.

The citizens of New Orleans, where the murder rate has risen 101 percent from 1985 to 1990, want to reduce the options open to criminals to ban evidence obtained in good faith in their criminal trials, not expand them.

The people in Milwaukee, where murder has risen a whopping 126 percent from 1985-90 and has risen another 43 percent already in 1991, want to implement the death penalty, not outlaw it with racial quotas.

Mr. President, we need a crime bill that will hold criminals accountable for their actions, not create more loopholes for them to escape justice. We need a bill that will incapacitate criminals, not empower them. In short, we need to enact an anticrime bill which would:

Expand the number of Federal crimes punishable by death;

Allow prosecutors to use evidence in court even if it was obtained in violation of some legalistic hyper-technicality; and

Limit the number of frivolous habeas corpus petitions by prisoners.

The President's crime bill is such an anticrime bill. The Democrat's bill is not.

THE DESERT STORM HOMECOMING—A TIME FOR REFLECTION AND CELEBRATION

Mr. WALLOP. Mr. President, on Saturday, the American people will come together in our Nations Capital to welcome home the liberators of Kuwait. It will be a time for joy and relief—joyous that our men and women serving in the Armed Forces were successful in their most recent crusade, and relieved that our sons and daughters, husbands and wives, fathers and mothers have come home.

During the celebration on the Mall, one soldier from Wyoming will not be participating in the parade. Manuel Davila died in combat on February 27, 1991. Private Davila served in the U.S. Army, and was killed by enemy fire which struck his armored vehicle. While we watch the festivities on Saturday, we must recall the sacrifice that Manuel Davila and 377 of his comrades made in service to our country.

Shortly after Manuel's death, a letter was received in Gillette, WY, addressed to the employees of the Black Hills Power & Light Co. They had organized a support effort for troops serving in the gulf. The letter was from Private Davila thanking the people of Gillette for their kindness. It is one of those poignant letters of loneliness and dedication inspired by the tensions of war. I would ask that the text of the letter be printed at this point in the RECORD.

Manuel Davila will not fulfill his promise to thank in person the Gillette community. Rather, it was the people of Wyoming who came out on a cold early spring morning to attend a memorial service to honor and lay to rest this young man. As we celebrate this Saturday, we will remember Private Davila.

There are other service men and women from Wyoming who will not be here on Saturday. They will be attending to their duties defending the Nation, or they will have returned to civilian life after being called up as members of the Reserve or the National Guard. One unit, from Wyoming, was the 1022d Medical Company [Air Ambulance], which supported the 3d Armored Division. This unit provided medical services to the division which fought the Republican Guards in southern Iraq.

Shortly after the cease-fire, I received a letter from the company's commanding officer, John Mudlo. He recounts the activities of his unit which expertly accomplished their mission. It is his closing that captures the spirit of those we honor on Saturday. He wrote, "I am very proud of the 1022d soldiers. * * * We look forward to returning home soon to get reunited with our families and friends. We miss Wyoming." Though the 1022d will not be in Washington on Saturday, I would like to welcome them home, and congratulate them on a job well done.

I would ask that John Mudlo's letter also be printed in the RECORD at this point.

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

FEBRUARY 23, 1991.

Kind People of Black Hills Power and Light:

I meant to write earlier, but as you can probably guess, we've been moving a lot and keeping busy. Well, I've got some time, I'd like to thank you all for your support. It really makes us feel good that people back home care enough to send gifts.

Well, if you don't know already, I've got a huge family in Gillette, and all of them appreciate what you've done. When I get back, I will make it my business to thank you in person. I recently was married and I've got a wonderful little girl.

As for my life over here, I'm a long way from home, and I miss our little home in Wyoming. I can't wait to get back. My new wife may already be on her way, it's really high stress for her knowing I'm down here. Well, I've got to go, I'll write again.

Thanks for everything,

MANUAL M. DAVILA.

MARCH 22, 1991.

DEAR SENATOR WALLOP: Thank you for your Christmas greetings to the soldiers of the 1022nd Medical Company (Air Ambulance). We were late in receiving the greeting because our zip code changed when we reached the Persian Gulf.

The 1022nd has been very busy since we were activated on November 21, 1990. We moved to our mobilization station at Ft. Carson, Colorado from our ground vehicles and flew our 12 helicopters to Oakland, California. In Oakland, we loaded our equipment on two ships on about 7 December. The two ships departed for the Persian Gulf around 10-14 December. We continued our training at Ft. Carson until we were given our orders to move to Saudi Arabia. We departed Peterson AFB in Colorado Springs on January 15th at 3 AM. We arrived at King Fahd International Airport on 16 January. That night we watched our Air Force heading north over our camp enroute to Kuwait and Iraq. We were still on moutain time, so we were wide awake at 2 AM. We quickly moved to the port of Dammam and unloaded our aircraft and trucks from the ships. Within one week we were getting orientation flights in our area of operations.

We were assigned to the VII Corps under the 332nd Medical Brigade. During the ground war we provided aeromedical evacuation to the 3rd Armored Division. The 3rd Armored Division travelled about one hundred miles into Iraq and ended up fighting units from the Republican Guard. Fortunately, there were very few casulaties and the war ended quickly. We carried about 62 patients during the ground war (both Iraqi and U.S. soldiers). We are still supporting the 3rd Armored Division in eastern Kuwait. The soldiers of the 1022nd successfully accomplished their mission during the war and are still providing valuable support to the

3rd Armored Division soldiers. I am very proud of the 1022nd soldiers and Wyoming should be also. We look forward to returning home soon to get reunited with our families and friends. We miss Wyoming.

Sincerely,

JOHN T. MUDLO,
Commanding.

ECONOMIC ENGAGEMENT IS A KEY TO FURTHER SOVIET REFORM

Mr. PELL. Mr. President, this week, the Bush administration has taken three steps that seem to signal its recognition that economic stability and increased economic contact with the West are key factors in the Soviet Union's ability to move forward on political reform.

On Monday, President Bush announced that the administration was extending its waiver of certain Jackson-Vanik provisions, making the Soviet Union eligible for credits and some trade benefits. Then, after talking with Prime Minister Major of Great Britain, President Bush stated that the United States would support an invitation to Soviet President Gorbachev to attend the Group of Seven's annual meeting in London. Finally, the President nominated Robert Strauss, an individual with extensive business and trade experience—as well as political acumen—to be our next ambassador to Moscow.

Mr. President, last month, I urged the administration to be responsive to Soviet requests to become more fully integrated into the international economic community. I welcome the steps that President Bush has taken this week toward that end. If the Soviet Union is to be our active, constructive partner in areas such as arms control, regional peace efforts, and the environment, the Soviet economy must be put in order. I believe that international cooperation in the economic sphere—including the extension of most-favored-nation trade status—can help promote the internal stability necessary for success in these and other efforts.

President Gorbachev has come to view Western support as essential to the success of Soviet restructuring efforts. The West, for its part, has come to view a specific, comprehensive Soviet plan for free-market reform as essential to any commitment of assistance. In my view, the London summit of the G-7 will provide a particularly good forum for a constructive exchange of views on these issues among the seven industrialized nations and the Soviet Union.

Mr. President, the United States and our allies in the G-7 have responded positively and responsibly to Soviet requests to become more engaged in the international economic community. It is now up to President Gorbachev to take the next step by bringing to the London summit a detailed program that reflects some sort of consensus among Soviet central and republic leaders on the course of reform.

TRIBUTE TO LT. COL. DICK CODY, 101ST AIRBORNE DIVISION

Mr. LEAHY. Mr. President, I have known Robert and Janice Cody for most of my life. The Cody family is well known in the Montpelier area of Vermont where I was born and raised, and represent several generations and numerous family members who have contributed a great deal to our community and our State.

Recently, their son, Lt. Col. Dick Cody, was profiled in the Burlington Free Press and the article tells, better than I could, of his heroism and professionalism in Operation Desert Storm. So often, we do not hear of people we know so I want to share it with my fellow Senators, and ask unanimous consent that the article be included in the CONGRESSIONAL RECORD at this place.

I make this request with a great deal of pride for Dick and his family.

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

[From the Burlington (VT) Free Press, May 18, 1991]

MONTPELIER NATIVE FIRED SHOT HEARD ROUND THE GULF

(By Patricia Haller)

Despite years of training, flying a dark and silent helicopter into Iraq to fire the first shots of the air war was "like being on the worst part of a roller coaster for an hour and a half," said Lt. Col. Dick Cody.

Cody, a 1968 graduate of Montpelier High School, led eight Apache attack helicopters from the U.S. Army's 101st Airborne Division in the first attack of Operation Desert Storm. At 2:38 a.m. Jan. 17, the pilots broke radio silence and opened fire, destroying two key early warning radar stations in Western Iraq.

"We were flying 50 to 75 feet above the desert at 120 to 130 miles an hour, completely blacked out," said Cody, commander of the 1st Battalion, 101st Aviation Regiment stationed at Fort Campbell, Ky. "We had no lighting systems and no radio calls until just 10 seconds before launching the first missiles."

By taking out the Iraqi radar, Cody's unit opened a 20-mile corridor so allied bombers could fly unhindered to Baghdad. The raid was captured on a video that the 40-year-old Vermont native said he has watched repeatedly, often freezing the frame the moment the missiles hit.

"It was chaotic," said Cody, 40, son of Robert and Janice Cody, owners of Cody Chevrolet Inc. in Montpelier. "All the stuff was blowing up. It was like a 4½-minute explosion. You can see the soldiers running for cover and see the effects of our rockets and guns taking care of the enemy."

The 101st Airborne was the first Fort Campbell unit called up in the Gulf war. Cody, his pilots, his soldiers and their equipment left for Saudi Arabia on Aug. 15, less than two weeks after Saddam Hussein's invasion.

"They airlifted the entire battalion—40 aircraft, 85 pilots and a total of about 340 soldiers," Cody said. "It took about 2½ days to get us all over there. But we were a deterrent force and General Schwarzkopf wanted to have as many attack helicopters in-country as he could to prevent (Saddam) from coming down from Kuwait and taking the Saudi Arabian oilfields."

Cody was told to train for the first-strike mission in September. Those orders were top-secret. He spent the winter months drilling his pilots, who didn't learn of their mission until he briefed them two days before the strike.

Cody said he and his pilots saw the assignment as a chance to prove the night attack capabilities of the AH-64A Apache attack helicopters.

"We love the aircraft, and it felt good to have a chance to prove that it was everything we said it was," he said.

Despite the radio silence the unit drew fire from Iraqis with shoulder-held missile launchers and machine guns, but all the rounds missed.

"We were nervous, obviously, because if any of us had been shot down, we would have been POWs," Cody said. "But we were all pretty proud that we did it, and did it right."

TAX RELIEF FOR UTILITIES INSTALLING CLEAN AIR TECHNOLOGY

Mr. SPECTER. Mr. President, I join my distinguished colleague from Illinois as an original cosponsor of legislation to help offset the capital costs of technologial controls installed by public utilities under phase I of the Clean Air Act. The goal of this legislation is to provide a financial incentive to help lower the cost of capital of installing scrubbers, so that utilities can achieve higher emissions reductions at an earlier date. In doing so, the bill would achieve an important result to ensure a more equitable allocation of acid rain control costs.

I want to make it plain, Mr. President, that I fully support the goals of the Clean Air Act with its objective of removing 10 million tons annually of sulfur dioxide from the air to help solve the acid rain problem. However, I am concerned with the matter of fairness, and I see this legislation as a method to correct an inequity that was present in the final version of the Clean Air Act.

As I said at the time of this debate last year, clearly, it is not equitable for a small number of Midwestern States who together comprise 51 percent of the national sulfur dioxide emissions total, to be responsible for 90 percent of the emissions reduction in implementation of phase I of the Clean Air Act.

Mr. President, we are not asking for relief from our environmental protection responsibilities. This bill would simply allow those utilities which install pollution control devices, scrubbers, the same kind of a tax break enjoyed by others who undertook those controls at an earlier time when there was an investment tax credit.

In order to comply with the stringent regulations established by the Clean

Air Act, expensive, state-of-the art technology will necessarily be installed by our region's utilities. Electrical rates for consumers in some States could increase by 13 to 20 percent. By allowing this tax credit, this bill would provide needed relief in reducing the costs to our region's electrical consumers in meeting our national clean air goals. In addition, this tax credit may avoid the cost of paying for compensation of unemployed workers should we fail to provide assistance for the installation of new technology in these plants.

I am hopeful that you will see this bill not as a regional issue, but as a show of national support for a national priority that must be shared by the whole country, and I ask that you join in support of this legislation as a long-term step in the solution to the nation's acid rain problem.

REGARDING S. 173, THE TELECOMMUNICATIONS EQUIPMENT RESEARCH AND MANUFACTURING COMPETITION ACT

Mr. WALLOP. Mr. President, yesterday the Senate adopted S. 173, the Telecommunications Equipment Research and Manufacturing Competition Act by a vote of 71 to 24. I voted against the measure because of my reservations about its domestic content provision. I regret that my friend and colleague from Texas, Mr. GRAMM, was unsuccessful in convincing the majority of the Senate that it was a mistake to retain such a protectionist measure.

As the Senator from Texas pointed out so eloquently, including a domestic content provision in a bill primarily intended to make America more competitive in the telecommunications industry flies in the face of common sense. Domestic content violates six treaties, is potentially unconstitutional, and is an inefficient way to do business.

For many, many years, we as a nation have worked very hard to open foreign markets to our products. We have made great progress in that regard, a fact boldly demonstrated by the rather dramatic reduction in our trade deficit. Nowhere is that reduction more obvious than in the telecommunications industry where we have a trade surplus of $1.3 billion in the high value lines and our overall deficit has dropped from $2.61 billion in 1988 to $790 million in 1990. Telecommunications equipment exports have grown 157 percent while imports have increased only 64 percent.

Yet, in our fervor to appease one particular special interest group—notwithstanding what its impact might be on the consumers of America—we make an agreement which has the potential for building a brick wall around our country and sends a signal to other countries that we aspire to anticompetitive practices.

Mr. President, we cannot have it both ways on trade. We cannot expect to close our doors to foreign products and anticipate negotiations will result in anything but reciprocal treatment. Therefore, I urge our House colleagues to inject some reason and good judgment into this domestic content dispute. My hope is that common sense will prevail so we can move forward with a bill that produces jobs, telecommunications industry growth, and sophisticated technologies that other countries now enjoy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired.

Mr. DOLE. Mr. President, is there any leader time left or did I use it all earlier?

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. DOLE. Thank you, Mr. President.

CRIME BILL

Mr. DOLE. Mr. President, Americans want action in the war against crime. And they want it now. President Bush heard that message, and responded by proposing the Crime Control Act of 1991, and challenging Congress to take action within 100 days.

I am proud to say that the Senate also heard that message loud and clear, and next week we will consider crime legislation.

And I want to join my colleagues in praising Senator MITCHELL, Senator BIDEN, and Senator THURMOND, for their work in meeting the President's 100-day calendar.

Unfortunately, the members of the majority party in the House of Representatives have turned a deaf ear to the demands of the people. They have closed their eyes to the epidemic of crime which continues to sweep the Nation. They continue to believe that the best way to combat crime is to ignore it and the best way of handling criminals is to let them roam the streets.

I sincerely hope that next week's debate in the Senate will enlighten those who want to wave the white flag in the war against crime.

Next week's debate should not be lengthy. We have discussed and debated these issues before.

There are a number of crime bills floating around. But it is clear to me that the best bill, the hardest-hitting bill, the bill that will make the biggest difference, is the President's bill.

No one can deny that our courts are clogged and overburdened. And the President's bill deals with this by putting a stop to repetitive and frivolous delays.

No one can deny that our courts all too often let the guilty go free because of minor procedural errors by the police. And the President's bill deals with this by permitting evidence collected in good faith to be introduced, and by allowing all firearms to be introduced as evidence, no matter how they are obtained.

No one can deny that one way to decrease handgun violence is to put those who use handguns behind bars. The President's bill creates additional categories of firearm offenses and penalties. And it says that first time felons caught with firearms should serve 5 years behind bars. No plea bargaining. No early release. No kidding.

And no one can deny that the vast majority of Americans favor the death penalty for the most heinous of criminals, such as cop killers and terrorists. And the President's bill does just that.

The President's bill also does more. It includes provisions designed to curb terrorism, racial injustice, sexual violence, and juvenile crime. It makes it easier for Federal officials to prosecute those who commit acts of sexual violence against children. It requires drug testing as a condition of postconviction release for Federal prisoners. It guarantees a victim's right to address the court at sentencing.

It is a good bill, a comprehensive bill, and a bill that will reduce crime, that will save lives, if it becomes law.

Given the situation in the House of Representatives, it is a tough fight. But it is a fight that we owe the American people. And it is a fight we cannot afford to lose.

DEMOCRATS ON HEALTH CARE

Mr. DOLE. Mr. President, yesterday the majority leader joined by four of his colleagues announced their solutions to certain aspects of the health care crisis confronting this Nation. They are to be commended for helping to begin and shape the long overdue debate on access to health care.

Frankly, Mr. President, there is little disagreement over the existence of serious problems. People are undoubtedly falling through the cracks—in fact, whole regions, particularly rural areas, are falling through the cracks. Children as a group are woefully underserved. Costs are too high and getting higher and the quality and appropriateness of some care is certainly in question. All of these things lead to the inevitable conclusion that the status quo cannot survive. Our disagreement—if we have a disagreement, and it is not a partisan disagreement as much maybe as a philosophical disagreement—comes over how best to proceed.

In the coming weeks and months many proposals will be discussed. And in fact, there is much in the Democrat's proposal worth discussing—there

are other ideas, however, which clearly take us in the wrong direction.

PAY OR PLAY

As a number of my colleagues have already pointed out, the central focus I believe of the proposal are the so-called pay or play requirements. I, for one, see no reason to look to the State of Massachusetts for solutions to our problems. Yet, what the Democrats have proposed is largely the old Dukakis plan.

Now that the Federal Government is running in the red, and State governments are faced with budget deficits that rise each year, the Democrats are looking for a new pocket to pick, and small business will fill that role.

The proposed mandate on employers is, in effect, a heavy tax on jobs. As with any tax, the more Government taxes something, the more it discourages it. Taxing employment means fewer jobs.

The proposal pretends that it is employers who would bear the cost of the new mandates, but the costs really fall on the workers, particularly low-wage workers, the very worker who is most likely to lack health insurance. For these workers, the costs will come in the form of reduced employment, slower rates of employment growth, and cutbacks in other fringe benefits.

By imposing mandates on business, the result is a growing web of Government regulations, restrictions and price fixing that distort the system and that are contrary to the fundamentals of a market economy.

We have already seen the effects of such a strategy on other areas when Government regulation of these industries has resulted in time-consuming and cost-consuming efforts in Congress, when deregulating years later is necessary to hand the resources and decisionmaking power back to the consumers and providers.

Following regulatory logic to its natural conclusion, a fully nationalized system will be created by proposing a universal system of mandatory insurance, with Government specified benefits and prices. The proposal effectively has called for a national system paid for by the employers. Of course, many American companies may quickly grow frustrated and simply shed the burden by pressing the Government to take over completely.

A Government monopoly would achieve some savings initially, but over time it would become as unresponsive, inefficient and ineffective as any other monopoly.

If we look to Canada, we can assume the inevitable result would be explicit rationing and waiting lists as a response to the disparity between unrestrained demand and finite resources. In Canada, patients can expect to wait 4 to 7 months for heart surgery, 2 to 5 months for disc surgery, and 2 to 7 months for cataract removal.

COST IMPLICATIONS

And, of course, the anticipated cost of this new federalized system is completely unknown. What the ultimate increase in the payroll tax would be or the increase in costs to the States from the new mandates are yet unknown.

What we do know is how poor our history is in projecting the costs of new programs. In fact, Medicare and Medicaid are excellent examples. We have no reason to be any more trusting now. What we may find is that we promise far more than we can ever deliver. The failure of the Democrats to propose any specific financing mechanism certainly further complicates this issue.

On the positive side, I compliment the distinguished majority leader and his colleagues for including a number of initiatives which mirror proposals made by a number of Republicans. Senators DURENBERGER, CHAFEE, and MCCAIN have proposed small market insurance reform, in the hopes of making coverage more affordable to small business. Senators HATCH, DOMENICI, DANFORTH, MCCONNELL, and MCCAIN have also proposed wide ranging malpractice reform—not simply grants to States for more experimentation.

The preemption of State mandated benefit laws and the removal of barriers to managed care initiatives are also proposals Republicans have championed.

Mr. President, there are other areas where I believe we can reach consensus. The challenge to all of us is to develop a fair and equitable health care strategy that will address the health care needs of all Americans from both the accessibility and cost perspectives. To achieve this we must restructure and build on our present system to both hold down skyrocketing costs and expand access to health care services.

I believe the following are the elements of how to meet the challenge:

Evaluate our current health insurance system.

Examine health insurance practices and Federal tax policies to ensure that small employers and individuals are treated fairly in comparison to large employers and their employees.

Ensure that innovative and creative alternatives to traditional health insurance plans are given a fair opportunity to evolve.

Place a greater emphasis on prevention.

Examine the role of the individual.

If a good and affordable health insurance plan is available, does one have a responsibility to purchase it?

How can we encourage and reward good health care behavior.

Reform medical liability laws that have an impact on how care is provided and on the rising cost of health care.

Maintain and continue to improve the quality of care provided.

Develop better and more responsive methods of providing health care; for example, emergency rooms versus health centers or other primary care providers.

Maintain critical element of choice.

We owe it to our colleagues to join with them in debating these very serious issues. I think we can, working together, put together a strategy that we can afford and that will achieve our goal of improving access to care for all our citizens.

I say that we have a long way to go. The issue certainly cries for debate, discussion, solution, and I am pleased to see that with the plan by the majority, there will be other plans introduced on this side of the aisle. Perhaps if not this year, very soon we can address the problem that has needed addressing for some time.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, 2 weeks ago, the Congressional Research Service released a report on the Persian Gulf war. Once again, CRS has distinguished itself for its ability to turn real world events into useful recommendations that can be pursued by Congress. The report, entitled "Persian Gulf War: Defense Policy Implications for Congress," highlighted insights that Senators and their staffs should consider well before the Defense authorization bill reaches the floor of the Senate.

The Defense acquisition system bears the burden for converting technology advances into the weapons used by our men and women in uniform. It consumes a large amount of Federal tax revenues. This summer, Congress will give the Department of Defense $103 billion to develop and buy new weapons. Several billion dollars must be added to this total in order to account for the salaries of several hundred thousand DOD employees who buy, maintain, and upgrade weapon systems.

The defense acquisition system is comprised of a huge bureaucracy, with layer upon layer of management and dozens of buying commands and subcommands in each military service. When the Packard Commission recommended streamling this bureaucracy to three layers and a handful of commands, the Defense Department added a second multilayer bureaucracy to the old structure. As a result, the American taxpayer is now paying for two bureaucracies in each of the three military departments. As the CRS report noted, this system is clearly at odds with the principle of unity of command that was applied so successfuly in Operation Desert Storm.

It should come as no surprise that virtually every major weapon system currently being developed is experiencing serious cost and schedule problems. A recent Defense Department advisory group study revealed that DOD's acqui-

sition system continues to experience cost and schedule problems despite the myriad reforms enacted over the last 10 years; reforms the DOD study found to have marginal impact. The study found that it now takes 16 years to field a new weapon.

Mr. President, once again, the data support the need for a single defense acquisition agency to acquire modern weaponry. The CRS report suggested that a single buying agency would be better able to interact with the Joint Chiefs of Staffs' unified command structure resulting in more cost-effective weapons. In addition, while recent acquisition work force reforms have made a big step toward what I had recommended in the 1980's, many gains are lost without a single buying agency to integrate work force innovations. Moreover, a single buying agency would save money just by removing the expensive duplication of acquisition staff. Still, the largest gains would come from reducing the cost and time currently wasted in converting new technology into weapons.

Further, the single buying agency could improve the use of defense research and development expenditures. For example, DARPA is on the edge of breakthroughs in smart weapons guidance technology, which is critical to at least five major weapons currently in development—the B-2 bomber, the advanced technology fighter, SDI, the next generation tank, and the Army's light helicopter. A single buying agency would be best able to efficiently transfer these technological advances because there would be no need to work around procedures at each military department that currently limit the use of such innovations.

Mr. President, I commend the Congressional Research Service for recognizing the merits of the single defense buying agency. I intend again to introduce a new bill that would streamline DOD's acquisition system into a single agency. This approach is supported over and over by studies and real world events. As the CRS report noted, the success of Operation Desert Storm demonstrates the importance of unity of command and the need for reforming the defense acquisition system to reflect this principle.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The chair advises the Senator that the time for morning business has expired.

EXTENSION OF MORNING BUSINESS

Mr. KERREY. Mr. President, I ask unanimous consent that the period for morning business be extended and that Senators be allowed to speak as in morning business for such time as needed.

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

HEALTH CARE

Mr. KERREY. Mr. President, yesterday the Democratic leadership introduced comprehensive health care legislation. It is obvious to me, and I think practically everyone in this body would share the observation, that some comprehensive solution is much needed and it is long overdue. I also point out that it is exceedingly controversial health care.

The distinguished occupant of the Chair yesterday introduced legislation that will, I think, address a serious problem, and that problem is the problem of the growing cost of Medicaid as well as the increase in difficulty that working people have in being able to get access to health care.

There is a variety of proposals. The Democratic proposal, the proposal introduced by the leadership is comprehensive and thus it stakes out a piece of territory, and thus it demonstrates a willingness to confront the status quo and say we simply cannot allow the status quo to go on.

I appreciate earlier the distinguished Republican leader came forward and commented and in praising the Democratic leadership pointed out some differences of opinion, pointed out some areas where he believes that there is philosophical disagreements. Indeed, I think there may be philosophical disagreements throughout.

Thus, I would like to focus a bit this afternoon on the philosophy of health care which I think is terribly important because I think what we are about to do is much more than just solve or hopefully solve a domestic problem.

As I said, Mr. President, this is much needed and overdue because of rising costs at the national level, rising costs at the business level, and rising costs at the individual level. All of these rising costs are squeezing American families and businesses. They are decreasing the capacity of both individuals and businesses to maintain competitive stature in the marketplace.

In addition to that, as he spoke well of yesterday, rising costs are also forcing too many Americans onto the thin ice of medical indigency. It is also needed and overdue because of a more vexing change than just the change associated with rising costs. Although the necessity of solving this problem and its close companion decreasing access is urgent, we should not view this as just another domestic problem to be solved by legislative action.

The larger and more important context for this debate is the need to adjust to a changed competitive environment. The larger context is the same one which guided our debate of the President's request for fast-track authority to negotiate trade agreements.

American workers have been competing in an international marketplace for at least the past 20 years. As communications technology has improved and as the move of jobs offshore has increased in the 1980's, the risk to American jobs has been the object of much of our attention. The impulse to protect our markets and to shelter our industries is a powerful and understandable impulse.

Mr. President, I believe it is a mistake for us to yield to this impulse because the United States has an obligation to lead the world toward freer trade. However, it is an even greater mistake if we conclude that treaties alone, that treaties all by themselves, will make us competitive. Our public and private institutions simply cannot hunker down around the status quo if we expect to do well in this dramatically changed world.

Thus, for me health care reform is one of several changes we need in order to give American workers a more level playing field in an international workplace. The enormous change in the competitive environment of the American worker necessitates fundamental changes in our public and private institutions of health care. To those who will be adversely affected by this change, and there will be some—perhaps the insurance industry will be adversely effected by needed change, perhaps there will be some providers that will be adversely affected by needed change—we must do the same thing that we did during the debate about the extension of fast-track authority for the President: Look to the future and understand that there may be some short-term changes that will produce some short-term pain but that long-term what we are trying to do is say to an American worker, increase your skills, think about what you need in order to raise your standard of living, and do not worry that if what you need causes you to increase your skills that you are going to lose health care as a result of going back to school. Do not sit and worry that technology is going to come into the marketplace and perhaps displace you and your job, that that displacement will cause you to lose health care.

We need to be thinking that way, Mr. President. Think about American workers up against German workers, American workers up against Canadian workers, American workers up against Japanese workers, and American workers up against every worker of every country in the world, except for South

Africa, and think about what those workers need so that they can raise their skill level, so they can raise their standard of living and will not be penalized as a consequence of their action.

We cannot afford to avoid difficult institutional changes just because there may be some short-term pain. President Bush, who demonstrated he was willing to forge ahead on trade negotiations to reduce trade barriers, has been unwilling to reduce barriers faced by working American families. He has been unwilling to face institutional opposition that may indeed be adversely affected if we do the right thing with health care.

If we are to do this right, we simply cannot afford to be intimidated by our political supporters. Just as many of us Democrats took the long view in voting to give the President fast-track authority for trade negotiations, the President must take the long view with health care.

If we are to do this right, we must look into the future to see Americans not just at risk to rapidly rising health care costs, but also at risk to rapidly increasing worldwide competition. Only inside this context is it possible to see the need for health care benefits which are attached to being an American rather than attached to the place of work.

Mr. President, here is where I believe philosophy is important, and I believe simplicity is important, if we want to have a health care system that not only enables us to provide our workers with a level playing field but itself becomes simple as a consequence.

Mr. President, as a consequence I believe it is important for us to argue whether or not we believe that a universal right to health care in America should be a fundamental principle of our health care proposals. I believe it should be.

I believe that the case for a universal right to health care is in the first instance an economic case. Since our industrial competitors allow workers to move from job to job, or from job to temporary unemployment, without fear of losing health care benefits, their workers are not penalized if they attempt to increase their job skills.

The definition of a universal right is that everyone qualifies for it. We should not stigmatize the poor, and we do not need to create a special interest group when the right is universal.

A universal right is not an absolute right. There are limits. Thus, the fear that we will break the bank by establishing a universal right to health care should be no greater than our fear of breaking the bank's windows by creating a right to free speech. Moreover, Mr. President, the fear and I hear it all the time, all the time, from those who oppose establishing this right, the fear that limitations will produce destructive rationing I believe is almost the exclusive property of those whose income and/or status enable them to avoid the rationing with which a majority of Americans are already quite familiar.

A universal right allows us to simplify our system. The most rapidly growing area in most providers' offices is the space used for data processing or bill collecting. If we established a nondifferentiated right with a budgeted, negotiated fee schedule method of financing, there would be no more Americans employed to answer questions about eligibility or questions about how payment is going to be achieved. By creating a certainty to access we also create a certainty in payment.

A universal right to health care also allows us to consider much needed welfare reform. Anyone familiar with the details of our Medicaid Program will tell you that breaking the cycle of poverty must begin with health care reform.

Mr. President, as good as the Democratic leadership proposal is, and I believe it is a good proposal, it does not establish a right to health care as a fundamental principle. It attempts to solve some of the most serious problems Americans face, and as such gives us a very solid foundation upon which to begin our debate. However, I hope we use this opportunity to see health care in a larger context than just a domestic issue. I hope we use this opportunity to require the kind of institutional change that a rapidly changing workplace demands.

Mr. President, I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the parliamentary situation? What is the pending business?

The PRESIDING OFFICER. Pursuant to the unanimous-consent agreement offered by the Senator from Nebraska we are in an extended period of morning business.

Mr. BAUCUS. I thank the Chair.

Mr. KERREY. The majority leader just asked me to do something here. Could I get the distinguished Senator from Montana to yield just for a few minutes?

Mr. BAUCUS. Yes.

DEFENSE PRODUCTION ACT AMENDMENTS

Mr. KERREY. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 991, the Defense Production Act.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 991) entitled "An Act to extend the expiration date of the Defense Production Act of 1950, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House:

From the Committee on Banking, Finance and Urban Affairs, for consideration of the House bill, and title I of the Senate amendment, and modifications committed to conference: Mr. Gonzalez, Mr. LaFalce, Ms. Oakar, Mr. Vento, Mr. Carper, Mr. Wylie, Mr. Ridge, and Mr. Paxon.

From the Committee on Banking, Finance and Urban Affairs, for consideration of title II of the Senate amendment, and modifications committed to conference: Mr. Gonzalez, Mr. Annunzio, Mr. Neal of North Carolina, Ms. Oakar, Mr. Schumer, Mr. Carper, Mr. Wylie, Mr. Leach, Mr. McCollum, and Mrs. Roukema.

From the Committee on Energy and Commerce, for consideration of section 8 of the House bill, and sections 203–206 of the Senate amendment, and modifications committed to conference: Mr. Dingell, Mr. Markey, Mrs. Collins of Illinois, Mr. Lent, and Mr. Rinaldo.

From the Committee on the Judiciary, for consideration of section 5 of the House bill, and section 104 of the Senate amendment, and modifications committed to conference: Mr. Brooks, Mr. Edwards of California, and Mr. Fish.

From the Committee on Ways and Means, for consideration of sections 202–204 of the Senate amendment, and modifications committed to conference: Mr. Rostenkowski, Mr. Gibbons, Mr. Jenkins, Mr. Archer, and Mr. Crane.

Mr. KERREY. Mr. President, I move that the Senate insist on its amendment to the House bill, agree to the request for a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on behalf of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. RIEGLE, Mr. SARBANES, Mr. DIXON, Mr. GARN, and Mr. D'AMATO conferees on the part of the Senate.

Mr. KERREY. I thank the Chair, and I thank the distinguished Senator from Montana.

Mr. WARNER. Mr. President, there is no objection on the minority side.

The PRESIDING OFFICER. The Senator from Montana.

THE CLEAN WATER BILL

Mr. BAUCUS. Mr. President, last month, I introduced, with Senator CHAFEE and other members of the Environment Committee, legislation to expand and strengthen the Clean Water Act.

In a statement in the Senate shortly after introducing the clean water bill, I highlighted one of the major themes of the legislation—pollution prevention. For many years we have focused our efforts on treating whatever pollutants we generated before dumping them into the water. But further progress toward

our goal of fishable and swimmable waters demands that we expand our efforts to reduce the amounts of pollutants we create in the first place.

Today, I want to describe two other central goals of our clean water bill—better water quality science and tougher controls over toxic pollutants.

The water pollution control issues we will face in the coming years will be increasingly complex and challenging. If we are to address these issues successfully, we must assure that the water programs operate on a solid scientific foundation.

A critical first step in this effort is to improve our water quality research program. The present research program is badly underfunded. Further, it does not provide the information we need about the effect of pollutants on aquatic systems and on human health.

In addition, our research efforts are not fully effective in stimulating advances in pollution prevention and control technology. Improving the state-of-the art for water pollution prevention and control is critical if we are to advance the cause of water quality protection.

Another element of improved water quality science is better monitoring of our rivers, lakes, and coastal waters. We cannot operate effective water quality programs if we lack data on the extent of pollution problems and the effectiveness of our response.

Today, information concerning water quality conditions is very sketchy. For instance, we only assess about 30 percent of our river miles.

Furthermore, we need better indicators of the cumulative effect of toxic pollutants. And, we need better methods to measure the pollution associated with wet weather, such as runoff from city streets, agricultural lands, combined sewers, and construction areas.

Perhaps the most important benefits of improved science in the water quality program will be the ability to upgrade water quality criteria and standards.

States rely on the Federal Government to provide the basic scientific assessment of pollutants. States then use this information in setting enforceable water quality standards.

As we uncover more evidence of the human health and environmental consequences of water pollution, we need to increase the number of pollutants assessed by the EPA. And, we must ensure that the information is tailored to meet the needs of States. We also need to provide the EPA with clear authority for development of scientific information needed to protect sediment quality, an area of increasing concern among water quality specialists.

Another major goal of the new clean water bill is control of toxic water pollutants. This was a primary objective of the 1987 Clean Water Act amendments. It is even more clear today that continued progress in toxic pollution control is essential to meeting our water quality objectives.

An important first step in toxic pollution control is to expand the existing authority of the EPA Administrator to prohibit the discharge of pollutants which are highly toxic or which are likely to accumulate in the food chain. These highly toxic and bioaccumulative pollutants represent a significant threat to human health that must be addressed.

Much of the toxic pollution control accomplished to date is the result of the effluent guidelines established for 50 major categories of industry. Continued toxic reductions will require expanding the authority for these guidelines, including instituting periodic review of existing guidelines and developing guidelines for new industries.

It is a little known fact that of the total amount of pollutants discharged by industry to our waters almost two-thirds is discharged to sewage treatment plants and then into the water. The remainder is directly discharged to rivers and other water bodies.

Given this fact, improved control of discharges to these municipal treatment plants is vital. We need to strengthen authority for development of indirect discharge standards and assure that industries not covered by such general standards still meet appropriate discharge limits.

In summary, we face major challenges in developing a first-rate water quality program. New initiatives to improve the scientific foundation of our program and to tighten control of toxic pollutants are central to this effort.

Over the next 2 months, my Subcommittee on Environmental Protection will be holding hearings on these and other amendments to the Clean Water Act.

I look forward to working with other Senators to develop the best possible legislation to protect the quality of rivers, lakes, and coastal waters.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. WARNER. Mr. President, I have appeared here on the floor at high noon to engage in a colloquy with my good friend, the distinguished Senator from New York and chairman of the Transportation Subcommittee of the Committee on Public Works, Mr. MOYNIHAN. He will momentarily, I believe, appear on the floor at which time I am hopeful that we can enter into a colloquy regarding the differences that I perceive between the bill which he and the leadership of the Public Works Committee have fashioned for the transportation of our Nation in the next 5 years and a bill which I have fashioned, together with some perhaps 18 or 19 other Senators, which draws on the work performed over a period of 2 years by the transportation officials of several States.

I think Senators are quite anxious to learn of the differences between these pieces of legislation and to learn from the leadership of the Senate as to the scheduling of this important piece of legislation. Therefore, I am hopeful that Senator MOYNIHAN will appear shortly and we can have a colloquy on this subject.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE SURFACE TRANSPORTATION EFFICIENCY ACT

Mr. MOYNIHAN. Mr. President, my very good friend and colleague on the Committee on Environment and Public Works, the most able and distinguished senior Senator from Virginia, has just mentioned we will be turning our attention now to the Surface Transportation Efficiency Act of 1991. He indicates, and I want very much to emphasize, this is a moment of rare opportunity for the Senate; it is a moment we have known would be coming, and which has now arrived.

When I say we knew that it would be coming, I note that it fell to me to be the floor manager for the Surface Transportation Act of 1987 which was a year off schedule because the Senate-House conference committee could not reach agreement in 1986, and so we had to take it up immediately in the next Congress. It was H.R. 2 on that side. It came here and it had to be reported twice. It was vetoed, and then the veto was overriden.

At that time I took the occasion of some rather long stretches where negotiations were taking place off the floor to make the point that the bill was the last bill of the interstate era. It would bring to conclusion the Interstate highway program, the largest public works program in our history and in fact the largest in the history of the world.

It has a long and colorful origin. I think it can be said in a curious way

this most elemental of all subjects, transportation, is not written about as it ought to be. It is not attended to as ought to be in the case for something as fantastically important as the interstate—no real research, no literature, on its origin.

It is my view, and I hope it to be an informed view, that the interstate program goes back—its conceptual origin is the General Motors Futurama Exhibition at the 1939 World's Fair in Flushing, Queens. I can speak from more than passing knowledge of that exhibit. It was quite the great wonder of the fair—that, plus the obelisk with a hammer and sickle on the top, while we were told was higher than the spire of St. Patrick's and was meant as a source of obviously sinister purpose by the Soviet Union, which I cannot doubt; in any event, it did not succeed.

But General Motors built this huge display which showed automobiles on a new platform, a separated multilane highway called the superhighway, moving along without stops, without obstructions, moving one over the other, moving through mountains, across and around cities, flowing smoothly, ever more efficiently.

A new idea. And it caught the imagination of the country. It caught the imagination of this 12-year-old, who knew a hole in the fence such that if you got out there for 5 cents and went in that way, you got all sorts of free snacks and another look at the Futurama, and then you had 5 cents to get home. A good day was spent.

In 1944, President Roosevelt asked that the Interstate System be established, having in mind, as best we know—but again I repeat a subject that ought to be worth a dozen books has none to my knowledge. I may be doing a disservice to some author who realizes his work has gone unnoticed. But I am not aware of anything like the research that ought to accompany a subject of such consequence.

President Roosevelt had in mind, as best I can tell, that this would be a postwar public works program in the anti-Depression mode. It was assumed the Depression would resume after World War II was over. It had come to be assumed that depression was the normal condition of capitalist societies and only very large efforts would keep employment levels up.

The actual program, in 1944, was authorized. The map was agreed to in 1947. New York State had gone off right away to build the first segment of interstate, the New York State Thruway, now the Gov. Thomas E. Dewey Thruway.

In 1956, however, we have the next large event, which was the decision to establish a trust fund into which a gasoline tax would be paid for purposes of financing this program. This was done at the behest of a group of younger members of the House Committee on Public Works.

President Eisenhower was very much interested. One of the formative experiences of his life took place in 1919 when, as a young Army lieutenant colonel, soon to revert to captain in peacetime rank, he was given command of a serious exercise—I know the Senator from Virginia will be interested in this—based on the assumption that the railroads have been destroyed in wartime.

World War I was just over, and the railroads had been the principal means of transportation, with mules and the internal combustion engine. A new phenomenon, that internal combustion engine.

Lieutenant Colonel Eisenhower was asked to take a convoy of trucks across the United States from Ft. Meade, a few miles north of us, to San Francisco, to see whether it could be done and whether the Nation could function in a military sense absent railroads, in the event they were destroyed by saboteurs, invaders, what have you. A good military exercise.

What Eisenhower found was that it could not be done. His convey moved on average 7 miles an hour. Getting from the east coast to the west coast was no easy task.

So when he became President, he very much welcomed the idea of getting on with building this enterprise. Indeed, in 1956, the National System of Interstate Highways became the National System of Interstate and Defense Highways, the defense provision being real in President Eisenhower's mind and important as a means, I suppose, of getting anything done.

Two years later, in 1958, we passed the National Defense Education Act, our first aid to higher education. Putting defense on a program those days was as good then as I suppose it is today.

We proceeded, Mr. President, to build the Interstate System with Federal moneys matched in ratios from 90 to 10. In certain cases, 95 to 5. It meant in the first instance a large flow of revenues out of the Northeast quadrant of the Nation to the South and to the West.

At that time, about half the automobiles in the country were registered in the Northeast quadrant—parallelogram is a better way to put it. They would be paying half the gasoline tax, but three-quarters of the outflows would be West and South, it being a national program and having a national purpose. It did then and does today.

The one thing that was never really made clear, Mr. President—and only in the aftermath is it possible to win any recognition for this fact—is that we were building an Interstate System, yes; but most of the money would be spent in cities. The interstate map showed the Nation and showed the great highways crossing the prairies and the mountains.

What I hope everyone is able to see is the way which the predominant impression of the map is of these long highways crossing Kansas, crossing Nebraska, going down through Colorado, over into Idaho, down through Nevada. Great distances were covered with these great new highways, but from the beginning, the majority of the money was going to be spent in cities.

It was just 30 years ago in the Reporter magazine that I had occasion to write a long article on the subject. It was called "New Roads and Urban Chaos." I said we did not know how to put something this big through a city. I watched the construction of New York State Thruway built by a brilliant civil engineer, Bertram D. Tallamy. Bertram Tallamy came down from Albany at President Eisenhower's request to take over the Bureau of Public Roads in the Department of Commerce, a little old farm-to-market road operation. Good, but not large. He built the rest of the Interstate System to the specifications of the thruway.

In building the New York State Thruway, Tallamy avoided cities, going around Albany, under Utica and Rome, over Syracuse, under Rochester. He did get into Buffalo, I grant, but in the main, he stayed out of cities, knowing, I like to think, that doing so was an art not yet developed. How do you put such an enormous physical fact into the cities of that time? How can you do it without smashing them? How can you do it without dividing them? How can you do it without eviscerating them?

The answer, Mr. President, is you could not. And so we did. That piece, I think, reads very well today. We have had, in one form or another, urban chaos ever since. It has been at the center of American political issues, in one form or the other: the mismatch of population in the center of cities; the continuous flow of jobs out of the cities.

The railroads were effectively disabled by this legislation. Railroads, as George Will has made clear, made manufacturing possible in cities. And when there became the cost competition with federally subsidized highways, it was such that the railroads could not compete. Job opportunities began to move along the Interstate System, out of the cities, and with the mismatch that pattern continues to this day.

Mr. WARNER. Mr. President, can I interrupt my distinguished colleague to ask if it would not be beneficial for the Senate as a whole, at some point, that he and I and perhaps others who may join, have, say, a 10-minute colloquy on just the basic differences and viewpoints that we have? And then the Senator could continue his historical view, which is a very important per-

spective, the foundation for the ultimate consideration of this bill.

I am wondering at what point the Senator might entertain a brief colloquy? I have the Senator from Florida and the Senator from Missouri here. If we can take 2 or 3 minutes apiece, what I am trying to do is educate the Senate on the sincerity of a bipartisan group of Senators who respectfully disagree with major portions of the chairman's bill.

If the Senator would be kind enough to indicate what time it would be convenient: Perhaps the Senator from Virginia, 3 or 4 minutes; the Senator from Missouri, 2 or 3 minutes; the Senator from Florida, 2 or 3 minutes; just to frame our grievances, if I might say.

Mr. MOYNIHAN. Mr. President, I would be more than happy to proceed exactly such. I had been anticipating that the majority leader might appear to begin this process. But we are quite capable of debating these matters on our own, and I would suggest we proceed exactly as the Senator from Virginia suggests.

I had hoped the Senator from Idaho would be on the floor.

Mr. WARNER. Mr. President, I think he is in the environs. I saw him here 1 minute or 2 ago. Indeed, we wish to accommodate the majority leader.

Mr. MOYNIHAN. We will.

Mr. WARNER. I wonder if there could be some clarification. I received some indication that perhaps he was going to observe this from his chambers and then maybe at a later time come and express his views. Maybe the Senator has other information on that point.

Mr. MOYNIHAN. Mr. President, may I then just state for the record that we will now be discussing S. 1204, the Surface Transportation Efficiency Act of 1991. This bill was reported out of the Committee on Environment and Public Works by a 15-to-1 vote. The Senator from Virginia was in the minority on that occasion. Occasionally, sooner or later, all of us will be in that situation.

The bill is reported by our most revered chairman, Senator QUENTIN BURDICK of North Dakota. It is cosponsored by the distinguished chairman and the distinguished ranking member, the junior Senator from Rhode Island [Mr. CHAFEE]. It is cosponsored as well by myself—I am the chairman of the Subcommittee on Water Resources, Transportation, and Infrastructure of the Committee on Environment and Public Works—and my very able counterpart, the Senator from Idaho [Mr. SYMMS]. He is the ranking member of the subcommittee. Senator LAUTENBERG joined us, as did Senators JEFFORDS, LIEBERMAN, BAUCUS, and REID, members of the committee. We feel very proud that Senators CRANSTON and D'AMATO, who are working on the mass transit aspect of this legislation, also are cosponsors.

That is just to establish our pedigree here. I think as such that I have spoken as long as I need to for the moment, and I am happy, Mr. President, seeing my able colleagues on the floor, to yield the floor.

The PRESIDING OFFICER. The Senator from New York yields the floor.

Mr. WARNER. I thank the Chair. I express my appreciation to my good friend and chairman of the subcommittee on which I am proud and privileged to serve. I thank him for his courtesies. We will fight a fierce battle, but I think throughout, the amenities will always be observed.

Mr. President, I joined this committee several years ago for the specific purpose of taking a more active role in the Transportation Act referred to by the chairman. I did so because I learned, after the passage of the predecessor legislation, which I understand expires in September, that my State did not come out with as much money as it had anticipated. In fact, we feel in Virginia that we were not treated equitably.

That is history. But we are about to make new history, and, therefore, I voted against this bill, reluctantly but decisively, as an expression of my desire to come to this floor and work with other colleagues to bring about a more equitable and a fairer allocation of those tax dollars paid by each citizen, when they buy a gallon of gas, into the Federal Treasury, into the highway fund, and eventually portions of that fund come back to the States. It is the disparity between what is paid in and what is received back in the State, that this fight is all about.

Mr. President, I, indeed, am grateful to the Presiding Officer for his counsel and advice to me personally throughout the formation of this group that will express their views in the context of this bill. I have now put in a bill with some 16 Senators joined representing 9 States. This bill embraces provisions which were formulated over a period of 2 years. I readily acknowledge not by the Senator from Virginia but from transportation officials across this Nation, who have spent some 2 years anticipating this moment in the life of the Congress, anticipating that we would come to the floor and have it out on the question of the apportionment of these funds and other aspects of the leadership bill referred to by my distinguished chairman as drawn up by the distinguished Senator from North Dakota, Mr. BURDICK, and ranking member, Mr. CHAFEE, and Mr. MOYNIHAN and Mr. SYMMS.

Mr. President, the opening part of this battle will involve a very prolific use of charts and statistics. Those will be the weapons. Just a few moments ago my distinguished chairman handed me another chart prepared by the Federal Highway Administration, and I received no more than 24 hours ago another chart from the Federal Highway Administration, and I must say this is the one I received, this is the one that the Senator from New York gave me, as you cannot reconcile them, at least I cannot, both prepared by the same source but they are difficult to reconcile.

Initially this battle will be a battle of statistics and charts, and I hope somehow persons who spend more time than I, who have a longer history of association with this issue, can interpret these charts and eventually we can find a chart which clearly delineates which are the donor States and which are the donee States, such that Members of this distinguished body can reach their conclusions on this legislation.

I will now yield the floor to my other colleagues, but I want to say to my good friend—and I say this with sincerity but in partial jest—we have known each other many years. We share a deep respect for the Navy. The Senator from New York served in the Navy in World War II, with a distinguished record. I served a brief tour in the Navy. But as I said to him earlier, our group, which now represents nine States—and I anticipate it will grow to twice that number and perhaps three times that number—we are determined, Mr. President, to fight for one cause.

Today, June 6 being the anniversary of D-day, in the immortal expressions of Winston Churchill as he addressed the House of Commons, "We shall go on to the end * * * we shall fight in the seas and oceans * * * we shall fight on the beaches, we shall fight on the landing-grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender * * * ." We will not surrender until we receive that degree of fairness and equity to which we think we are entitled in our respective States. We will not relinquish 1 inch of ground, procedurally or otherwise, until such time as we have that opportunity to make known our case.

I thank the distinguished chairman. I am hopeful that my colleagues will speak for a few minutes. This is not partisan, Republican or Democrat. Indeed, this coalition of nine States reflects a bipartisan effort. Politics has been checked at the door on this. The question now is fairness and equity among the several States of this great Union.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from New York.

Mr. MOYNIHAN. I am very happy to have heard that statement from my friend, Mr. Secretary, as I prefer to call the Senator from time to time. Of course, the allocation of resources is an issue in any nationwide program, but it is uniquely difficult with respect to a surface transportation program because our States are of different size.

That is simply the elemental fact here. We will get to it. We will discuss it. How do you mediate that reality? Wyoming is 350 miles wide. That is how God made Wyoming. It just does not help much if you are living in Rhode Island. God made Rhode Island smaller. There is no way around that.

I want to say this, however: We have the data on the 35-year experience of the Federal-Aid Highway Program. I ask unanimous consent that a table showing which is the return on investment for the highway account of the highway trust fund cumulative for the fiscal years 1957–89, be printed in the RECORD at this point.

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

Return on investment for the highway account of the highway trust fund cumulative from fiscal years 1957–89

[Expressed as dollars returned per dollar contributed]

State	*Return*
Above 2.0—9 States:	
Alaska	7.80
District of Columbia	3.98
Hawaii	3.27
Montana	2.57
Vermont	2.43
West Virginia	2.32
Wyoming	2.15
Rhode Island	2.11
Utah	2.02
1.5 to 2.0—9 States:	
South Dakota	1.96
North Dakota	1.94
Nevada	1.92
Idaho	1.90
Washington	1.74
Connecticut	1.66
Maryland	1.58
Delaware	1.53
New Hampshire	1.52
1.0 to 1.5—21 States:	
New Mexico	1.46
Louisiana	1.43
Arizona	1.42
Colorado	1.40
Minnesota	1.35
Virginia	1.30
Oregon	1.29
Kentucky	1.21
Alabama	1.20
New York	1.20
Iowa	1.17
Nebraska	1.16
Pennsylvania	1.14
Kansas	1.14
Illinois	1.13
Maine	1.11
Massachusetts	1.11
Tennessee	1.08
Mississippi	1.05
Georgia	1.00
Missouri	1.00
Below 1.0—12 States:	
Arkansas	0.98
Florida	0.94
New Jersey	0.93
South Carolina	0.93
Ohio	0.91
Michigan	0.91
California	0.89
Indiana	0.87
Texas	0.85
Wisconsin	0.85
North Carolina	0.85
Oklahoma	0.85

Source: Federal Highway Administration.

Mr. MOYNIHAN. Such has been the cunning tenacity and the unshakeable conviction of the Senator from Virginia, that Virginia got away with robbery over the last 35 years, receiving $1.30 of highway trust funds for every $1 paid. I honor him.

Missouri broke even. Florida lost 6 cents to the dollar. New York received $1.20 for each $1.00 contributed. These are patches. But those are the patterns of building the interstate.

What will be a new pattern, which is the legitimate subject that the Senator from Virginia raises, is what we are discussing now.

May I make one comment before the very able Senator from Missouri speaks, the former Governor? The question is about how shall we decide what the numbers are? That is always the first problem on this side of the discussion. I would like to make a proposal informally, but I wonder if we could not have some informal discussion of it as the other Senator speaks.

We have as the head of the Federal Highway Administration, Dr. Thomas Larson, a person of great knowledge in this field. He is an educator. He has been running the Federal Highway Administration. He sent us a bill. I am prepared to let him be the arbiter of what these numbers are. The measure I just put in the RECORD is from the Federal Highway Administration.

I think we will always serve our constituents and serve the country best if we have a common set of numbers that we work from. I do not know why we should not take them from Dr. Larson and the Federal Highway Administration.

Mr. President, I see my able friend patiently waiting. I yield the floor.

Mr. WARNER. Mr. President, will the distinguished Senator yield? I ask unanimous consent to put in the RECORD here tables where the Highway Administration provided to the Senator from Virginia and his coalition, together with a GAO report which addresses the subject in some detail. Although it is dated March 31, 1986, I think that report is very pertinent to the issue at hand.

I thank my colleague again for his courtesy.

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

TABLE TA–124.—COMPARISON OF THE ESTIMATED 5 YR FISCAL YEAR 1992–96 APPORTIONMENTS UNDER S. 965 (W/O I–CON & I–TRN) WITH ESTIMATED 5 YEAR FISCAL YEAR 1992–96 APPORTIONMENT UNDER S. 1121 (W/O I–CON & I–TRN) AND EST. 5 YEAR FISCAL YEAR 1992–96 HIGHWAY TRUST FUND ATTRIBUTIONS (HIGHWAY ACCOUNT PAYMENTS, 2½ CENTS TO HTF IS EXTENDED TO FISCAL YEAR 1996) BASED ON FISCAL YEAR 1990 HIGHWAY ACCOUNT ATTRIBUTIONS

States	S. 965 Apportionments			S. 1121 Apportionments			Fiscal year 1991–96 Hwy Acct Pymt	
	Dollars (thousands)	Percent	Ratio of percent apportionments/percent payment	Dollars (thousands)	Percent	Ratio of percent apportionments/percent payment	Amount (thousands)	Percent
Alabama	1,433,548	1.86	0.89	1,567,776	2.02	0.97	1,765,528	2.09
Alaska	1,129,867	1.46	6.55	755,445	0.97	4.35	189,078	0.22
Arizona	1,106,210	1.43	0.91	1,225,303	1.58	1.00	1,333,682	1.58
Arkansas	986,818	1.28	0.91	1,082,168	1.39	0.99	1,193,063	1.41
California	6,693,121	9.02	0.83	7,664,398	9.88	0.91	9,219,541	10.91
Colorado	1,190,891	1.54	1.32	903,716	1.16	1.00	988,845	1.17
Connecticut	1,286,779	1.67	1.46	854,628	1.10	0.96	966,567	1.14
Delaware	365,681	0.47	1.62	373,715	0.48	1.65	246,971	0.29
District of Columbia	406,486	0.53	3.67	373,716	0.48	3.36	121,235	0.14
Florida	3,360,802	4.36	0.89	3,724,076	4.80	0.98	4,146,626	4.91
Georgia	2,325,521	3.01	0.85	2,578,699	3.32	0.94	2,992,689	3.54
Hawaii	371,299	0.48	1.89	373,716	0.48	1.89	215,632	0.26
Idaho	552,645	0.72	1.64	474,950	0.61	1.40	370,009	0.44
Illinois	3,017,232	3.91	0.95	3,127,517	4.03	0.98	3,482,523	4.12
Indiana	1,800,589	2.33	0.90	2,023,530	2.61	1.01	2,186,673	2.59
Iowa	1,110,127	1.44	1.15	1,014,383	1.31	1.05	1,056,287	1.25
Kansas	1,027,880	1.33	1.08	999,554	1.29	1.04	1,042,041	1.23
Kentucky	1,233,104	1.60	0.88	1,351,773	1.74	0.96	1,535,040	1.82
Louisiana	1,214,060	1.57	0.89	1,305,734	1.68	0.95	1,495,650	1.77
Maine	487,937	0.63	1.13	426,364	0.55	0.98	472,924	0.56
Maryland	1,250,497	1.62	0.89	1,253,212	1.61	0.89	1,541,682	1.82
Massachusetts	1,563,484	2.03	1.05	1,401,360	1.81	0.94	1,631,287	1.93
Michigan	2,215,085	2.87	0.89	2,432,052	3.13	0.97	2,736,467	3.24
Minnesota	1,314,612	1.70	1.02	1,311,948	1.69	1.01	1,415,622	1.67
Mississippi	915,873	1.19	0.93	989,805	1.28	1.00	1,078,416	1.28
Missouri	1,897,615	2.46	0.92	2,042,662	2.63	0.99	2,248,903	2.66
Montana	784,922	1.02	2.23	550,539	0.71	1.55	386,254	0.46
Nebraska	759,063	0.98	1.41	716,461	0.92	1.32	591,259	0.70
Nevada	566,738	0.73	1.28	503,326	0.65	1.13	486,174	0.58
New Hampshire	448,312	0.58	1.43	373,716	0.48	1.18	344,471	0.41
New Jersey	2,087,198	2.70	0.97	1,906,452	2.46	0.88	2,361,247	2.79

TABLE TA-124.—COMPARISON OF THE ESTIMATED 5 YR FISCAL YEAR 1992-96 APPORTIONMENTS UNDER S. 965 (W/O I-CON & I-TRN) WITH ESTIMATED 5 YEAR FISCAL YEAR 1992-96 APPORTIONMENT UNDER S. 1121 (W/O I-CON & I-TRN) AND EST. 5 YEAR FISCAL YEAR 1992-96 HIGHWAY TRUST FUND ATTRIBUTIONS (HIGHWAY ACCOUNT PAYMENTS, 2½ CENTS TO HTF IS EXTENDED TO FISCAL YEAR 1996) BASED ON FISCAL YEAR 1990 HIGHWAY ACCOUNT ATTRIBUTIONS—Continued

States	S. 965 Apportionments			S. 1121 Apportionments			Fiscal year 1991-96 Hwy Acct Pymt	
	Dollars (thousands)	Percent	Ratio of percent apportionments/ percent payment	Dollars (thousands)	Percent	Ratio of percent apportionments/ percent payment	Amount (thousands)	Percent
New Mexico	771,581	1.00	1.31	724,993	0.93	1.22	647,146	0.77
New York	4,432,529	5.74	1.27	3,209,517	4.14	0.92	3,810,207	4.51
North Carolina	1,994,125	2.58	0.86	2,192,706	2.83	0.94	2,532,310	3.00
North Dakota	527,886	0.68	2.01	490,949	0.63	1.86	287,398	0.34
Ohio	2,907,517	3.77	0.88	3,252,443	4.19	0.98	3,614,914	4.28
Oklahoma	1,155,417	1.50	0.91	1,288,781	1.66	1.01	1,383,578	1.64
Oregon	919,483	1.19	0.89	1,010,441	1.30	0.97	1,131,463	1.34
Pennsylvania	3,271,505	4.24	0.98	3,006,049	3.87	0.90	3,657,131	4.33
Rhode Island	397,047	0.51	1.66	373,865	0.48	1.56	261,515	0.31
South Carolina	1,148,584	1.49	0.87	1,246,515	1.61	0.94	1,441,308	1.71
South Dakota	585,554	0.76	2.13	478,382	0.62	1.73	301,150	0.36
Tennessee	1,647,380	2.13	0.90	1,778,889	2.29	0.97	2,004,359	2.37
Texas	5,013,800	6.50	0.88	5,645,570	7.28	0.99	6,207,306	7.34
Utah	708,467	0.92	1.29	619,942	0.80	1.12	603,458	0.71
Vermont	391,375	0.51	2.10	373,716	0.48	1.99	204,381	0.24
Virginia	1,601,116	2.08	0.78	1,867,822	2.41	0.91	2,247,101	2.66
Washington	1,336,855	1.73	0.90	1,425,268	1.84	0.95	1,635,462	1.93
West Virginia	894,194	1.16	1.46	605,220	0.78	0.98	672,161	0.80
Wisconsin	1,234,746	1.60	0.83	1,467,438	1.89	0.98	1,637,082	1.94
Wyoming	589,305	0.76	1.59	484,172	0.62	1.30	407,183	0.48
Puerto Rico	459,748	0.60		376,466	0.49		0	0.00

[U.S. General Accounting Office]

HIGHWAY FUNDING: FEDERAL DISTRIBUTION FORMULAS SHOULD BE CHANGED

GENERAL ACCOUNTING OFFICE, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION,
Washington, DC, March 31, 1986.

Hon. LAWTON CHILES,
U.S. Senate.

DEAR SENATOR CHILES: This report, prepared in response to your March 1, 1985, request, discusses the formulas and factors currently used to apportion federal highway funds to the states. The report also identifies alternative formula factors that, in our opinion, more closely relate to today's highways. At your request, we did not obtain agency comments on the draft report; however, we did discuss the content of the report with Federal Highway Administration officials.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to the Director, Office of Management and Budget; the Secretary of Transportation; appropriate congressional committees; and other interested parties.

Sincerely yours,

J. DEXTER PEACH,
Director.

EXECUTIVE SUMMARY

More than $13 billion in highway funds have been apportioned among the states in fiscal year 1986 on the basis of highway formulas enacted by Congress over the years. These funds are used to preserve the existing highway system and provide for its further development.

Concerned about whether the formulas distribute funds to the areas of greatest need given the population growth in the South and West, Senator Lawton Chiles asked GAO to examine the formulas' relevance to today's highways.

To evaluate the relevance of each formula and alternative formula factors, GAO developed criteria against which to compare apportionment factors.

Background

Since the inception of the federal-state highway program in 1916, the Congress has established several highway systems that receive federal funding. These systems are referred to as the "federal-aid highway program" and are funded by the Federal Highway Administration (FHWA). Each highway system has a legislatively established formula for apportioning the congressionally authorized funds. GAO agreed to examine the formulas for apportioning funds for the primary, secondary, and urban highway systems; the interstate resurfacing, restoration, rehabilitation, and reconstruction (4R) program; and the highway bridge replacement and rehabilitation program. These have combined authorizations of about $9.1 billion for fiscal year 1986.

Generally, the apportionment formulas consist of several factors. For example, the primary highway system funds are apportioned on the basis of each state's share of a complex combination of the nation's land area, postal mileage, and urban and rural population. The secondary highway system funds are apportioned on the basis of each state's relative share of the nation's total land area, rural population, and postal route mileage, each weighted one-third. The urban highway system funds are apportioned on the basis of each state's share of the nation's urban population.

Results in brief

The factors used in formulas to apportion highway funds should reflect the extent and usage of today's highway system. The factors used in the primary, secondary, and urban highway apportionment formulas—land area, population, and postal mileage—are not closely related to today's highway system. These factors were chosen between 40 and 70 years ago on the basis of data available at that time. Other factors that better reflect highway activity are now available.

In contrast, the basic interstate 4R formula, established in 1978, is based on two factors that are directly related to the extent and use of the system. It includes lane-miles, which measures the extent of the road network to be preserved, and vehicle miles of travel, which measures highway use.

Principal findings

Land Area, Postal Mileage, and Population Are Not Closely Related to Today's Highways

Land area is used in both the primary and secondary apportionment formulas. It was originally included as a factor in 1916 against which to balance population and to reflect future highway needs. However, rather than balance population, it now results in large but sparsely populated states receiving larger apportionments than would otherwise be possible. In addition, land area no longer bears a close relationship to the extent of today's highway system or future highway needs since the highway system is no longer growing at a dramatic pace throughout the country.

Postal mileage is also a factor in the primary and secondary apportionment formulas. The Congress included postal mileage as a formula factor in 1916 because of the constitutional justification for federal involvement in highways (the power to establish post offices and post roads). By 1919, however, additional highway legislation ended the postal system justification for federal highway involvement. In addition, since postal mileage is computed on the basis of the distance traveled both on and off the federally aided highway system, it is unrelated to either the extent of the federal-aid highway network or its use.

Population is used as a factor in the primary, secondary, and urban apportionment formulas. Population figures, for formula use, are derived every 10 years from the decennial census. As a result, population changes that occur within the states are not accounted for except at 10-year intervals. Therefore, states that experience above-average population growth receive no credit under these formulas except at 10-year intervals.

Alternatives Are Related to the Extent or Use of the Highway System

On the basis of GAO's review of congressional hearings and studies and papers completed by FHWA, the American Association of State Highway and Transportation Officials, and other national associations and discussions held with various congressional committee and federal highway officials, in GAO's view the general consensus of opinion is that the present federal highway system can be considered largely complete except for growth areas such as suburbs and the Sunbelt.

Therefore, GAO's criteria and evaluation were based on the belief that today's highway goals are to preserve the current system and provide for its expansion where traffic dictates. In developing its criteria and arriving at its results, GAO considered a wide variety of factors previously suggested to the Congress and identified those that are consistent with retaining the basic federal highway programs, and for which data are available.

GAO found that lane-miles is a direct measure of the size of the road network and should be used to reflect the extent of the system to be preserved. GAO also found that highway use can be measured by both vehicle miles of travel and motor fuel consumption. Each has its own advantages and disadvantages from a formula perspective. The interstate 4R program is the only formula currently using a combination of these factors.

The primary, secondary, and urban formulas, therefore, need to be revised to be consistent with the extent and use of the current system. Changing the factors used in these apportionment formulas would result in some states receiving more or less funds than under the present formulas. To lessen these impacts, a transition period could be provided during which the full effect of the formulas would be gradually introduced.

GAO also reviewed the bridge formula, which is based on the cost of repairing and replacing each state's deficient bridges relative to national needs. This formula favors states with high construction costs. GAO is currently reviewing this program more fully.

Recommendations to the Congress

On the basis of GAO's conclusions on the relevancy of both current and potential alternative formula factors to the highway environment, GAO is recommending specific changes in the formula factors used in the primary, secondary, and urban highway apportionment formulas to more closely reflect the extent of these highway systems, their present use, and increases in their use. GAO is not, however, recommending specific formulas for apportioning the federal-aid highway funds because it believes that the development of such formulas must be reached through political consensus. By limiting its recommendations to individual factors, GAO believes it can provide information that would be useful to the Congress in achieving such a consensus. (See ch. 3.)

Agency comments

As requested, GAO did not obtain the comments of Department of Transportation officials on this report but did discuss its contents with them during the review. Their comments were considered in preparing the report.

Mr. BOND. Mr. President, I thank very much our distinguished colleague from New York and our good friend from Virginia for giving me just a few moments.

What my colleague from New York has outlined is a quandary. We have a difficult question to face—how we divide up the funds that are raised by user fees supposedly to go for highways, for infrastructure, for roads and bridges.

In recent years, I think shortsightedly, we have used some of those funds to mask overspending elsewhere in the budget. That has been one of the reasons our States have suffered. My State gets back only 77 cents on the dollar—in the most recent year, my colleague from Florida will tell you that his State gets back only 53 cents. Our colleague from New York does quite well. He gets back $1.10.

That formula was designed, as I understand it, to enable this country to accomplish a national purpose; that is, to complete the Interstate Highway System. That, for all intents and purposes, has been accomplished. But the people in my State know more than anything else that inadequate infrastructure is a problem for economic development, for jobs, for convenience and yes, for safety.

We have many roads in our State, highways that are two-lane highways with two-way traffic on them, and they are handling 6,000, 8,000, 10,000, and even 12,000 vehicles a day. The highway officials will tell you that many vehicles demand a divided or a dual highway. Our State has the dubious distinction of being No. 2 in the Nation in terms of deficient bridges. For example, I was driving day before yesterday from Butler to Clinton, MO. We came over a hill on Highway 18. We were traveling at the speed limit. At the bottom of the hill was a one-lane bridge. The bridge is in such bad shape that only traffic in one direction can cross that bridge. It was very exciting because there were two cars coming the other direction, also seeking to use that single lane. Fortunately, the young man with me who was driving had a good heavy foot on the brakes. He shut it down so the cars could cross from the other direction.

We have to have a fair funding formula. We need to change the old formual which allocated money to get the interstates built. I accept the distinguished New York Senator's suggestion that we talk about the formula, and I have a suggestion. I have a suggestion that these user fees be allocated back to the States on the basis of need, need as based on the usage because where you are using the highways, you have need.

He has suggested, very generously, that we meet with the Federal Highway Administrator. I suggest we include the American Society of Highway and Transportation Officers because these are the men and women who build highways in our States. I think we could gain from them.

We are dead serious about this problem, Mr. President. We want to see a good highway bill. We want to see a highway bill, a transportation bill of the future, and many aspects of the chairman's bill are visionary. But for a visionary forward-looking highway program, we do not need a dinosaur of a formula.

So it is with great enthusiasm that we accept the invitation and look forward to discussing this with the chairman because quite simply staying with the old formula just will not work, and it cannot be accepted by us. I thank the Chair.

Mr. WARNER. Mr. President, may I ask my colleague a question? He used a phrase, "need." Might I suggest, I have been working with a phrase. In other words put the money where the cars are. It is where "use" of the system is. Does that correlate?

Mr. BOND. Mr. President, I believe that "need" is reflected in "use".

Mr. WARNER. That is the point I wish to make because all of us have needs, and it is very difficult to quantify which bridge will fall down first or which highway has the most potholes. We have good statistics on where the cars are and what the usage of this road system is.

Mr. MOYNIHAN. Mr. President, I wonder if the Senator from Florida will allow me to make a quick comment, and then we will proceed?

Mr. President, I very much respect and appreciate what the Senator from Missouri has just said. I want to join him in recognizing that we have a new program. It certainly will be a new program.

How we will deal with these matters is something we will work out here in the Senate. We have been at it for 2 centuries and they work pretty good. I want to make clear that geography is a hard reality here that will dictate outcomes according to whatever the makeup of the Senate is, or how much it may resist that outcome.

I make the point that the first public highway program was the National Road. It was signed into law by President Thomas Jefferson in 1806. It had as its purpose bringing in first Ohio into the Union and then the territories still further west.

There was fierce opposition in this body. Virginia wanted nothing of it. The South would have nothing of it. It will drain our population off. And most particularly outrageous, the road did not pass through Richmond. Then, of course, in Pennsylvania, the idea the road west would not go through Philadelphia, and the idea that the road was heading for a place called St. Louis, oh, heaven, what is the world coming to. The first great public road and it was a tragedy.

It technically ended in Vandalia, IL, but it was at that point 20 miles from Missouri and St. Louis. The road went from Baltimore to St. Louis. If you lived in Baltimore or lived in St. Louis, or anywhere in between, you were better off having that road. As a matter of fact, if you did not, and you were an American, you were still better off for having that road.

Mr. BOND. Mr. President, if my distinguished colleague will yield, I only point out to him that that road was a road traveled by the St. Louis Browns when they became the Baltimore Orioles, so there are some down sides to transportation.

Mr. MOYNIHAN. The Senator is correct. It is U.S. 40 today.

Mr. MACK. Mr. President, let me express my appreciation to the distinguished Senator from New York for yielding to allow us to have a few moments to express our opposition to the allocation of these funds. I want to join my distinguished colleague from Vir-

ginia in this battle, because it is a battle of significance and of great importance for our individual States.

This is one of those classic debates in the Senate where, really, the political lines are not drawn by party; they are really drawn by State or by geography, as the Senator from New York has indicated.

I also want to thank the Senator for the opportunity that he gave us several weeks ago to express our concerns to the committee at that time. If the Senator will recall, one of the points I raised had to do with geography.

Most people think of the State of Florida in a sense that it is one growing very rapidly, a thousand people a day, or that 360,000 people a year are moving into the State. People are somewhat focused on that, and that causes us some problems with respect to formulas. Very few people focus on the idea or the knowledge that it is almost as far from Key West, FL to Pensacola, FL, as it is from Pensacola to Chicago. It is a big, big State, which is facing tremendous needs with respect to roads.

So I express those concerns today just to indicate my willingness to become involved in this debate, and in standing with the Senator from Virginia in making our case.

We feel that it is very important that Florida be recognized, recognized in the sense of what it has given up in the past. A figure was given earlier that showed we were supposedly only 6 cents short. The numbers I have looked at since 1956, show us getting back 80 cents on the dollar over that period of time. That is something we will have to reconcile. I know that within the last 2 years, Florida has gotten back, in 1990, something like 53 cents for every dollar that we have paid into the fund. In 1991 that is estimated to be 63 cents.

So this issue for my State, for the people of the State of Florida, is vital, because we are talking about hundreds of millions of dollars a year that are not coming back into the State. So this is the No. 1 issue. This allocation issue must be settled first, and then we can look at other issues related to this piece of legislation.

Again, I thank the distinguished Senator for yielding me time.

Mr. WARNER. Mr. President, I thank, again, my distinguished colleague and good friend. He has given us the opportunity which we desired to express here.

In morning business I hastened to say the formalities of this bill have not started. That is up to the leadership. The report has not as yet reached the Senate. For various reasons, we cannot go to the bill.

I assure him that this is the anniversary of D-day, and our forces have landed, sir, and we have established a beachhead, and we are a growing group. We do not wish to do anything but be constructive, but I urge the Senator to come to the peace table as quickly as possible and hear us out.

I thank my colleague.

Mr. MOYNIHAN. Mr. President, may I thank, once again, the Senator from Virginia, Mr. Warner. He is always gallant, incapable of fear, and indomitable in the pursuit of the concerns and the interests of the Old Dominion. I must make the point, and he would agree, that there are Senators with other views, and we will hear these out.

We are starting a new program. To make the record clear, what the committee has tried to do, is to take the distribution of funds from existing law, the 5-year period that will end on September 30, leaving aside interstate construction and substitution. We have attempted to ensure that all States review a share of these programs equal to their share under current law.

In other words, what you have received in the past for the purposes that will not become the focus of the program: Maintenance and improvement of the existing system.

Our purpose is to say what we have been getting in that matter is arbitrary and, yet, it had a purpose. There was a rationality behind it. The system worked. And so our intent was to keep everybody where they were. That may not be adequate. I fully understand that those who are below a certain return rate would feel that way. I must say at this point that we have numbers going around the floor that are not so. The disparities are real, but there are places that are way off the curve in the historical experience. Alaska receives $7.80 of highway moneys for every dollar contributed.

Those are unusual. Most hover around between 85 cents and $1.15. But we must talk about this issue. We will try to agree about our numbers. In the end, we will reach agreement. Of that, I am confident.

The PRESIDING OFFICER. The Senator from New Jersey [Mr. BRADLEY].

SOVIET AID—GRAND BARGAIN OR GRAND ILLUSION

Mr. BRADLEY. Mr. President, a few weeks ago the Senate debated whether the Government of the United States should extend $1.5 billion in additional agricultural credit guarantees to the Soviet Union on top of the $1 billion that we extended in December.

The Senate voted decisively to urge the extension of further credit guarantees to the Soviet Union. I regretted that vote because I did not think it was in our long-term interest as a country.

At the time, I reflected on the remarks of the Librarian of Congress, Mr. James Billington, in which he pointed out that what is going on in the Soviet Union is a conflict between two groups—one group is the old Leninist-Communist political machine that has power but no legitimacy. And that political machine confronts a challenge from range of groups in the Soviet Union. These grassroots forces are pressing for democratic rights, for human rights, for the right to worship as they choose, for the right to vote and have their voices heard at all levels of government. They are fighting for a better environment in the Soviet Union, trying to protect cultural monuments and religious shrines, reviving the spiritual and moral values of the Russian Orthodox Church and other religious groups.

There are literally millions of Russians, Ukranians, Balts, and others who are a generation younger than Gorbachev and Yeltzin and have organized and belong to these groups. Unlike the ruling political machine which has power but no legitimacy, these informal organizations have legitimacy but no power.

And that, I believe, is where we are: A conflict between a political machine that has power but no legitimacy and a massive set of movements that have legitimacy but no power.

Mr. President, it is in that context that we had the vote on credit guarantees for the Soviet Union, and it is in that context that in the last several weeks there has emerged something called the grand bargain; the Soviet Union would ask for and be provided with $30 to $50 billion a year for each of the next 5 years—in exchange for some as yet undefined mutually agreed to actions.

Now we read in today's Washington Post that Mr. Gorbachev has accepted his Nobel Peace Prize, and in his acceptance speech, he made a number of interesting points. The headline in the Washington Post says, "Gorbachev Asks Aid, Shuns Conditions." That about says what he did. He said in one point in the speech, "Now that perestroika has entered its critical phase, the Soviet Union is entitled to expect large-scale support to assure its success." Entitled, Mr. President, entitled like the American Social Security recipient, he says he is entitled.

Mr. President, I would say, first, that I do not believe the Soviet Union is entitled to aid from the United States or other Western countries.

But more importantly, Mr. Gorbachev said in his speech that there should be no conditions for aid. His exact words: "It is also futile and dangerous to set conditions."

In other words, the Soviets will not agree to do anything in exchange for aid—not more movement toward a market economy, not a reduction of weapons, not implementation of more liberal immigration laws, not instituting clear democratic reforms, not codifying the right of the individual to practice a religion of their choice, nothing. Mr. Gorbachev has said very

clearly that there should be no conditions for aid and that the West should send enormous sums of money to the Soviet Union because the Soviet Union is entitled to that aid.

Well, he seems to be saying—and, in fact, does at a number of points—that such conditions would be an interference into the internal affairs of the Soviet Union.

So there you have it. The grand bargain that has been trumpeted around this town for the last month is revealed to be a grand illusion.

Does Mr. Gorbachev really believe that there is any compelling reason to aid the Soviet Union? Generally, I see little, and specifically after these statements, I see very little. Oh, the proponents of the grand design say that if we do not provide the aid, nuclear terrorism might be unleashed in the Soviet Union as rabid groups get control of nuclear weapons. That is, indeed, what representatives of the Soviet Government were saying when they were shopping around their ideas last week: If there is no aid, it might unleash nuclear terrorism in the Soviet Union as various unreliable groups get control of nuclear weapons.

How should we react to that? I react by saying it seems to me, it sounds to me like that is somewhere between an attempt at nuclear blackmail—"Give us money or there will be some form of nuclear terrorism"—and a gross exaggeration.

Mr. President, I think that those who use this tactic and inject that specter into this debate underrate the determination as well as the capacity of the Soviet Armed Forces to keep control of their nuclear weapons. Indeed, Soviet nuclear security command and control systems are extraordinarily well designed and managed for unconventional civil as well as military contingencies.

After all, they do have a rather sophisticated military. That has always been the big bulk of over $300 billion defending ourselves against. They manage a lot of nuclear weapons. They have clearly thought of many different contingencies. They do have plans to manage those contingencies.

Second, those who use this tactic and introduce this element into the debate slight the statements and actions of the Russian, Ukrainian, and other leaders of republics to facilitating the consolidation and protection of any nuclear weapons stockpiles if and when there are more serious disorders.

The fact of the matter is that the weapons are controlled by Russians in Russia in large part.

So, Mr. President, I was struck today in the morning paper by Mr. Gorbachev's acceptance speech.

I felt it appropriate to come to the floor and deal both with the assertions that if there is to be aid there should be no conditions and, if there is not aid, we will end up with a kind of nuclear terrorism in the Soviet Union. I reject both of those.

I think the Senate should give careful thought to what is taking place in the Soviet Union. I hope we will not fail to realize today's statement by Mr. Gorbachev makes what some call the grand bargain look more like a grand illusion.

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

The PRESIDING OFFICER (Mr. KOHL). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BURNS. 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. BURNS. Mr. President, might I inquire what is the pending business?

The PRESIDING OFFICER. We are in morning business.

The Senator from Montana is recognized.

Mr. BURNS. I thank the Chair.

(The remarks of Mr. BURNS pertaining to the introduction of S. 1233 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BURNS. 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. Without objection, it is so ordered.

SPACE STATION FREEDOM

Mr. SEYMOUR. Mr. President, the House of Representatives will vote today on an appropriations amendment that would restore most of the administration's full fiscal year 1992 funding request to the space station Freedom.

This vote by our colleagues will do more than merely affect bureaucratic careers in Washington. Even at this early stage in its development, the space station employs nearly 100,000 people nationwide. This program will have a direct impact not only on our manned space flight and exploration initiatives, but on health care research, manufacturing technologies, and our understanding of what the environment of the solar system does to the environment of this Earth.

A few days ago, a House appropriations subcommittee denied all fiscal year 1992 funds for the space station and reduced the total spending authority for the program to $2 billion from $15 billion. The subcommittee took this action citing the need to investigate less costly alternatives.

This reasoning, Mr. President, is naive and shallow at best. First, the administration has already investigated and produced a less costly space station. Last year, NASA restructured the program and sliced $6 billion out of it. The funding cut by the House subcommittee came on top of a budget request that reflected 1992 savings alone of $900 million.

Second, the administration, with the approval of Congress, has already invested $56 billion in the space station and estimates that it would cost between $200 and $500 million to terminate the program.

As a result, if we let the House subcommittee action stand, the taxpayers would have spent up to $6.1 billion for nothing.

Eliminating or even significantly reducing our investment in the space station now, will not save the American people any money, it will cost them.

It will not allow them the luxury of looking at a cheaper alternative, since we are already in the first fiscal year of the cheaper alternative.

And it will not, Mr. President, have a positive impact on our economy.

After the Apollo launch, America's manned space flight program languished for more than 10 years, and according to NASA, the United States lost nearly 750,000 jobs just in that time.

And the people holding these jobs were not victims of economic adjustments or technological change—on the contrary, they were the agents of the rapid market changes swirling around us today.

We must also clear up the misperception that the space station would benefit only astronauts, astronomers, or physicists.

A permanent manned platform in the solar system will make it possible for us to discover how and why human beings can live in space over long periods of time.

It can give doctors and technicians new insights into how operational medicine might address deadly diseases.

It will uncover unknown atmospheric impacts on weather patterns and soil quality.

Finally, the space station will give us direct access to materials that may produce lighter and stronger components for industrial production.

These are some of the futuristic promises of space station Freedom. But we cannot forget what it can deliver to the American people here and now.

The technology, design process, launch system, and subcomponents of the station could help a struggling aerospace industry in the rebirth of its export potential.

Even in these times of decimated defense spending, aerospace firms continue to remain internationally competitive. They account for more than 10 percent of all American export sales and sustain a high trade surplus in the international market.

The export side of this business assumes an even greater importance in light of the decreasing military budget. By 1995, when we will have slashed Defense Department spending by 25 percent, the survival of many U.S. aerospace firms could depend on a robust export business. And much of this business could stem from the myriad of systems and subsystems that make up the space station.

Why is it important to discuss the station's relationship to this sector of the economy? Because the salvation of the domestic aerospace industry does more than preserve jobs at home. It helps us protect the peace in an unpredictable world, sharpens our edge in transportation and health care technologies, and directly contributes to the stabilization of our international balance of trade.

The economic and technological reach of the space station, therefore, will extend as far away as Mars and as close as the laboratories and factories in every State of the Union.

It is an original multifaceted enterprise. It will demonstrate that the more we penetrate the mysteries of the universe, the better we will be able to address the problems of our own earth.

I urge each of my colleagues, then, to support full funding for space station Freedom once this issue comes before that Senate.

I thank the Chair. I yield my time and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DODD). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. DOMENICI. Mr. President, parliamentary inquiry. Are we in morning business?

The PRESIDING OFFICER. The Senator is correct; we are in morning business.

Mr. DOMENICI. How much time does the Senator have under the previous order.

The PRESIDING OFFICER. There is no time limit. The Senator may speak as long as he wishes.

Mr. DOMENICI. I thank the Chair.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 1232 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistance legislative clerk proceeded to call the roll.

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

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

FEDERAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

Mr. LUGAR. Mr. President, I want to take this opportunity to express my willingness to join with the senior Senator from Virginia, Senator WARNER, in the fight for equitable highway funding formulas, and to express my opposition to the committee-reported surface transportation legislation.

I was not able to join my colleagues on the floor earlier this afternoon, but had I been here, I would have clearly stated, along with them, opposition to any motion to proceed to S. 965, the Surface Transportation Efficiency Act of 1991, or S. 1204, an identical bill.

This omnibus transportation funding legislation is of critical importance both to my State of Indiana and to our Nation as a whole. Its provisions will not only determine the fate of many local highway and public transportation projects in Indiana, but will also directly impact our Nation's economy, commerce, and competitiveness.

The issue of surface transportation policy is visited by this body only once every 5 years. Such an approach provides long-term stability to transportation programs whose projects often take many years to plan and to construct. At the same time, such a schedule requires that the Congress be that much more careful in crafting changes to these programs. Mr. President, this bill is even more unique. With the completion of the Interstate Highway System, the 1991 highway bill is the first major overhaul of our highway programs in 30 years. It is likely that this bill will lay the foundation of our Nation's transportation policy for decades to come.

In this context, one would predict that the leadership of the Environment and Public Works Committee would take a careful and, I would stress, cooperative approach in moving this legislation through the Senate. Instead, the committee has apparently rushed the bill to the floor, barely allowing Senators time to review its provisions or to discuss it with constituents. The committee apparently wants to move to this legislation without even giving Senators a chance to review its report.

Mr. President, this is a highly technical and complicated bill. It deserves very careful analysis on the part of Senators and the Nation. State and local governments, industry groups, and professional associations all deserve and will need time to examine its provisions, discuss it with their own organizations, and ultimately provide feedback to us.

S. 965 is a strong departure from our current transportation policy. I fear that the committee's speedy timetable may be an effort to limit analysis, discussion, and opposition to its ideas.

I strongly plead with the committee leadership to discuss their legislation with those of us who have opposing views and to attempt to address our concerns. In my judgment, if their proposal has merit and integrity, it will presevere in this debate and preserve its basic outline.

My prediction is that, after consultation with all Senators, better formulas of distribution of funds among the States will be found, certainly more equitable distributions will be established and, likewise, the outlines for a sound transportation policy for our country will come much more clearly into view.

I thank the Chair, and I yield the floor.

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

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

THE 25TH ANNIVERSARY OF THE ADDRESS OF SENATOR ROBERT F. KENNEDY ON THE DAY OF AFFIRMATION, UNIVERSITY OF CAPETOWN

Mr. DODD. Mr. President, it is indeed ironic that today, the 25th anniversary of one of the greatest civil rights addresses of this generation, should fall at the conclusion of such a bitter battle over the passage of civil rights legislation in the House of Representatives. Mr. President, it is ironic that race is still a political issue in this country, in this day and age.

Twenty-five years ago today, Mr. President, Robert Kennedy stood up in Capetown, South Africa, a bastion of apartheid, and called for the enlargement of liberty for individual men and women as "the supreme goal and abiding practice of any Western society." He spoke of a society where Government must answer—"not just to the wealthy, not just to those of a particular religion or particular race, but to all of its people." He continued, Mr. President, calling upon the youth of South Africa and the United States to set their own houses in order so as to contribute to the world's progress toward this vision of society. He said:

> If we would lead outside our borders, if we would help those who need our assistance, if we would meet our responsibilities to mankind; we must first, all of us, demolish the borders which history has erected between

men within our own nations—barriers of race and religion, social class and ignorance.

Mr. President, 2 years later on this very day, June 6, 1968, Robert Kennedy was felled by an assassin's bullet before he had a chance to see his dreams of a better, freer world come true. How would Robert Kennedy rate us in our pursuit of equal justice for all if he were alive? I wonder, Mr. President, whether the world that he envisioned where we did not deny "individual integrity, human dignity, and the common humanity of man" can be, when implementation of a meaningful and necessary civil rights law is not assured.

The debate over the quotas that the administration fears the civil rights legislation will give rise to has descended to the level of race baiting. Mr. President, I am opposed to quotas, as I believe most Members are. However, race baiting has no place in the formulation of that policy. We need a fair civil rights bill that will ensure equality and justice in the workplace. We need legislation that reemphasizes the often-stressed fact that no one in this Chamber favors racial or sexual quotas, but that the American people look for an equal employment opportunity for all of its citizens.

Mr. President, I ask unanimous consent that Robert Kennedy's remarks delivered on June 6, 1966, at the University of Capetown be printed in the RECORD.

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

ADDRESS OF SENATOR ROBERT F. KENNEDY, DAY OF AFFIRMATION, UNIVERSITY OF CAPETOWN, JUNE 6, 1966

I come here because of my deep interest and affection for a land settled by the Dutch in the mid-seventeenth century, then taken over by the British, and at last independent; a land in which the native inhabitants were at first subdued, but relations with whom remain a problem to this day; a land which defined itself on a hostile frontier; a land which has tamed rich natural resources through the energetic application of modern technology; a land which once imported slaves, and now must struggle to wipe out the last traces of that former bondage. I refer, of course, to the United States of America.

But I am glad to come here to South Africa. I am already enjoying my visit. I am making an effort to meet and exchange views with people from all walks of life, and all segments of South African opinion—including those who represent the views of the government. Today I am glad to meet with the National Union of South African Students. For a decade, NUSAS has stood and worked for the principles of the Universal Declaration of Human Rights—principles which embody the collective hopes of men and good will all around the world.

Your work, at home and in international student affairs, has brought great credit to yourselves and to your country. I know the National Student Association in the United States feels a particularly close relationship to NUSAS. And I wish to thank especially Mr. Ian Robertson, who first extended this invitation on behalf of NUSAS, for his kindness to me. It's too bad he can't be with us today.

This is a Day of Affirmation—a celebration of liberty. We stand here in the same name of freedom.

At the heart of that western freedom and democracy is the belief that the individual man, the child of God, is the touchstone of value, and all society, groups, the state, exist for his benefit. Therefore the enlargement of liberty for individual human beings must be the supreme goal and the abiding practice of any western society.

The first element of this individual liberty is the freedom of speech; the right to express and communicate ideas, to set oneself apart from the dumb beasts of field and forest; to recall governments to their duties and obligations; above all, the right to affirm one's membership and allegiance to the body politic—to society—to the men with whom we share our land, our heritage and our children's future.

Hand in hand with freedom of speech goes the power to be heard—to share in the decisions of government which shape men's lives. Everything that makes man's life worthwhile—family, work, education, a place to rear one's children and a place to rest one's head—all this depends on decisions of government; all can be swept away by a government which does not heed the demands of its people. Therefore, the essential humanity of men can be protected and preserved only where government must answer—not just to the wealthy; not just to those of a particular religion, or a particular race; but to all its people.

And even government by the consent of the governed, as in our own Constitution, must be limited in its power to act against its people; so that there may be no interference with the right to worship, or with the security of the home; no arbitrary imposition of pains or penalties by officials high or low; no restriction on the freedom of men to seek education or work or opportunity of any kind, so that each man may become all he is capable of becoming.

These are the sacred rights of western society. These were the essential differences between us and Nazi Germany as they were between Athens and Persia.

They are the essence of our difference with communism today. I am unalterably opposed to communism because it exalts the state over the individual and the family, and because of the lack of freedom of speech, of protest, of religion and of the press, which is the characteristic of totalitarian states. The way of opposition to communism is not to imitate its dictatorship, but to enlarge individual human freedom—in our own countries and all over the globe. There are those in every land who would label as "communist" every threat to their privilege. But as I have seen on my travels in all sections of the world, reform is not communism. And the denial of freedom, in whatever name, only strengthens the very communism it claims to oppose.

Many nations have set forth their own definitions and declarations of these principles. And there have often been wide and tragic gaps between promise and performance, ideal and reality. Yet the great ideals have constantly recalled us to our duties. And—with painful slowness—we have extended and enlarged the meaning and the practice of freedom for all our people.

For two centuries, my own country has struggled to overcome the self-imposed handicap of prejudice and discrimination based on nationality, social class or race—discrimination profoundly repugnant to the theory and command of our Constitution. Even as my father grew up in Boston, signs told him that "No Irish need apply." Two generations later President Kennedy became the first Catholic to head the nation; but how many men of ability had, before 1961, been denied the opportunity to contribute to the nation's progress because they were Catholic, or of Irish extraction. How many sons of Italian or Jewish or Polish parents slumbered in slums—untaught, unlearned, their potential lost forever to the nation and the human race? Even today, what price will we pay before we have assured full opportunity to millions of Negro Americans?

In the last five years we have done more to assure equality to our Negro citizens, and to help the deprived both white and black, than in the hundred years before. But much more remains to be done.

For there are millions of Negroes untrained for the simplest of jobs, and thousands every day denied their full equal rights under the law; and the violence of the disinherited, the insulted and injured, looms over the streets of Harlem and Watts and Southside Chicago.

But a Negro American trains as an astronaut, one of mankind's first explorers into outer space; another is the chief barrister of the United States government, and dozens sit on the benches of court; and another, Dr. Martin Luther King, is the second man of African descent to win the Nobel Peace Prize for his non-violent efforts for social justice between the races.

We have passed laws prohibiting discrimination in education, in employment, in housing; but these laws alone cannot overcome the heritage of centuries—of broken families and stunted children, and poverty and degradation and pain.

So the road toward equality of freedom is not easy, and great cost and danger march alongside us. We are committed to peaceful and non-violent change and that is important for all to understand—though all change is unsettling. Still even in the turbulence of protest and struggle is greater hope for the future, as men learn to claim and achieve for themselves the rights formerly petitioned from others.

And most important of all, all the panoply of government power has been committed to the goal of equality before the law—as we are now committing ourselves to the achievement of equal opportunity in fact.

We must recognize the full human equality of all our people—before God, before the law, and in the councils of government. We must do this, not because it is economically advantageous—although it is; not because the laws of God and man command it—although they do command it; not because people in other lands wish it so. We must do it for the single and fundamental reason that it is the right thing to do.

We recognize that there are problems and obstacles before the fulfillment of these ideals in the United States as we recognize that other nations, in Latin America and Asia and Africa have their own political, economic, and social problems, their unique barriers to the elimination of injustice.

In some, there is concern that change will submerge the rights of a minority, particularly where the minority is of a different race from the majority. We in the United States believe in the protection of minorities; we recognize the contributions they can make and the leadership they can provide; and we do not believe that any people—

whether minority, majority, or individual human beings—are "expendable" in the cause of theory or policy. We recognize also that justice between men and nations is imperfect, and that humanity sometimes progresses slowly.

All do not develop in the same manner, or at the same pace. Nations, like men, often march to the beat of different drummers, and the precise solutions of the United States can neither be dictated nor transplanted to others. What is important is that all nations must march toward increasing freedom; toward justice for all; toward a society strong and flexible enough to meet the demands of all of its own people, and a world of immense and dizzying change.

In a few hours, the plane that brought me to this country crossed over oceans and countries which have been a crucible of human history. In minutes we traced the migration of men over thousands of years; seconds, the briefest glimpse, and we passed battlefields on which millions of men once struggled and died. We could see no national boundaries, no vast gulfs or high walls dividing people from people; only nature and the works of man—homes and factories and farms—everywhere reflecting man's common effort to enrich his life. Everywhere new technology and communications bring men and nations closer together, the concerns of one inevitably becoming the concerns of all. And our new closeness is stripping away the false masks, the illusion of difference which is at the root of injustice and hate and war. Only earthbound man still clings to the dark and poisoning superstition that his world is bounded by the nearest hill, his universe ended at river shore, his common humanity enclosed in the tight circle of those who share his town and views and the color of his skin.

It is your job, the task of the young people of this world to strip the last remnants of that ancient, cruel belief from the civilization of man.

Each nation has different obstacles and different goals, shaped by the vagaries of history and experience. Yet as I talk to young people around the world I am impressed not by the diversity but by the closeness of their goals, their desires and concerns and hope for the future. There is discrimination in New York, the racial inequality of apartheid in South Africa and serfdom in the mountains of Peru. People starve in the streets of India; a former Prime Minister is summarily executed in the Congo; intellectuals go to jail in Russia; thousands are slaughtered in Indonesia; wealth is lavished on armaments everywhere. These are differing evils; but they are the common works of man. They reflect the imperfection of human justice, the inadequacy of human compassion, the defectiveness of our sensibility toward the sufferings of our fellows; they mark the limit of our ability to use knowledge for the well-being of others. And therefore they call upon common qualities of conscience and of indignation, a shared determination to wipe away the unnecessary suffering of our fellow human beings at home and round the world.

It is these qualities which make of youth today the only true international community. More than this I think that we could agree on what kind of world we want to build. It would be a world of independent nations, moving toward international community, each of which protected and respected basic human freedoms. It would be a world which demanded of each government that it accept its responsibility to insure social justice. It would be a world of constantly accelerating economic progress—not material welfare as an end in itself, but as a means to liberate the capacity of each human being to pursue his talents and his hopes. It would, in short, be a world we would be proud to have built.

Just to the North of here are lands of challenge and opportunity—rich in natural resources, land and minerals and people. Yet they are also lands confronted by the greatest odds—overwhelming ignorance, internal tensions and strife, and great obstacles of climate and geography. Many of these nations, as colonies, were oppressed and exploited. Yet they have not estranged themselves from the broad traditions of the West; they are hoping and gambling their progress and stability on the chance that we will meet our responsibilities to help them overcome their poverty.

In the world we would like to build, South Africa could play an outstanding role in that effort. This is without question a preeminent repository of the wealth and knowledge and skill of the continent. Here are the greater part of Africa's research scientists and steel production, most of its reservoirs of coal and electric power. Many South Africans have made major contributions to African technical development and world science; the names of some are known wherever men seek to eliminate the ravages of tropical diseases and pestilence. In your faculties and councils, here in this very audience, are hundreds and thousands of men who could transform the lives of millions for all time to come.

But the help and the leadership of South Africa or the United States cannot be accepted if we—within our own countries or in our relations with others—deny individual integrity, human dignity, and the common humanity of man. If we would lead outside our borders; if we would help those who need our assistance, if we would meet our responsibilities to mankind; we must first, all of us, demolish the borders which history has erected between men within our own nations—barriers of race and religion, social class and ignorance.

Our answer is the world's hope; it is to rely on youth. The cruelties and obstacles of this swiftly changing planet will not yield to obsolete dogmas and outworn slogans. It cannot be moved by those who cling to a present which is already dying, who prefer the illusion of security to the excitement and danger which comes with even the most peaceful progress. This world demands the qualities of youth; not a time of life but a state of mind, a temper of the will, a quality of the imagination, a predominance of courage over timidity, of the appetite for adventure over the love of ease. It is a revolutionary world we live in, and thus, as I have said in Latin America and Asia, in Europe and in the United States, it is young people who must take the lead. Thus you, and your young compatriots everywhere have had thrust upon you a greater burden of responsibility than any generation that has ever lived.

"There is" said an Italian philosopher, "nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success than to take the lead in the introduction of a new order of things." Yet this is the measure of the task of your generation and the road is strewn with many dangers.

First, is the danger of futility; the belief there is nothing one man or one woman can do against the enormous array of the world's ills—against misery and ignorance, injustice and violence. Yet many of the world's great movements, of thought and action, have flowed from the work of a single man. A young monk began the Protestant reformation, a young general extended an empire from Macedonia to the borders of the earth and a young woman reclaimed the territory of France. It was a young Italian explorer who discovered the New World, and the 32 year old Thomas Jefferson who proclaimed that all men are created equal. "Give me a place to stand," said Archimedes, "and I will move the world." These men moved the world, and so can we all. Few will have the greatness to bend history itself; but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation. Thousands of Peace Corps volunteers are making a difference in isolated villages and city slums in dozens of countries. Thousands of unknown men and women in Europe resisted the occupation of the Nazis and many died, but all added to the ultimate strength and freedom of their countries. It is from numberless diverse acts of courage and belief that human history is shaped. each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance.

"If Athens shall appear great to you," said Pericles, "consider then that her glories were purchased by valiant men, and by men who learned their duty." That is the source of all greatness in all societies, and it is the key to progress in our time.

The second danger is that of expediency; of those who say that hopes and beliefs must bend before immediate necessities. Of course, if we would act effectively we must deal with the world as it is. We must get things done. But if there was one thing President Kennedy stood for that touched the most profound feelings of young people across the world, it was the belief that idealism, high aspirations and deep convictions are not incompatible with the most practical and efficient of programs—that there is no basic inconsistency between ideals and realistic possibilities—no separation between the deepest desires of heart and mind and the rational application of human effort to human problems. It is not realistic or hard-headed to solve problems and take action unguided by ultimate moral aims and values. It is thoughtless folly. For it ignores the realities of human faith and passion and belief; forces ultimately more powerful than all the calculation of economists or generals. Of course to adhere to standards, to idealism, to vision in the face of immediate dangers takes courage and self-confidence. But we also know that only those who dare to fail greatly, can ever achieve greatly.

It is this new idealism which is also, I believe, the common heritage of a generation which has learned that while efficiency can lead to the camps of Auschwitz, or the streets of Budapest, only the ideals of humanity and love can climb the hill to the Acropolis.

A third danger is timidity. Few men are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential, vital quality for those who seek to change a world which yields most painfully to change. Aristotle tells us that "At the Olympic games it is not the finest and the strongest

men who are crowned, but they who enter the lists . . . So too in the life of the honorable and the good it is they who act rightly who win the prize." I believe that in this generation those with the courage to enter the moral conflict will find themselves with companions in every corner of the world.

For the fortunate among us, the fourth danger is comfort; the temptation to follow the easy and familiar paths of personal ambition and financial success so grandly spread before those who have the privilege of education. But that is not the road history has marked out for us. There is a Chinese curse which says May he live in interesting times. Like it or not we live in interesting times. They are times of danger and uncertainty; but they are also more open to the creative energy of men than any other time in history. And everyone here will ultimately be judged—will ultimately judge himself—on the effort he has contributed to building a new world society and the extent to which his ideals and goals have shaped that effort.

So we part, I to my country and you to remain. We are—if a man of forty can claim that privilege—fellow members of the world's largest younger generation. Each of us have our own work to do. I know at times you must feel very alone with your problems and difficulties. But I want to say how impressed I am with what you stand for and the effort you are making; and I say this not just for myself, but for men and women everywhere. And I hope you will often take heart from the knowledge that you are joined with fellow young people in every land, they struggling with their problems and you with yours, but all joined in a common purpose; that, like the young people of my own country and of every country I have visited, you are all in many ways more closely united to the brothers of your time than to the older generations of any of these nations; and that you are determined to build a better future. President Kennedy was speaking to the young people of America, but beyond them to young people everywhere, when he said that "The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it—and the glow from that fire can truly light the world."

And, he added "With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own."

Mr. DODD. Mr. President, I yield the floor.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. I thank the Chair.

(The remarks of Mr. DIXON pertaining to the introduction of S. 1234 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

FEDERAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

Mr. MITCHELL. Mr. President, as I have stated previously publicly on several occasions, it is my hope that the Senate can proceed as promptly as possible to consider the Surface Transportation Efficiency Act of 1991, what we all know as the highway bill.

The report of the Committee on the Environment and Public Works with respect to that legislation, now designated as S. 1204, was received in the Senate at 2:33 p.m. today. Under the rules of the Senate, unanimous consent is required in order to proceed to that legislation prior to the expiration of 2 days following the receipt of the report. Therefore, although I had hoped we could begin consideration of that legislation at this time, I am advised that there is objection on the part of one or more Senators to so proceeding.

It is my intention shortly to seek that unanimous consent. I have discussed the matter previously with the distinguished Republican leader, with the manager of the bill, the distinguished Senator from New York, and several others. I understand there will be objection to the request to proceed immediately. It is my hope that we can work out some way of getting to this bill as promptly as possible.

As I have indicated also publicly on several occasions, immediately upon disposition of this bill, it is my intention to proceed to the consideration of comprehensive crime legislation, and I know many Senators have expressed an interest in proceeding to that, as well.

Mr. President, before I make the request, I want to yield to the distinguished Republican leader to see if he has any comment at this time.

Mr. DOLE. Mr. President, I appreciate the majority leader yielding. It is my understanding that the Senator from Virginia [Mr. WARNER] has been conducting a number of meetings, discussions, with Members on each side of the aisle. They have a different view concerning a formula that is contained in the legislation.

I have discussed taking up the bill immediately with the Senator from Virginia, and I would, as the Senator has indicated, be constrained to object on his behalf. He indicates somebody would object because the report is 257 pages long. It was only available at 2:33. He just feels he needs some time.

Having said that, it is my hope that if we cannot agree to lay the bill down immediately, or tomorrow morning, or tomorrow afternoon, we could agree to go to the bill on Monday, and maybe in the interim try to work out the differences. I will be working with the majority leader.

I am advised by the Senator from Virginia that he is on his way here from the Pentagon. He should be here momentarily, and I will have an opportunity to talk with him again at that time.

Mr. MITCHELL. Mr. President, I thank my colleague.

I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 105, S. 1204, the Federal Surface Transportation Efficiency Act of 1991.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, as previously indicated, I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. Mr. President, as we have previously discussed, both here publicly, and prior to that privately, it is my hope that we can work out a way to begin consideration of this bill. I understand and appreciate the concerns of Senators about provisions in the bill.

Obviously, any Senator may appropriately use whatever means are available under the rules to delay consideration of the bill.

The substantive differences, it seems to me, will ultimately have to be resolved by the full Senate. I would hope that those Senators who have disagreements with one or more parts of the bill will permit us to proceed to the bill, and if any Senator has an amendment seeking to alter some provision of the bill, he or she will offer the amendment and we can proceed to disposition of the bill.

I simply say to Senators that we have a lot of work to do in this legislative period, and anything we do not do today will mean a long evening session point in the near future, or perhaps a weekend session or a Friday afternoon session or a Monday evening session. So, the work has to be done. It is a question of when it is done.

I am grateful to the distinguished Republican leader for this cooperation in this matter. I understand the reasons for the objection, and I hope that before this day is out, and shortly, that we will be able to reach an accommodation enabling us to proceed to the bill as soon as possible.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SIMON). The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I thank the leaders for arranging for this bill to come forward. It has been 5 years in the making, and it is the first such legislation we will have enacted of comparable importance since the Federal-Aid Highway Act of 1956.

Four and a half years ago, it fell to me to be the floor manager of the last such bill. It fell to me then, as it will now, as Senator MITCHELL said. And I made the point repeatedly that the 1987 bill would be the last of the interstate highway era, and that the bill we are about to take up would be the first of a new era. A new era in which we would address new subjects, and we hoped in new ways.

Might I make the point to an empty Chamber, the word having spread that there will be no votes, that we are in a period of some dispute about the allocation of the Federal moneys, $105 bil-

lion over 5 years between the different States. This is ever a difficulty with regard to a public works program that involves surface transportation.

It simply is the case that the States are of such different size and topography, that the normal processes of allocation cannot work. The per capita basis for allocating most resources which we dispose of through the Federal Government just is not available to us.

I said earlier today that the Lord made Wyoming 350 miles wide, and there simply is no way to get around that fact. There is no way to get around the fact that all the routes have disparities. The national road, which began in 1806, ran from Frederick, MD to Vandalia, IL. Basically, the route connected Baltimore with St. Louis.

It was a tremendously important event. A hugely important event. That and the Erie Canal opened the West. It bypassed Richmond and it bypassed Philadelphia, and they were furious. It was so far south of Albany that I suppose nobody there thought to complain, and we were even then embarked on the Erie Canal.

Boston and Charleston did not feel in the issue. Anybody close enough to say, you should not put it there; you should put it here, would have difficulty. That is inherent in this Union of States conceived at Philadelphia. That is why we have two Senators from every State on this floor. In the next Congress, 1 State will have more than 50 Members in the House of Representatives, and a number of States will have 1. But each will have two Senators.

So we will do our best to work this out. I think we will. We always have. It was a lot more difficult in Thomas Jefferson's day than it is today, or at least it was thought to have been.

I would like to make the point in these few moments that the allocation of resources between the States in this legislation is a very minor consideration compared with the theory and practice of this legislation as we envision it.

We hope to have the first bill, which will address the issue of surface transportation, a large portion of the public sector of the economy, to introduce into that sector the principles of cost effectiveness, of accountability, and of productivity. They have not been there in the last 35 years. They did not seem to be important issues in 1956, which was when we added defense to the purpose of the enterprise.

And when you hear defense, you cease thinking cost effectiveness, because for good reasons defense outcomes have other measurements. But not here. What we find here is what public sectors find everywhere. It is the problem of government in our age.

Public sectors are so inefficient. We have the productivity rates. I remarked earlier today that it is not generally seen this way, but productivity in manufacturing in the United States may be at its all-time high. I am not an economics historian, but productivity in durable goods is rising at 6 percent per year, and has been for the last decade. Such a rate of growth doubles in 12 years.

In the end, your wealth, your standard of living, reflects the productivity of your economy. If we had an economy growing at 6 percent, productivity growing at 6 percent per year, we would double our GNP in 12 years.

But, sir, that is only part of the economy. There is another part called transportation. Transportation productivity, Mr. President, has been growing at 0.2 percent a year. At that rate, it takes 3½ centuries to double. You have about the rate of productivity of Western European economy from the year 1000 to the year 1350, an increase in the standard of living that you could see over 3½ centuries. But no one in his or her own lifetime would think anything had changed, the pace of change being so small.

That comes of inattention to these matters, which are inherently difficult to attend to when you are in the public sector spending what appears to be free goods. There are no free goods here. We hear it said there is no such thing as a free lunch. There is not. And neither is there such a thing as a freeway.

They have costs and they have benefits, and what is the balance? It happens that just this morning, the Washington Post, on the job as always, had a front-page story about our new legislation. The Post was contrasting our bill with some proposals in the administration bill. There were some mild details that we want to correct, if that is the term.

The Post observes that the bill that we have reported provides operating subsidies for mass transit.

It does not. An earlier draft inadvertently had that provision. We dropped it right away because we want to know prices here.

But much more importantly, there is a story written by one of the coauthers of the article on the front page. Inside, on the carryover page, I believe they speak of it in the newspaper world, by Mr. Don Phillips, who is a Washington Post writer, it has a headline which tells it all. It says: "Europeans Build Better Pavement Faster—With Guarantees."

This describes a factfinding tour which a group of State transportation officials—I have to assume this was AASHTO, the American Association of State Highway and Transportation Officials. They went over to Europe and came back with—I will just read the lead paragraph of Mr. Phillips' discourse. He says:

> A sense of unease spread through the winter meeting of State transportation officials last year in Phoenix. A transatlantic factfinding tour had a sobering report: European countries have developed an asphalt pavement that lasts twice as long and handles heavier loads than U.S. pavements, is quieter and doesn't rut.

One of the members of the group, Mr. Wayne Muri, who is the chief engineer of the Missouri Highway and Transportation Department, had this to say:

> Rather than a second-class nation, we could become a fourth-class nation, and that's tough for an American to swallow.

Here we are describing ourselves as a second-class nation and talking about the prospect of becoming a fourth-class nation. Well, is has happened before in the history of the world. And when it does, transportation is one of the fulcrums. Because we have built on transportation that National Road, that Erie Canal, the canal system, then the railroad system, followed by the road system. Our road system has now matured, but it is hugely inefficient and not well-maintained. The congestion, which we thought would disappaar with the Interstate System, seems only to have worsened with it.

It says here in the main body of a long article by Mr. Phillips and Mr. Fehr:

> Because of congestion, the Federal Highway Administration estimates that trucks traveling more than 50 miles on intercity highways lose $35 billion a year through loss of productivity, greater fuel costs, higher driver pay and other costs.

Thirty-five billion dollars is a lot; more than we would be spending each year in our program. How come, after the largest public works program in history, designed to get rid of congestion, we have more congestion than ever?

There is an answer to that, Mr. President. Free consumer goods, are disposed of by overconsumption. Congestion is the pricing mechanism for our highways. The economist Steve A. Morrison of Northeastern University compared them in our hearings, to those long lines of people waiting outside butcher shops in Moscow which do not have anything in them. It is very simple. The prices are too low. And so there is a great, excessive demand and a great shortage of supply.

Now, there will always be some congestion at some hours in any transportation system. It is called the football stadium effect. When the game is over, everybody leaves and you have a big jam. That is understood and clear. But when you have systems that appear to provide something free which is in demand, the demand will be higher than the supply. Always. That is a rule that Adam Smith laid down and no one has found a way around it since.

But we are going to try to say to States and cities, think this way: the more efficient systems of travel you

get, the better off you will be. The better your ability to compete.

I know we are going to compete on the floor for who gets this Federal money. I would like to see us compete after the legislation is in place. To see who spends it best, who says move to our town. Your trucks will arrive on time, your transit will work, your highways will perform. We will better highways, electronic highways. We have no more electronics in our highways or on our cars as regards their performance than did the model T Ford. Better ways to, for instance, collect tolls. I was a young boy when the Triborough Bridge opened in New York City. I remember the cars going over it. A great moment.

Fifty years later, a person is still standing in those toll booths collecting the tolls. Zero increase in productivity, zero, for 50 years. A dollar's worth of electronics—and that is a good kind of electronics, those little things Americans like to make that only cost a dollar and you make 17 million of them or 117 million—a dollar's worth of electronics would signal to the Triborough Bridge that you are crossing it, record your license plate number, and bill you once a month like a telephone bill. If you do not pay it for 3 months, you lose your license. Easy. You get people out of those toll booths. That is no life, living in those unnecessary exhaust fumes.

We would like to build that, and Senator LAUTENBERG has been very active in the provision of the bill on intelligent vehicles and highways. We would like to see innovation and usage.

I read here in the Post that they are beginning to experiment in Europe with pavement concepts. Some include ground rubber, which is quieter and has qualities—I was interested in that because in our bill, it says 10 percent of surface pavements now should use recycled rubber from those 250 million tires that we discard every year.

And the Tire Manufacturers Association, I would like to record, Mr. President, volunteered that they would be prepared to have a tax levied on tires to provide for this recycling to the point where, instead of "the rubber meets the road," the rubber meets the rubber. And why not? That is what is called thinking. That is what we are suposed to be good at.

We have one provision for a single magnetic levitation project to be awarded by competition by the Department of Transportation. Here is a good exmple of our problems. We are the only major industrial country in the world that is not experimenting and developing high speed transportation systems. The most advanced such system is magnetic levitation. Magnetic levitation, Mr. President, is the floating train. Magnetic fields repel each other and a car, of whatever length, simply rises on a guide path and moves along at 220 miles per hour, no friction, no difficulties of that kind. I have ridden on one in Germany. There is one going into fare box operation in Japan now.

It is a little too familiar to have to tell you, sir, that magnetic levitation was invented in the United States and is being made in Japan. I do not know who is to blame for that but two nuclear engineers, very able men, still very active, Doctors Danby and Powell at Brookhaven National Lab, patented the device in 1964. We put a little money into it in the 1970's and dropped it. It is going on all over the world.

This will be the first time since the railroad, which was the beginning of modern transportation, where the United States is not ahead of all the other economies of the world, or at least abreast of them.

We were that way with the steamboat. We caught up on the long-distance railroads. We did it with the automobile. We did it with the airplane. We are not doing it now. I think we went to sleep during that period of the Interstate System and I hope we can wake up with this legislation. It is not just the Surface Transportation Act, it is the Surface Transportation Efficiency Act. We are making a bet on ourselves. I think we ought to do that.

Mr. President, at this point in the RECORD, I ask unanimous consent to have printed the introduction to the report which I prepared several weeks ago.

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

INTRODUCTORY STATEMENT

The first Federal highway program was signed into law by Thomas Jefferson on March 29, 1806 (2 Stat. 357). It was part of the arrangements whereby Ohio was admitted to the Union. The National Road, as it came to be known (r e recently, U.S. 40), was to connect the new state with the Eastern seaboard. As has been the case ever since, the legislation both divided the states and united the nation. The historian Philip D. Jordan writes:

"The South was antagonistic because it feared a Western road would drain off its population and because Richmond was not included on the route. Pennsylvania was angry because the road would pass through only a small part of the state and because Philadelphia was by-passed."[1]

Even so, no state failed to give the measure at least one supporting vote. The age of internal improvements had begun, as had the debate concerning them.

Then, and ever since, internal improvements have been intricately involved with foreign relations. The origins of the National Road go back to the French and Indian wars and George Washington's earlier expedition to the Ohio valley in 1753. A basic fact of American geography is that, save for a gentle nine mile portage between Lake Erie and Lake Chautauqua in New York, a river and lake system runs from Quebec City on the St. Lawrence River to New Orleans on the Gulf of Mexico. Until the advent of the canal and the railroad, these natural waterways were the most economic routes for exports from the American interior. But they passed through foreign domains, and the national government was constantly seeking through tariffs and assorted preferments, especially roads, to maintain the link to the original thirteen.

The era of The National Road gave way to a period of canal building, followed by the advent of the railroads. Again the Federal government was involved, and again we were crossing the continent. Vast tracts of Federal lands were given to the transcontinental railroads. The railroad system matured at about the turn of the century just as a new transportation technology, the automobile, made its epic appearance. In 1916 Congress enacted a permanent Federal roads program. Not large, but ongoing and again rural-oriented. ("Farm-to-market" roads, as they were known.)

By now another great technological change had occurred, albeit few saw it in those terms. The City. The Census of 1920 reported that for the first time the majority of Americans lived in "urban" areas. These could be quite small communities, but the essential truth was that the United States had ceased to be an agricultural nation. Whatever Jefferson's fears and Hamilton's hopes, we were now an urban civilization. Our wealth came from Big Cities, and mainly from manufacturing in such cities. Detroit, which manufactured automobiles, was the quintessential such city.

The idea of a vast national network of "superhighways" to connect these cities, and to provide high speed separated roads within them appears to have taken shape with the great success of the General Motors "Futurama" exhibit at the 1939 World's Fair at Flushing Meadows in Queens, New York. From there it was then a short distance to the White House where President Franklin D. Roosevelt soon proposed such a system. Legislation authorizing a "National System of Interstate Highways" was enacted in 1944.

As all students of the Congress know, authorizations are one thing, appropriations are another. At first, little money was forthcoming for the Interstate System. Then, in the next decade a President came to office who cared very much about the subject, having encountered it in a formative personal experience more than three decades earlier.

In 1919, young Army Lt. Colonel (soon to revert to his peacetime rank of Captain) Dwight D. Eisenhower was given command of a serious military exercise. He was to assume that wartime events had disabled the railroads. He was to lead a convoy of Army trucks across the country from Camp Meade in Maryland (about where the National Road began) to San Francisco. In "At Ease: Stories I Tell to Friends," Eisenhower writes:

"To those who have known only concrete and macadam highways of gentle grades and engineered curves, such a trip might seem humdrum. In those days, we were not sure it could be accomplished at all. Nothing of the sort had ever been attempted."[2]

The convoy averaged less than seven miles per hour. The trip took two months, and proved that cross-continental travel by truck was all but infeasible for defense purposes. The convoy demonstrated that railroads were indispensable; ironically, it also contributed to their great decline. In 1950,

[1] Philip D. Jordan, *The National Road* (Gloucester, Mass.: Peter Smith (1966), p. 74.

[2] Dwight D. Eisenhower, "At Ease: Stories I Tell to Friends" (New York: Doubleday & Company, Inc., 1967), p. 157.

the railroads carried 47 percent of freight traffic. By 1989, this had dropped to 26 percent. Truck traffic has seen a corresponding increase.

Eisenhower became convinced of the need to end such dependence on rail. Upon becoming President he set about seeing to it that the National System of Interstate and Defense Highways (as it became in the Federal-Aid Highway Act of 1956 [70 Stat. 374]) got up and going.

Working with a group of young Congressmen on the House Public Works Committee, notably Jim Wright of Texas, later to become Speaker of the House, the idea emerged of a Federal gasoline tax to be paid into a Highway Trust Fund dedicated to this object. This, too, was provided in the 1956 Act (70 Stat. 374). Construction of the Interstate System now began in earnest. Years later, President Eisenhower would regard this as the most important domestic achievement of his administration.[3] At the urging of our esteemed late colleague Senator John Heinz of Pennyslvania, the system is now officially designated the Dwight D. Eisenhower System of Interstate and Defense Highways.

In the meantime, however, the first true segment of the Interstate System had been built in New York, where the idea had first gained currency. Not too long after the end of World War II, automobile ownership began to grow again, not least to follow housing to the suburbs. In 1950 the New York State Legislature created a public corporation to construct and operate a 559 mile expressway, from along the historic route up the Hudson and westward through the break in the Appalachians that had been first traversed by turnpike, then canal, then railroad. The Governor Thomas E. Dewey Thruway, as it would be named in recognition of its sponsor, was opened in 1954, the longest toll road superhighway in the United States. With passage of the Federal-Aid Highway Act of 1956, the Thruway was included in the Interstate System as Interstates 87 and 90.

Bertram D. Tallamy, who had supervised construction of the Thruway as New York State's Superintendent of Public Works, and later as Chairman of the New York State Thruway Authority, was asked by President Eisenhower to come to Washington to build the Interstate System. In 1957, Tallamy took over the then-small Bureau of Public Roads in the Department of Commerce as the first Federal Highway Administrator appointed by the President and confirmed by the Senate. He used his vast experience with the Thruway to launch the national program.

It was originally understood that this would require 13 years and cost $27 billion. In the event, however, it would take more on the order of 39 years and $128 billion, which is to say three times as long and 5 times as much as originally planned.

Even now, it is not quite finished. Two urban segments, the Glenn M. Anderson Freeway in Los Angeles and the Central Artery/Third Harbor Tunnel in Boston remain to be completed, and some States are still owed reimbursement for segments removed from the system. In all, another $8 billion will be required over the next 4 years. However, it will then, finally, be done.

This is excellent news, but of course comes as no surprise. In 1987, as floor manager for the Surface Transportation Act of that year, I repeatedly reminded the Senate that this would be the final legislation of the Interstate era, and that in 1991 a new period would begin.

[3] Bryce N. Harlow to D.P.M., Conversation, 1969.

In the years since, the Subcommittee on Water Resources, Transportation and Infrastructure has held extensive hearings on the needs of this new period and its constraints on those needs.

One of these constraints, as will be discussed, is budgetary. The United States government for the present and foreseeable future cannot and will not embark on the epic enterprises that came with such seeming ease to Roosevelt and Eisenhower. We have spent our money on other things, and are now much in debt. And there you are.

But this is not our only constraint. The plain fact is that traffic congestion has grown during this period of massive highway construction. We have to face the fact that even if we had greater resources than we do, adding to highway capacity does not any longer seem a promising road to increased highway efficiency. In city after city we heard of horrendous congestion problems. Yet this was a problem the Interstate System was meant to resolve. (Whatever President Eisenhower's purposes!) In their definitive study, "Autos, Transit and Cities John E. Meyer and José A. Gómez-Ibáñez observe: ". . . [T]he greatest disappointment with the interstate highway program . . . was that it did not seem to achieve its major objective of reducing traffic congestion."[4]

This is the oldest of urban problems. Rome struggled with it until the day the Goths arrived. We have done the same. Meyer and Gómez-Ibáñez note that when the Interstate program seemed to be failing we turned to the Urban Mass Transit Act of 1964. First construction grants; then operating subsidies. Again with limited or seemingly counterintuitive results.

In effect, both practitioners and analysts urged the Committee to consider that four decades of straight forward adding to "supply" by building more urban highway lanes or diverting demand through additional transit facilities had been tried—and has had at most a partial success. The subject is more complicated. The systems involved are complex, interdependent, often idiosyncratic. They cry out for innovation and flexibility. Thus the Committee approached its task in the context of three realities.

First, with the completion of the Interstate System and cutbacks (in the case of transit), the United States has entered a period of general disinvestment in infrastructure. Specifically, in surface transportation infrastructure. The most important study of the overall subject was "Fragile Foundations," the 1988 report of the National Council on Public Works Improvement, which was created by the Public Works Improvement Act of 1984 (Public Law 98-501). The Council found that federal expenditures for highways, to take one segment, reached a peak in 1965 at some $40 billion per year. This is followed by a steady decline into the early 1980s, when expenditures leveled off at about the $10 billion per year level, where they remain. (Both numbers are in 1982 dollars.)

Federal outlays are important, but note that far and away the largest share of investment in transportation infrastructure comes from state and local governments. In 1989, for example, State and local governments accounted for 84 percent of the total outlays for roads and highways, with the Federal government providing only 16 percent.

A second reality that emerged from our hearings is that the level of federal investment in infrastructure generally, and in surface transportation specifically, is not likely to rise at any time soon. Rescuing America's "crumbling infrastructure" has become part of the imagery of American political discourse. For the moment, however, the federal deficit is a reality and a restraint. Just as engineers live in a world of precision measurement, prudent risk, and the understanding that decisions must be based on what is, rather on what might be, so legislation concerning public works must be equally realistic.

Certainly a case can be made for greatly expanded investment in infrastructure. It is probably still not widely understood just how far we have wandered from our traditional, industrious, improving ways. During the early 1980s, as an example, the mighty and ancient United States Army Corps of Engineers designed and supervised more construction in Saudi Arabia than in the United States. (In the course of this foreign adventure we built among other things, 46 mosques. Excellent as a limited exercise, but even mosque building can be carried to excess.)

No doubt many members of our Committee would like to see greater spending for infrastructure, and would propose means by which to pay for its, notably an increase gasoline tax. Some would contend that such an increase would make for sound energy policy regardless of other needs or advantages. But for the moment, this Committee has been asked to devise a Surface Transportation Act that contemplates an outlay of some $105 billion over five years.

Be clear, however. We are going to spend more money on surface transportation. The present bill calls for the expenditure of $105 billion over the next five years, nearly one third more than the $80 billion of the past five years. Leaving aside interstate construction and substitution, the increase is one half.

A third reality emerged from the first two. If we will learn from the past and think about the future we must get more for our money. Given that investment is declining, and that it is not likely to rise anytime soon, it follows that the surpassing theme of the post-Interstate period must be efficiency. Hence the Surface Transportation Efficiency Act of 1990.

The heart of the matter is productivity. In the manufacturing sector of the American economy, productivity growth has been robust. As, for example, in durable goods, where productivity has been growing at the astounding rate of 6.0 percent per year. But everything that is manufactured must be transported, and productivity growth in transportation has been flat to the point of being nonexistent. In April, the Honorable Michael J. Boskin, Chairman of the Council of Economic Advisors, advised the Committee:

"Output per hour in the Transportation sector broadly defined rose at only 0.2 percent annually from 1979 to 1988."[5]

The contrast is incredible. A growth rate of six percent per year means that productivity will double in 12 years. If the whole of the economy were to grow at such a rate, living standards would increase five-fold in the course of a single generation. By contrast, if the economy as a whole were to grow only at the rate of 0.2 percent per year, it would take 12 generations for living standards to double.[6]

[4] John Meyer and José A. Gómez-Ibáñez, "Autos, Transit, and Cities" (Cambridge, Mass.: Harvard University Press, 1981).

[5] The Honorable Michael J. Boskin to Senator Daniel Patrick Moynihan, April 18, 1991

[6] Calculations are based on 30-year generations.

Jordan reports that the immigrant Irish laborers who did much of the pick and shovel work on the National Road were paid $6 per month. A 0.2 percent productivity growth since that time (for the economy as a whole, of course) would have brought monthly wages (in constant dollars) up to about $9 per month by now. Or $108 per year. Now clearly this would not seem a satisfactory growth rate to most of us. But that is our growth rate in transportation. Just as clearly, it is not something we can blame on foreign competition. Not, mind, that some won't try. But the Committee feels there ought to be a more constructive outlet for dissatisfaction. Namely, to think harder and to do better.

This will not be easy. When was it? No one seems to know just why productivity in transportation is so low. For one thing there is a stunning absence of data—facts. Transportation economics is clearly held back by the paucity of reliable information. (It is for this reason that the Act proposes to establish a Bureau of Transportation Statistics in the Department of Transportation.) However, as President John F. Kennedy would say, to govern is to choose, and we have chosen two working propositions as having the most explanatory power, and being the more convincing.

The first proposition is that our problems derive in part from a lack of technological innovation which has been virtually absent from this huge area of the economy.[7] Not entirely, but relatively. All the major machines—the steamboat, the railroad engine, the automobile—are 19th century inventions. (It is hard to assign a particular date for the pipeline. The "Big Inch" pipeline reached Pennsylvania from Texas in 1943. On the other hand, Robert Fulton was experimenting with cast iron aqueducts in the 1790s. The Committee readily concedes that engineering history is the province of other authorities.)

For the first time since Fulton's steamboat—the *Clermont* made its journey from New York to Albany in 1807—the United States is watching other nations take the lead in surface transportation technology. High speed rail, not a new technology, but an old one with new improvements, is developing rapidly (!) in Europe and Japan. In a number of states, including Texas, Florida, Pennsylvania and Nevada, there is active interest in building such facilities, using European or Japanese products. Which is competitive and good. What is not good, however, is for there to be no American firms in the competitions.

Even as this report was in preparation, the New York Times reported:

"GERMANY ROLLS OUT ITS FAST TRAIN

"BUILDERS HOPE TO COMPETE WITH THE FRENCH AND JAPANESE

"BONN, May 29.—Germany's state-owned railroad system formally introduced its new high-speed train service today, as slick, computer-controlled trains capable of speeds of 250 miles an hour carried 4,000 guests to a coming-out party in Kassel, a crossroads city lying almost precisely at the country's geographic center.

* * * * *

"More than two dozen Inter-City Express trains will begin regular service Sunday morning on a newly built line linking Hamburg, Frankfurt, Stuttgart and Munich and cities in between. The network will be expanded in the years ahead to include Berlin and other destinations, and it will eventually be part of a planned Western European high-speed train system.

* * * * *

"The Germans contend that their high-speed train is more technologically advanced and more comfortable than its French and Japanese counterparts. But it also costs more.

"Industry experts said experience and more flexible pricing made France's TGV and the Japanese "bullet" trains the front-runners in the bidding to build high-speed lines in other Western European countries and in the United States. Canada, South Korea and Taiwan are also accepting bids on high-speed train systems, while Australia, Brazil and the Soviet Union are considering such projects."[8]

The Times report goes on to note that the German state-owned enterprise is losing money, despite large government subsidies. Clearly no such effort is possible for the United States at this time. Or, rather, clearly the United States is not going to commence any such effort at this time. Still it is troubling to be out of the race.

This is especially disconcerting in the case of magnetic levitation, a genuinely new technology invented in the United States by Dr. James Powell and Dr. Gordon Danby, who got the first patent in 1966. The U.S. Department of Transportation did support some development work in the 1970s. But then, like much else, the energy just seems to have seeped out of our system. Two decades later we look up and find "maglev" systems moving ahead smartly in Germany and Japan. This technology will almost inevitably be established in the United States one day and the Committee would hope that American manufacturers will be able to bid for the work. To this end, the Act provides $750 million for a single "maglev" system to be constructed along a route chosen by the Department of Transportation following a national competition.

It is also evident that there is an enormous opportunity to introduce electronics into cars and highways. The hardy if furtive pioneers who first equipped their automobile dashboards with radar detectors will now be followed by millions on millions of ordinary drivers whose cars will be routinely equipped with new devices to collect and receive all manner of highway information. The Intelligent Vehicle-Highway Systems Act contained in Part C of our bill will create a program for applied research and development of these technologies.

Our second theme is that surface transportation has been subject to the inefficiencies associated with the public sector of any economy. There is no reason to be defensive about this. It is the nature of the beast. Public goods tend to be perceived as free goods, and consumed as if they had no cost. There is, of course, a cost. It is merely hidden. The trick, then, is to find a rationing mechanism that is the equivalent of a pricing system.

Just as there is no such thing as a free good, there is no such thing as a freeway.

The evidence is not clear—more accurately, there is no evidence as such—but it is not unreasonable to suspect that considerable portions of the Interstate System were built simply because the Federal money to do so was available in near unlimited quantities. That is to say, as a 90-10 ratio of Federal to State funds, or even 95-5.

This being said, let there be no question as to the large view of the Committee. The Interstate System has been an enormous success. If we had not built it when we did, we would be thinking of doing so now. As, indeed, is now being considered in Europe.[9]

On the other hand, there is not much question that the Interstate System went forward without much attention to its prospective effect on urban areas. From the outset, most of the money was destined to be spent in cities. As a nation, we missed this point completely. The Governor Thomas E. Dewey Thruway, the Interstate System prototype, had mainly avoided cities, the single exception being Buffalo, New York. As noted, the Bureau of Public Roads had previously been almost exclusively concerned with what were known as "farm-to-market" roads, small rural routes by definition.

Thirty-one years ago, in 1960, I wrote a long article for The Reporter magazine entitled "New Roads and Urban Chaos." It was, or attempted to be, a description of the new Interstate program written from the perspective of someone who had followed the development of the Thruway and who, from the vantage point of the Governor's office in Albany, could estimate the probable impact of a nationwide system built to Thruway standards—and Thruway size—but built into cities which the Thruway had prudently avoided.

The Interstate System map made you think of great ribbons of concrete crossing Kansas to the horizon. This was true so far as the prairies were concerned, and these great cross-continental routes have been a brilliant success. But this was only half the story, or rather less than half. To say again, from the beginning, most Interstate System funds were scheduled to be used in cities. The Reporter article was an effort to make this point. I argued that the roads as planned were simply too big for most cities as they then existed. Instead, they would smash through, wrecking and dividing and segregating as they went. Moving jobs out and leaving the jobless behind in what has become a permanent mismatch. I argued that the character of American cities would be changed beyond recognition and redemption:

"[t]he program is doing about what was to be expected: throwing up a Chinese wall across Wilmington, driving educational institutions out of downtown Louisville, plowing through the center of Reno. When the interstate runs into a place like Newburgh, New York, the wreckage is something to see."[10]

The wreckage in Newburgh would be more than physical. Shortly after "New Roads and Urban Chaos" appeared in The Reporter magazine, Meg Greenfield wrote a powerful account of the national controversy that had arisen there over the increase in welfare rolls and the association with unemployed minorities. Entitled "The 'Welfare Chiselers' of Newburgh, N.Y.," Ms. Greenfield described the beginnings of what she accurately perceived would become a national political issue that endures to this day. Things had not always been troubled in this Hudson river community, with its idyllic setting. Ms. Greenfield wrote:

[7] Compare the speed with which the private sector has introduced cellular telephones and "FAX" communications over the last 15 years.

[8] Ferdinand Protzman, "Germany Rolls Out Its Fast Train," (The New York Times, May 30, 1991), p. D1.

[9] See "Advanced Integrated Motorway System in Europe: The motorway project for the Europe of tomorrow," (Geneva: International Road Foundation, 1990).

[10] Daniel Patrick Moynihan, "New Roads and Urban Chaos," The Reporter, April 14, 1960, pp. 19-20.

"The last time Newburgh came to national attention was in 1952. In recognition of progress achieved through intelligent citizen action, Newburgh was honored as the All American City. At the time it was stated that Newburgh had managed to lower its taxes, raise its services, and all but perfect itself in defiance of the laws of American urban life."[11]

Had the Interstate System changed all that? Hard to state. But it is worth recording the Wall Street Journal editorial description of the haphazard manner in which we had set about redesigning the United States: "(A) vast program thrown together, imperfectly conceived and grossly mismanaged, and in due course becoming a veritable playground for extravagance, waste and corruption.[12]

The Reporter essay on the Interstate System had noted that urban planning was even then being described as a failed profession, meaning that the great expectations of the early years of the century had failed to come to pass. But the article also noted that the Interstate program, by any definition at least in part an urban program, made no provision whatever to take urban concerns into account. The prediction was "Urban Chaos." In science a correct prediction, even just once, adds to the likelihood that an explanation has been found. The author makes no great claims, but does assert that in 1960 he foretold "Urban Chaos," associating this with the new Federal highway program, and that urban chaos broke out and has persisted in one or another form ever since.

The eminent economist William J. Baumol describes the situation—thirty years later—in a communication to the Committee:

"I believe the interstate highway system has had at least one crucial consequence. By encouraging the substitution of truck transport of freight for railroads it eliminated one of the major advantages of the city as a manufacturing location. This, and other forces, drove manufacturing jobs elsewhere, and left the cities with excessive populations relative to the employment possibilities they offered. Indirectly, it added to the forces that exacerbated crime, drug consumption and homelessness, and, probably to the burning of the Bronx where I grew up one block from where General Powell was raised, attending the same high school and the same college . . ."[13]

More recently the commentator George Will put the matter in larger terms:

"The traditional functions of central cities are being dispersed. Central cities are no longer the nation's vital manufacturing centers or wholesale and retail marketplaces, or the preferential residence of the middle class. America is becoming the first developed nation in which central cities—cities as traditionally understood—are important primarily as problems."[14]

All this is done and cannot be undone. But neither should it be ignored. Similarly, the question arises as to whether the Interstate System directed more resources to the single-occupant automobile than is optimal for all concerned. In "Commuting in America" Alan Pisarski states that the average vehicle occupancy rate for commute travel in 1980 was 1.15 persons per vehicle, and is not increasing.[15] Hence congestion.

If space on the road appears as a free good, more and more persons use the road until scarcity—a situation of supply being less than demand—appears. A striking analogy was presented to the Committee by Professor Steven A. Morrison of Northeastern University. He likened the situation at rush hour in many American cities to the long lines in front of food stores in Moscow:

"Our highway congestion has the same basic cause—although a more ready solution—as the long lines we see in news reports from the Soviet Union. Both reflect shortages induced by prices set too low. The price system, which we rely on to ration nearly all goods and services in our economy, is usually ignored in seeking solutions to highway congestion."[16]

Pricing need not be inflexible. Toll facilities could, if they chose, introduce differential pricing. Economic historian Stanley Lebergott has suggested that, as an experiment, the toll for crossing the George Washington Bridge that connects New York City with northern New Jersey be reduced to 25 cents between midnight and 6 a.m. this coming Labor Day.[17]

Professor John Kain, who was ever attendant to our least inquiry, testified before the Committee that:

"90 percent of the urban transportation problem—and for that matter, congestion—[is] caused by the gross mispricing of perhaps 5 percent of the nation's highway capacity.

"The problem is that we have a system for pricing our roads . . . that charges vehicles the same amount for every mile driven. However, there are huge differences in the cost of producing highway capacity in various parts of the nation . . ."[18]

The Committee's concern with traffic congestion is necessarily associated with environmental issues, especially those addressed by the Clean Air Act Amendments of 1990, which occupied the Committee for much of the preceding decade. In Los Angeles County, for example, traffic congestion is said to cost upwards of 72 million gallons of gasoline every year. At present, 61 percent of Americans live in areas that violate federal air quality standards. Overwhelmingly, this air pollution is the result of inefficient use of the automobile as a mode of transport.

The only feasible way to introduce marketplace pricing and competition into the transportation system is to encourage states, and within states, cities, to compete with one another in how effectively they use the money made available to them.

We don't have to invent such competition. It already exists. It has existed from the beginning of the Republic. What do members of Congress tell their constituents more than any other single thing? That they "bring home the bacon." The problem is that most of this largesse comes in the form of a nominally free good. Once obtained, there is not accountability as to whether the investment is "profitable" or not.

It is very hard to develop competition in a setting of public monopoly. Our idea is to let states compete among themselves. Let them learn from each other's mistakes; copy each other's successes. Those who make wise decisions will prosper. Those who make poor decisions will pay.

This should be the new spirit of the public sector in America. It may sound odd, but there could be no better place for it to begin than with highways. Highways, after all, is where the public sector of the American economy begins. Before public schools, before public broadcasting, before public financing of election campaigns—came public roads.

The moment calls for flexibility. No one state or city is exactly like another. Our job must be to facilitate and reward the best mix of transportation modes suited to specific jurisdictions.

The Committee has been hugely encouraged by what we have seen and heard in hearings in Washington and across the nation. Everywhere we came upon highway officials, transit officials, transportation boards and commissions with high levels of innovative energy. Transportation is a major concern almost everywhere in the United States. Increasingly this concern attracts talent and invites innovation.

Our legislation requires large metropolitan areas to begin serious, formal transportation planning. Had this been specified in the legislation providing for the Interstate System, we possibly would have a more efficient transportation network today. But that was then, now is now. The Committee has heard testimony from state and local officials who have asked for a larger role for Metropolitan Planning Organizations, which bring local elected officials into the planning process. We have tried to respond to these requests.

Not every jurisdiction or every interest will be fully satisfied by our proposal. This is the nature of legislation to allocate resources across a continent. This was the case with the National Road in 1806; it is still the case nearly two centuries later.

Even so, the Subcommittee has been encouraged by the general reception to the present proposal. Perhaps most by the testimony of the Honorable Alan S. Boyd, whom President Lyndon B. Johnson asked twenty-five years ago to serve as the nation's first Secretary of Transportation. The Committee's bill, he declared in testimony of May 14, 1991, is "breakthrough legislation." We like to think it is and are hugely encouraged that such a distinguished public servant first volunteered the thought.

It remains to address two important concerns of the administration. In a letter of May 22, 1991, addressed to Chairman Burdick, Secretary of Transportation Samuel K. Skinner noted that the Committee bill did not establish a new National Highway System, as proposed by the administration, and did not increase the State/local share of the costs of surface transportation projects and thus get more "leverage" from Federal funds. The Committee was of course aware of the Secretary's concerns, and sympathetic to them. However, the National Highway System called for by the administration bill (S. 610) is not yet drawn. No Senator can know that any portion of it will be located in his or her State. No Representative can know whether any segment passes through his or her District. We may assume, for example, that Texas will be included. But we don't know.

[11] Meg Greenfield, "The 'Welfare Chiselers' of Newburgh, N.Y.," The Reporter, August 17, 1961, p. 37.

[12] "Warning: Icy Roads Ahead," The Wall Street Journal, December 29, 1959, p. 10.

[13] Professor William J. Baumol to Senator Daniel Patrick Moynihan, April 30, 1991.

[14] George F. Will, "New York: A Failed City," The Washington Post, May 20, 1991, p. D7.

[15] Alan E. Pisarski, "Commuting in America: A National Report on Commuting Patterns and Trends" (Westport, Connecticut: Eno Foundation for Transportation, Inc., 1987), p. 50.

[16] U.S. Senate Committee on Environment and Public Works, "Congestion Pricing and Infrastructure Financing: Hearing before the Subcommittee on Water Resources, Transportation, and Infrastructure," 102nd Cong., 1st sess., March 21, 1991, p. 7.

[17] Professor Stanley Lebergott to Senator Daniel Patrick Moynihan, May 1, 1991.

[18] U.S. Senate Committee on Environment and Public Works, "Demographic Trends and Transportation Demand: Hearing before the Subcommittee on Water Resources, Transportation, and Infrastructure," 102nd Cong., 1st sess., February 7, 1991, pp. 8-9.

The Committee bill accordingly directs the Secretary of Transportation to draw a precise map and submit the proposal to the Congress in two years' time. As for increasing State and local matching ratios, the Committee is simply of the view that given the current economic recession this is not an appropriate time. Thus in the lead article of The New York Times on May 30, 1991, Mr. David E. Rosenbaum reports:

"WASHINGTON, May 30.—States and municipalities across the country plan to raise taxes and cut spending by tens of billions of dollars in the fiscal year that begins July 1, and economists fear that the money this takes out of consumers' pockets could inhibit recovery from the recession.

"Edward M. Gramlich, a professor of economics at the University of Michigan who is studying the situation for the Congressional Budget Office, has concluded that belt-tightening by state and local governments could send unemployment up by one-half of one percentage point nationwide. . ."[19]

Indeed, the current recession makes it all the more important to ensure that the new Surface Transportation Efficiency Act is enacted prior to October 1st, when the existing Act expires.

That said, it remains to thank Secretary Skinner for his great patience and insight, along with his most distinguished Administrator of the Federal Highway Administration, Dr. Thomas D. Larson. They have been supportive throughout our deliberations. If we have not always been able to agree on everything, we have even so come this far with a growing sense of gratitude and regard for their efforts.

DANIEL PATRICK MOYNIHAN.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 1235 and S. 1236 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER (Mr. ROCKEFELLER). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE HIGHWAY BILL

Mr. HELMS. Mr. President, reauthorization of the Federal Highway Program is always an important and often contentious matter, but this year's reauthorization is the most important reauthorization in 35 years. I hope it will not be contentious. About that we will have to wait and see.

The Interstate Highway Program—first funded in 1957, as I recall—is on the verge of being completely finished. Therefore, Congress must establish priorities for our Nation's various transportation needs for the next 5 years and beyond in terms of funding.

In other words, the most important part of this debate, the most important question to be resolved, will be how the $92 billion in Federal highway funding will be distributed among the States. For 35 years, North Carolina and many other States have consistently, year after year, sent more money to Washington in transportation fees and taxes than they have received in return for their highway programs.

North Carolina to be specific—and obviously I am primarily interested in that State—has sent $1.7 billion more transportation dollars to Washington since 1957 than my State has received in funding from the Federal Highway Program.

Obviously, Mr. President, North Carolina could have used that money but, like other States that have been shortchanged, we donated this money to assist less populated States in building their portions of the national interstate highway network because those States could not have built those roads without that help.

And this I understand. But, as I said at the outset, the Interstate System is almost complete and the need for some States to donate to other States is no longer as necessary, because maintaining the interstates will cost a great deal less than building them did.

Sad to say, Senator MOYNIHAN's transportation bill—which has been and is being discussed on this floor today—takes the money from the so-called donor States as if the Interstate System were still being built. But I reiterate for the point of emphasis, that the interstates are nearly completed now. So the ballgame has changed and the playing field needs to be made level.

Senator MOYNIHAN's highway bill fails to recognize this fact because it incorporates the same inequitable funding allocation formulas as under current law. The bill, therefore, fails to mitigate in any way how much money donor States, like my State of North Carolina, will be required to contribute to other States.

Now let us look at a few specifics, and there will be more and more of these as the days go by. Under the Moynihan bill, North Carolina will continue to receive just 84 cents for every transportation dollar North Carolina sends to Washington. Senator MOYNIHAN's bill proposes, on the other hand, that New York receive a whopping $1.27 for every dollar Senator MOYNIHAN's State sends to Washington. In fact, almost every State in the Northeast—States with large populations that ought to be able to pull their own weight—gets more money back than it puts into the Federal Highway Program.

For the 5-year period beginning in 1992, Rhode Island would get $1.66 for every dollar paid into the highway fund. Vermont will get $2.10; Connecticut gets $1.46. Massachusetts gets a $1.05. Delaware gets a $1.62. And so on and so on.

Mr. President, most of the extra money awarded to these States is primarily taken from States in the Southeast and the Midwest.

Perhaps I should also emphasize that these figures do not include the large amounts that States receive under the Mass Transit Program. Of course, some of the States I have just listed will receive the lion's share of the Federal Mass Transit Program funds as well. I note that in the Federal Mass Transit Program last year, North Carolina got back a mere 5 percent of the $45 million we sent to Washington for that program. I will have more to say on this, however, when the mass transit bill becomes the pending business in the Senate.

Senator WARNER, whose State of Virginia likewise will suffer under the Moynihan bill, has offered another highway transportation reauthorization bill recognizing that the interstate highways are almost complete. Senator WARNER's bill uses a new allocation formula that is vastly more equitable to those States that have been forced to donate money for the past 35 years.

Under the Warner bill, North Carolina, Virginia, and the other 17 so-called donor States still will not get back 100 cents for every highway dollar they send to Washington, but they do much better than they would under the Moynihan bill.

Mr. President, the donor States realize the sparsely populated States out West will still need some help maintaining the interstates and other national highways, but those of us in the donor States see no reason why our States must be compelled to subsidize large metropolitan States. These States should not receive inordinate subsidies at the expense of North Carolina and other so-called donor States. As I said earlier, the urban States already receive enormous Federal subsidies for their unique transportation needs through the Federal Mass Transit Program.

Fair is fair, Mr. President, but the Moynihan proposal is not fair. And that is why it is being resisted by a number of Senators.

Mr. President, I reiterate that in 1990 North Carolina got back only 54 cents of every dollar it sent to Washington. For 35 years my State has helped others in order to build the Nation's interstates. But even though the interstates are complete, the Moynihan bill will return only 84 cents to North Carolina for every dollar sent to Washington. The Warner bill does not give us back 100 percent, but it does improve North

[19] David E. Rosenbaum, "States and Cities With Deficit Woes May Slow Rebound," The New York Times, May 31, 1991, p. A1.

Carolina's return to 94 cents on the dollar, much better than the 84 cents offered by the Moynihan bill.

Mr. President, fairness and equity demand that States like North Carolina will no longer be required to send more of their transportation dollars to other States than is absolutely necessary. The Warner bill moves in the direction of correcting this inequity. The concerns of the 19 so-called donor States must be addressed before a new highway reauthorization bill becomes law.

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

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

The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON pertaining to the introduction of S. 1242 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE NOMINATION OF ROBERT STRAUSS

Mr. EXON. Mr. President, I rise to congratulate the President and my good friend Robert Strauss. I was delighted to learn that President Bush has nominated Robert Strauss, to be the next United States Ambassador to the Soviet Union.

Robert Strauss is a statesman and a most shrewd businessman. He was appropriately described by a fellow Texan as the "ultimate capitalist." Bob Strauss also understands the strategic and economic interests of the United States and is a visionary who can help guide United States-Soviet relations through a most interesting and exciting time.

I can think of no individual more qualified, or more respected by Democrats and Republcians alike than Ambassador Robert Strauss. In terms of world peace and prosperity, the nomination of Robert Strauss could well be considered the President's single most important nomination.

I am especially cheered by the fact that Bob Strauss has keen understanding of how important agriculture is in the United States. The Soviet Union represents one of America's most promising long-term export markets for American food products.

I look forward to discussing an agenda of cautious but constructive cooperation with Ambassador Strauss. As a leading advocate of barter and countertrade, I also look forward to discussing my ideas on trading American food for Soviet oil and other natural resources to expand American food-export markets.

Bob Strauss's incredible knowledge of economic and commercial matters will help guide our Nation in its rapidly developing commercial relationship with the Soviet Union and his deep commitment to United States national security will assure that the United States does not let our high hopes for closer friendship, trade and exchange with the Soviet Union cloud our judgment on security matters.

Mr. President, as the chairman of the Strategic Forces and Nuclear Deterrence Subcommittee with very serious responsibilities for America's nuclear arsenal, I am most encouraged by the President's nomination of Bob Strauss and I look forward to working with Ambassador Strauss and the Bush administration to form American policy toward the Soviet Union.

AREAS FOR UNITED STATES-SOVIET COOPERATION

Mr. EXON. Mr. President, today, I present the third report on my observations, recommendations, and reflections following a spring visit to the new democracies in Eastern Europe and the Soviet Union. In my first address I discussed my views on Eastern Europe, my second speech focused on political developments in the Soviet Union, and this report will discuss what I consider to be key areas of U.S.-U.S.S.R. cooperation.

As I have discussed in my previous address, the Soviet Union is undergoing rapid and dramatic change. The economic, political, and social underpinnings of Soviet society are crumbling and that nation is scrambling to rebuild and reshape its very foundation. This is no easy task for a multiethnic nation which covers one-sixth of the globe.

The present represents a unique time in history where the events and actions of the next dozen months can shape the future of the world for decades. The United States should take every opportunity to encourage the Soviet Union to continue down the path of peaceful political and economic reform.

It is a time for caution, but also a time for vision. The United States, unlike any other nation has the ability to influence and coax events in the Soviet Union. As I said in my last address, the United States has provided the Soviet Union and the world a shining example that the path to a better life is the path marked democracy and freedom. The Soviet Union should fully understand that closer ties and cooperation with the United States and the free world are made more likely with each Soviet step toward a free and democratic society.

In light of the dramatic changes which have occurred thus far in the Soviet Union there are several areas where cautious but constructive cooperation is appropriate. These areas emphasize the mutual peaceful aspirations of the United States, the Soviet Union, and the world community. As confidence is built through these initiatives, additional cooperation can be explored.

WORLD PEACE

First and foremost, the central focus of American and Soviet cooperation must be to continue to make the globe a more peaceful and safe place. Arms control, arms reduction, and risk reduction must remain at the top of the United States-Soviet agenda. In my earlier address, I outlined my serious concerns about the Soviet view of the Conventional Forces Europe [CFE] Agreement. While in the Soviet Union, I repeatedly made it known, that the United States Senate would have a difficult time placing confidence in a START Treaty. Since my return, I have been encouraged to learn of a measure of flexibility from the Soviets and will be watching carefully as CFE discussions continue. It now appears that the Soviet Union understands, that a high degree of confidence with regard to the CFE agreement is an absolute prerequisite to progress on the START Treaty.

As the chairman of the Strategic Forces and Nuclear Deterrence Subcommittee of the Senate Armed Services Committee, I am especially concerned that in spite of reductions in other areas of military activity, the Soviet Union continues to modernize their strategic forces. As such, the United States has no option but to continue our modernization program. That is a key reason I strongly support the B-2 bomber and research and development for the star wars system. The United States must consider military capability in planning our national defense, rather than present day personalities or intentions.

Over the long term, change in the Soviet Union coupled with significant verified arms reduction can open entirely new vistas for our two nations. Soviet cooperation in the Persian Gulf represented a remarkable turning point for U.S.-U.S.S.R. relations and for global politics. By working together, our nations can make the world a much safer place.

ENVIRONMENTAL CLEANUP

While in the Soviet Union, I met with Deputy Minister Mikhailov of the Soviet Atomic Energy Ministry. I sought this meeting to discuss a proposal Secretary Watkins and I have been discussing over the last few years, namely that America and the Soviet Union should cooperate on the cleanup of the nuclear waste created by the production of nuclear weapons. I told the Minister that our nations both know how to make nuclear weapons and components, but as nations we have not done a good job of cleaning up the waste pro-

duced by these endeavors. I said that if the United States and the Soviet Union can enter into a START Treaty which attempts to reduce nuclear weapons inventories, certainly, we can get together and work together on nuclear waste cleanup.

Minister Mikhailov welcomed the opportunity to cooperate. He said that it is a good idea to get the best minds together on this common problem. He emphasized that it would be very useful to have experts discuss some of the new "exotic" methods of nuclear waste disposal. He also raised another important point that as both nation's disarm weapons, even more waste will be produced, not just former nuclear warheads, but also nonnuclear components which may have been contaminated.

Cooperation on nuclear waste cleanup would serve the interests of the United States, the Soviet Union, and the world. America has a great deal to learn from the Soviets and to teach the Soviets. The tragedy of Chernobyl should be carefully studied to learn more about accident prevention, reaction, and the treatment of radiation disease. It also gives the world a warning about the many dangers of nuclear technology.

Since my return, I have discussed this nuclear waste cleanup initiative with Admiral Watkins, the U.S. Secretary of Energy, and gave him copies of transcripts of our meeting notes. In the coming months, I will be working with the Secretary to find appropriate avenues for United States-Soviet exchanges of scientists to find answers to our mutual nuclear waste cleanup problems.

AGRICULTURE TRADE

Mr. President, with regard to our economic relationship with the Soviet Union, the old saw that bread is the staff of life is a most apt description of United States-Soviet trade relations. Food is a basic human need and the basic ingredient of an important trade relationship. For political, economic, and humanitarian reasons, agriculture trade is a most appropriate first step toward building a closer economic relationship with the Soviet Union. Food shortages could spark chaos which could derail reforms in the Soviet Union.

In the economic arena, nowhere are the needs of the United States and the U.S.S.R. more closely matched than in the agriculture and food sector. American farmers need new markets and the Soviet people need American food.

During our visit to the Soviet Union, Senator HEFLIN and I had fascinating meetings with Vyacheslav Chernoivanov, the new Soviet Minister of Agriculture and Leonid Filmanov, the Soviet Minister of Oil and Gas.

We sought these meetings to explore opportunities to increase agriculture and food-related exports from the United States to the Soviet Union and to discuss a proposal I had made last year regarding an exchange of American food for Soviet oil.

At our meeting with the new Minister of Agriculture, Senator HEFLIN and I were perhaps two of the first United States officials to be informed of the Soviet Union's interest in additional credit guarantees. It was clear that the Soviet Union's food situation is very serious. Hunger in the Soviet Union is a real possibility. Several reports indicate that there will be a poor harvest in the Soviet Union this year and waste in the Soviet system is widespread. The Minister spoke of 20 percent waste and American experts at the American Embassy told us of upward of 40 percent waste in Soviet agriculture production.

Given the political tension I observed in the Soviet Union, food shortages could unleash a series of reactions and emotions within that country which could further undermine any movement toward reform. That would not be in the interests of the United States. As I have long said, a hungry bear is a very dangerous thing.

On May 15 the U.S. Senate overwhelmingly passed a resolution endorsing the extension of additional credit guarantees by the U.S. Government for additional American food sales.

This resolution backed the extension of credit guarantees in a manner which both encourages continued political and economic reform in the Soviet Union and in a manner which would limit risk to United States taxpayers. It stands as a prime example of the type of cautious but constructive cooperation that I recommend.

As a member of the working group which helped craft the language of the resolution, I am pleased to report that the legislation took into consideration the legitimate human rights concerns raised by several Senators.

The resolution urged the Bush administration to secure clear and binding assurances from the Soviet Union that the credits will not be used to support the military, security, or Communist Party apparatus at the expense of the people of the Soviet Union and that the credits will not be used to pressure the Baltic States or the Soviet Republics to support the new U.S.S.R. Union Treaty.

I was especially pleased that the Senate resolution included language I offered to urge the Bush administration to explore barter, countertrade, collateralization, and other nontraditional means of finance to facilitate additional Soviet purchases of United States agricultural and food products. The resolution also included language I suggested regarding the repayment of past and present credit extended under U.S. guarantees by currency or barter acceptable to grain providers and the United States.

Mr. President, as the Senate knows, I have for some years been an advocate of barter and countertrade as a means of expanding U.S. export markets. Some estimates suggested that 25 percent of world trade moves via barter and countertrade arrangements. For a number of years, the United States officially and unofficially discouraged firms from engaging in barter transactions. In 1988, the Congress changed that policy and adopted legislation I offered to the 1988 trade bill which created the Office of Barter in the U.S. Department of Commerce and made it clear that barter and countertrade should be part of our Nation's strategy to win new export markets.

Barter offers the United States the key to opening markets in areas such as the Soviet Union and Eastern Europe where hard currency is simply not available. Such arrangements would be ideal for expanding United States agriculture trade with the Soviets. For some months I have been encouraging the Bush administration to pursue a food for oil initiative with the Soviet Union.

As I mentioned, I discussed this proposal with the Soviet Minister of Agriculture and the Minister of Oil and Gas. Both of whom expressed great interest in my proposal.

The Soviet Union has the globe's largest oil reserves and the United States has the world's most productive food sector. The Soviet Union needs American food and the United States could use Soviet oil. As I have outlined in several previous speeches, it is time to match up these needs in a mutually beneficial manner. The United States could trade energy technology and food for future Soviet oil deliveries. It can be done on a project by project basis, or under a long-term framework agreement between the United States and Soviet Governments. I should point out that the French have already concluded a similar framework agreement. U.S. export promotion programs such as the Export-Import Bank and the Overseas Private Investment Corporation should be adapted to facilitate sound but creative financing.

Bartering food for oil is a very practical approach. If the United States waits for a convertible Soviet currency, valuable trade opportunities, especially in the food sector where the present Soviet need is so great will have been lost. The barter and countertrade language in the Senate-passed resolution attempts to further prod the Bush administration to explore barter arrangements.

The Soviet Union is an important agriculture market for the United States constituting about 10 percent of America's agriculture exports. The extension of credit guarantees will have a significant positive impact on America's grain markets and represents an important investment and development of

a most promising long-term market. When considering food sales to the Soviet Union, it should not escape the attention of the Senate that the French and the Canadians have seen fit to extend agricultural credits to the Soviet Union in recent weeks.

Over the long term, the Soviet market provides a rich opportunity for the American farmer and by using barter and countertrade, the United States can begin to explore the frontier of an expanded trade relationship.

FOOD PROCESSING

In a related area, the Minister of Agriculture made it very clear to Senator HEFLIN and me that his country desperately needs food storage and processing equipment. The Minister asked about credit opportunities to secure American storage and processing equipment. Nebraskans, including Omaha's former Congressman John Cavanaugh have been very involved in efforts to sell processing equipment in the Soviet Union and there are other Nebraska related business concerns looking into the Soviet food distribution network.

I am pleased that President Bush detailed a team to evaluate and advise the Soviets on their food distribution system. Improving the food distribution system is an excellent area for humanitarian assistance and an area where the United States has unparalleled expertise. Such an initiative can also form the groundwork for developing a mutually beneficial trade relationship. Food production, marketing, and distribution are clear American strengths. Rationalizing the Soviet distribution system can also be good for American farm exports. The geography of the Soviet Union is so vast, that there are regions of that nation which can and should be served largely by food exports from the United States. Presently, Soviet trains hauling grain pass each other going in opposite directions. Regional distribution makes sense for the Soviet Union and could create a trade opportunity for the United States. A rational distribution network forms the infrastructure of a market economy. It is my understanding that the Burlington Northern Railroad, a firm with significant operations in Nebraska has been working on such a plan with the Soviet Government to improve Soviet food distribution and transportation. The Soviet Union can learn a great deal from the United States in this regard and the President is to be congratulated for this initiative.

MILITARY CONVERSION

In another critical economic area, one point I heard at several meetings in the Soviet Union was that the military industrial interests are somewhat immovable because arms production employs so many Soviets. Our delegation heard of disappointing and failed efforts to convert Soviet military operations to the production of consumer goods.

If the Soviet Union is to successfully convert its economy, it must make drastic cuts in defense spending, just as reformers, including Boris Yeltsin and Stanislav Shatalin have suggested. Such a reduction will also bring dramatic improvements in the U.S.-U.S.S.R. relationship and add to the level of global security and risk reduction.

While in the Soviet Union, it struck me that the United States should lend technical expertise to the effort to convert Soviet factories from military production to consumer goods production. Upon my return, I saw an excellent article written by former Gov. Richard Celeste which advocates the creation of an International Conversion Management Institute to help both the United States and the Soviet Union identify and implement conversion opportunities. There may be business opportunities in this area as well. Through this cooperation, joint venture partners may be able to identify Soviet military technologies which could be spun off into the consumer and medical sector.

Mr. President, I ask unanimous consent that the article "A United States-Soviet Joint Venture" be printed in the RECORD at the conclusion of my remarks. While I do not embrace every suggestion by Governor Celeste, I believe his article is an excellent place to begin consideration of conversion cooperation. Such cooperation, of course, must be carefully implemented, and progress on the basis of mutual confidence building. In no way would we want to assist the Soviet Union to convert obsolete defense plants and apply American manufacturing innovations to newer more efficient defense operations. Appropriately implemented, such cooperation could help tame the Soviet military bear, meet the growing needs of the Soviet people and build a closer relationship.

In this regard, there exists an even more pressing need for conversion cooperation in Eastern Europe where the needs for employment and hard currency earnings make it very difficult for the governments of the new democracies to end arms production and turn down sales to countries in global hot spots. In the coming weeks I will discuss and explore the possibilities of conversion cooperation with defense and foreign policy experts.

TELECOMMUNICATIONS

To enter the modern age, the Soviet Union, and Eastern Europe for that matter, must modernize their telecommunications infrastructure. Cooperation in this area is also consistent with American expertise and philosophy. The information revolution is a freedom revolution. Even at the height of repression in the People's Republic of China during the Tiananmen massacre, the truth got out via phone calls, faxes, and satellites. Assisting the Soviet Union update its consumer and business communications network serves American interests in promoting free speech, free minds, and free markets.

The beauty of a telecommunications development project is that it is partially self-financing. The Soviet Union has perhaps the worst telephone system in the modern world. It was recently reported that there are only 17 public international phone lines out of Moscow. I can personally report on how difficult it is to call the United States from the Soviet Union. The interesting thing about long-distance phone traffic is that the receiving country earns a tariff on each incoming call. Those revenues are in hard currency. Each improvement in a country's phone system brings an increase in revenues in addition to opportunities for economic development.

Telecommunications is a key area where the United States holds a competitive advantage over the rest of the world, and an area of development which can support future exports. If the Soviet Union and the new democracies in Eastern Europe would devote increased phone tariffs to telecommunications infrastructure development, a good deal of the needed improvements could be self-financed.

The United States should target telecommunications opportunities for export promotion in Eastern Europe and the Soviet Union. As they say in the investment business, this is a chance to get in on the ground floor. Make no mistake, our European competitors are also scouting these important high-technology markets. If the United States does not move aggressively in this sector believe me, our competitors will step into the void. The continuing chill in Soviet-Japanese relations and the anxiety of East Europe and the Soviet Union regarding Germany, create a competitive breech into which the United States should move.

Telecommunications development will not only facilitate commerce, it will foster freedom.

SPACE AND SCIENCE

Another area where the United States already has had some experience is in the area of space and science cooperation. There are a number of exciting exchanges which have already occurred between the United States and the Soviet Union and we all remember the successful joint space mission in the 1970's. Exchanges in space and science should continue and be expanded.

From space, the Earth is not marked by political boundaries, it is but a fragile blue sphere floating in space. Cooperation in space exploration provides a poetic reminder of what is at stake in the U.S.-U.S.S.R. relationship. It appears that both the United States and

the Soviet Union have similar ambitions for future space exploration. Both nations face critical fiscal restraints. It simply makes sense to consider joint space missions and to share data from civilian space missions.

PEOPLE TO PEOPLE CONTACTS

The recent liberalization of Soviet travel restrictions may usher in a new opportunities for international travel and people to people exchanges. In many ways, international understanding has built one friendship at a time. While on the last leg of our trip, I had one of the most pleasant surprises of our journey. I was proud and pleased to meet Silvija Purkalitis, the assistant professor of business at Doane College which is located in Crete, NE, when our delegation visited Riga, Latvia, one of the Baltic Republics. Ms. Purkalitis was teaching English to Latvian students. It was thrilling to meet a fellow Nebraskan halfway around the world. The friendships between American and Soviet citizens are one of the best ways to build understanding.

I am also proud of a group of pioneering students from Omaha's Westside High School who are now participating in an exchange program with Soviet students and living with Soviet families. I am certain that these students will return with new friendships, valuable insights and a renewed appreciation of the blessings of America.

In this regard, I also must mention Omaha's SCOLA satellite network which broadcasts global news programs including programming from the Soviet Union to colleges, universities, and secondary schools across the United States to help students and scholars learn foreign languages, economics, and political science.

I salute Ms. Purkalitis, the students of Westside High, and the dozens of Nebraska educators, farmers, and business people who have taken the extra effort to share their knowledge and wisdom with our new friends in the Soviet Union. The United States should encourage more travel, more study, and more student and professional exchanges.

CONCLUSION

In conclusion Mr. President, I have outlined several areas of constructive cooperation with the Soviet Union which make sense under current conditions. If the Soviet Union continues its movement toward a free and democratic society the areas of cooperation are boundless. In implementing my recommendations for constructive cooperation, the United States must work to expand contacts with individual Soviet Republics because that is where increasing Soviet power is moving. At the same time increased contacts with the Republics can serve to make it clear that the United States expects the Soviet Union to respect human rights and negotiate peacefully the future confederation of the Soviet Union.

The liberation of Eastern Europe and the end of the cold war mark the dawn of a new era. Circumstances have given the United States unique leverage in this new era. Our Nation should use that leverage to encourage reform and global security. Certainly, our power must be used carefully and responsibly. However, failure to use that leverage would be squandering a unique and valuable moment in history.

Following World War II, the United States truly created a new world order, not by punishing the vanquished but by welcoming all who embraced freedom including our former foes into the world community. At the dawn of this new era, America can not afford to be timid or short sighted. Eastern Europe and the Soviet Union are embracing freedom. While the scope of our actions are restrained by America's decade of debt, there are prudent investments which the United States can now make in the United States-Soviet relationship and the economic development of Eastern Europe which promise to pay huge dividends for years to come.

My visit to the Soviet Union and Eastern Europe was an enlightening and inspiring journey. It presented a contrast between the joys of new found freedoms in Eastern Europe and the growing anxieties of a former superpower with an economy on the edge of collapse. Our delegation had an opportunity to only touch the surface of the scope of change in Eastern Europe and the Soviet Union. American must now plan a strategy to lock in the victories of liberty over the last 2 years.

These are exciting times. There is a new opportunity for the United States to close the door on decades of adversity and to work together to create the environment for peace and prosperity around the globe.

Mr. President, I ask that the article entitled "A U.S.-Soviet Joint Venture" by Richard Celeste and a partial list of delegation meetings be printed in the RECORD.

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

[From the Foreign Service Journal, May 1991]

A U.S.-SOVIET JOINT VENTURE

(By Richard F. Celeste)

The scope of change in the Soviet Union today is mind-boggling. And although the change may be too slow for ordinary Russian citizens lining up for daily necessities or for radical reformers articulating "500-day" visions, its pace is astonishing as well.

In February 1990, I led a delegation of 14 Ohio business people to Moscow and Riga, Latvia to explore trade opportunities. We were the guests of the mayor of Moscow and the prime minister of Latvia, both senior Communist Party officeholders. Arriving the same evening that the Soviet Parliament responded favorably to President Gorbachev's request to eliminate the primacy of the Communist Party in the Soviet Union, we saw the beginning of change. Nevertheless, I returned skeptical of the opportunities for joint enterprise between U.S. business and Soviet counterparts.

In November 1990—only 10 months later—I returned to Moscow as part of a joint business-academic delegation, sponsored by the Council on Economic Priorities, to meet with Soviet counterparts. Our dialogue focused on the transfer of public investment from military to civilian production in both our nations. In contrast to my earlier visit, this time I was cautiously optimistic.

TOOLING UP FOR CONSUMER GOODS

Today, the Soviet Union is struggling to bring about a virtual industrial revolution, as governments work to shift the focus of the economy from military to civilian production. Some Soviet experts say that military expenditures have constituted 20 to 25 percent of GNP in real terms. Much of those productive resources must be shifted to satisfy huge pent-up consumer demand.

In the United States as well, we are seeing efforts at the state level to come to grips with the impact of shifting patterns of defense spending, as we begin to adjust to a post-Cold War defense budget. In January 1990, Ohio sponsored the first such effort: a study and needs assessment culminating in a conference of 250 small defense contractors. The conference focused specifically on the needs of small businesses that are eager to lower their level of dependency on the military-contract treadmill. Now, several other states have followed their lead.

The Soviet Union is grappling with efforts to bring about four revolutions at once. One is the switch from military to civilian production throughout the economy. The second is a change from a command-administrative economy to one that will be decentralized and market-oriented. The third revolution is a change from a single, all-powerful central government and political party to increasingly assertive republican and local governments led by multi-party coalitions (almost as if the United States were to move from our Constitution back to the Articles of Confederation). And finally, the Soviet Union is changing from a closed society hunkered down behind the Iron Curtain, jamming incoming broadcasts to a vastly more open society in which vigorous debate now occurs on the streets and in the newspapers all across the country.

In one manifestation of this new openness, the Soviets now welcome foreign business delegations at previously high-security military production facilities to talk about the potential for civilian joint ventures using state-of-the-art military and space technology. And on a crisp November morning 10 of us, including senior officials from Digital Equipment and TRW, climbed the already chipped concrete and marble stairs of one of the new buildings in the Almaz defense production conglomerate.

In a small fourth-floor office, we were hosted by academician Boris Bounkin, astrophysicist and senior manager of this far-flung "scientific industrial corporation," which until 1988 was devoting 70 percent of its production to military contracts such as printed circuit boards for SA-10 missiles. For nearly an hour Bounkin and his top associates described the impact of military-civilian conversion—and that of the other profound changes taking place in this society—upon their enterprise.

In 1988, the Almaz marching orders, handed down from the central planning agency, Gosplan, called for increasing defense con-

tracts from 700 million rubles to 750 million; the very building in which we were sitting was then under construction to increase the manufacturing capacity of the 55,000-person enterprise. Suddenly, Gorbachev announced substantial unilateral Soviet military cuts at the United Nations. No one quarreled with the decision (other than whether the cuts were deep enough). At Almaz, however, they complained of lack of notice.

Military contracts for the enterprise fell immediately to 650 million rubles, then to 580 million rubles in 1990. This year the expectation is for just 500 million rubles of military contracts, repesenting a cut of one-third from the plan under which Almaz was operating three years ago.

As a consequence, the new plant is still unfinished. Now totally dedicated to civilian production, only 10 percent of its space is utilized, due to lack of product or orders. Almaz executives look forward to producing 200,000 TV sets for Great Britain in 1992, but have only just begun to reconfigure factory space for that production. And they are producing sample circuit boards for UNISYS in place of the old product, which was destined for the SA-10 missiles and is now stacked up under plactic covers gathering dust.

GROPING IN THE DARK

To cope with the necessity to switch to civilian production without adequate central government financing or clear-cut direction, the Almaz team contemplates bank-borrowing to finance new production equipment, early retirement to reduce the workforce while retaining highly skilled employees (including some 7,000 scientists and engineers), and management training in Moscow for senior management personnel who need new skills to survive in the new economic environment.

Finally, over tea and coffee, the Almaz senior management sought almost desperately to invite American interest in the possibility of joint production. "We believe we could produce 16-layer circuit boards for $20 apiece." "Here is a new-ink jet printer we designed in just six months." "We can make a deal directly without approval from the center or the Russian Republic (read "state capital") on any non-military product."

MEETING OPENNESS WITH OPENNESS

There was a certain messiness and even chaos in the Almaz attempts to move into civilian production. But they left me with general optimism about the capacity for change—not because the obstacles had diminshed in the shot period between my two visits, but rather because I became convinced that the sweeping changes in the Soviet Union are irreversible. They are unpredictable, yes. But still, the changes are moving irreversibly toward the market, toward civilan goods, toward decentralized political decision-making, and toward participation in the global marketplace.

For joint enterprise between the United States and the Soviet Union to flourish, however, certain steps are essential. On our side, we must offer Most Favored Nation status to the Soviets and provide trade credits or investment guarantees. We must reciprocate the openness on their side with authorization for our own military contractors to welcome Soviet counterparts to their plants and focus on state-of-the-art collaborations. That means further easing COCOM restrictions on the export of high technology as well.

On the Soviet side, they must provide investment guarantees (especially for any large-scale projects) and ensure the opportunity to bring our profits in hard currency. They must invest immediately in telecommunications infrastructure so that phone and fax contacts in that country are prompt and dependable. Perhaps both sides could set aside (for us, through the Export-Import Bank) to finance joint ventures that expedite conversion of military plants to the civilian sector.

We also should create an International Institute of Conversion Management, under the cooperative auspices of the Soviet Academy of Sciences and the National Academy of Science, and based at two or three outstanding business schools in each country. The institute ought to offer both theoretical and hands-on training in new market development (especially exports), product modification and redesign; technology transfer; cross-cultural understanding; and worker retraining. These are skills certain to be increasingly in demand in both of our nations.

Finally, the profound changes under way in the Soviet Union invite a bold response from our own leadership, as we wrestle with decisions about cuts in our own defense budget. As a means of strengthening the prospects for peace and cooperation between the United States and the Soviet Union, I believe we should launch a major joint conversion project at the government-to-government level. We could both pledge to devote 1 percent of our respective defense budgets for the next five years to address some shared urgent need. I have in mind, for example, the clean-up of nuclear weapons production sites and the disposal of nuclear waste. Citizens in both nations would be the beneficiaries for generations to come.

Two years ago it was hard to imagine the fall of the Berlin Wall or German reunification. A year ago it was hard to imagine talking to Soviet military contractors about bank loans, early retirement, and contracts for TV sets and circuit boards. Now is the time for bold imagination in our own private investment decisions and in our own public policy initiatives.

(Richard F. Celeste is former Governor of Ohio. He operates Celeste & Safety Ltd., an international business advisory firm specializing in providing business linkages to world markets.)

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,273d day that Terry Anderson has been held captive in Lebanon.

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.)

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 10:33 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 971. An act to designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, Ohio, as the "Luke Easter Post Office."

The enrolled bill was subsequently signed by the Acting President pro tempore [Mr. ROBB].

At 4:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 91. Joint resolution designating June 10 through 16, 1991, as "Pediatric AIDS Awareness Week": and

H.J. Res. 219. Joint resolution to designate the week beginning June 9, 1991, as "National Scleroderman Awareness Week."

The message also announced that pursuant to the provisions of section 204 of Public Law 98-459, the Speaker appoints from the private sector Dr. Eugene S. Callender of New York, NY, to the Federal Council on the Aging on the part of the House to fill the existing vacancy.

MEASURES REFERRED

The following bill, ordered held at the desk by unanimous consent, was read the first and second times by unanimous consent, and referred as indicated:

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; to the Committee on Finance.

The following joint resolution, received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and referred as indicated:

H.J. Res. 91. Joint resolution designating June 10 through 16, 1991, as "Pediatric AIDS Awareness Week"; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The Committee on the Judiciary was discharged from the consideration of the following bill, which was placed on the calendar:

S. 635. A bill to restore an enforceable Federal death penalty, to curb the abuse of habeas corpus, to reform the exclusionary rule, to combat criminal violence involving firearms, to protect witnesses and other participants in the criminal justice system from violence and intimidation, to address the problem of gangs and serious juvenile offenders, to combat terrorism, to combat sexual violence and child abuse, to provide for drug

testing of offenders in the criminal justice process, to secure the right of victims and defendents to equal justice without regard to race or color, to enhance the rights of crime victims, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1004. A bill to authorize a certificate of documentation for the vessel *Billfish* (Rept. No. 102-74).

S. 1005. A bill to authorize a certificate of documentation for the vessel *Marsh Grass III* (Rept. No. 102-75).

S. 1006. A bill to authorize a certificate of documentation for the vessel *Miss Lelia* (Rept. No. 102-76).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

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

Louise M. McClure, of Idaho, to be a member of the National Council on the Arts for a term expiring September 3, 1996; and

Daphne Wood Murray, of California, to be a member of the National Museum Services Board for a term expiring December 6, 1995.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATFIELD (for himself and Mr. BRADLEY):

S. 1228. A bill to provide for a comprehensive review by the Secretary of the Interior of western water resource problems and programs administered by the Geological Survey, the Bureau of Reclamation, and other operations of the Department of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. McCAIN (for himself and Mr. DURENBERGER):

S. 1229. A bill to exempt certain small employer purchasing groups from certain requirements of State laws relating to health benefit plans and to amend the Internal Revenue Code of 1986 to equalize tax benefits for self-employed persons participating in such groups; to the Committee on Finance.

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

S. 1230. A bill to authorize additional appropriations for land acquisition at Monocacy National Battlefield, MD; to the Committee on Energy and Natural Resources.

By Mr. BENTSEN (for himself and Mr. ROCKEFELLER):

S. 1231. A bill to amend title XVIII of the Social Security Act to provide for coverage of colerectal screening examinations and certain immunizations under part B of the medicare program, and for other purposes; to the Committee on Finance.

By Mr. DOMENICI (for himself, Mr. DANFORTH, Mr. RUDMAN, Mr. CHAFEE, and Mr. GRAMM):

S. 1232. A bill to provide for medical injury compensation reform for health care provided the Social Security Act and other Federal health programs, to amend the Internal Revenue Code of 1986 to implement like reforms in employer-provided health plans, and for other purposes; to the Committee on Finance.

By Mr. BURNS (for himself, Mr. SYMMS, Mr. PACKWOOD, Mr. PRESSLER, Mr. KASTEN, Mr. DANFORTH, Mr. MCCAIN, Mr. GORTON, Mr. LOTT, and Mr. ROCKEFELLER):

S. 1233. A bill to promote the growth of travel and tourism in the United States through the establishment of a rural tourism development foundation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DIXON (for himself, Mr. BYRD, Mr. ROCKEFELLER, Mr. SIMON, Mr. SPECTER, Mr. FORD, Mr. BOND, and Mr. COATS):

S. 1234. A bill to amend the Internal Revenue Code of 1986 to provide tax relief to utilities installing acid rain reduction equipment; to the Committee on Finance.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 1235. A bill to amend the Internal Revenue Code of 1986 to provide that storage tanks constructed in connection with the Regional Petroleum Reserve are eligible for the investment tax credit; to the Committee on Finance.

S. 1236. A bill to amend the Internal Revenue Code of 1986 to provide for tax-exempt bond financing for storage tanks used in connection with a Regional Petroleum Reserve; to the Committee on Finance.

By Mr. DURENBERGER:

S. 1237. A bill to suspend until January 1, 1995, the duty on certain ceramic ferrules and sleeves; to the Committee on Finance.

By Mr. GRAHAM:

S. 1238. A bill to require the Secretary of Health and Human Services to report to the Congress on the validity of utilizing certain criteria in the alcohol, drug abuse and mental health block allotment formula, and for other purposes; to the Committee on Labor and Human Resources.

By Mrs. KASSEBAUM:

S. 1239. A bill to preserve jobs in the aircraft industry by amending the Internal Revenue Code of 1986 to repeal the luxury excise tax on aircraft; to the Committee on Finance.

By Mr. CHAFEE (for himself, Mr. RIEGLE, Mr. DANFORTH, Mr. PRYOR, Mr. MOYNIHAN, Mr. BREAUX, and Mr. BOREN):

S. 1240. A bill to amend title XIX of the Social Security Act to provide criteria for making determinations of denial of payment to States under such Act; to the Committee on Finance.

By Mr. BIDEN:

S. 1241. A bill to control and reduce violent crime.

By Mr. EXON:

S. 1242. A bill to amend the Congressional Budget Act of 1974 to provide that any concurrent resolution on the budget that contains reconciliation directives shall include a directive with respect to the statutory limit on the public debt, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee has thirty days to report or be discharged.

By Mr. HARKIN (for himself, Mr. ADAMS, Mr. FORD, Mr. WELLSTONE, Mr. CRANSTON, Mr. KERRY, and Ms. MIKULSKI):

S. 1243. A bill to restrict assistance for Guatemala, and for other purposes; to the Committee on Foreign Relations.

By Mr. BRADLEY:

S. 1244. A bill to amend the Internal Revenue Code of 1986 to expand the working condition fringe benefit with respect to employee parking; to the Committee on Finance.

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

S. 1245. A bill to amend the Internal Revenue Code of 1986 to clarify that customer base, market share, and other similar intangible items are amortizable; to the Committee on Finance.

By Mr. PELL (for himself, Mrs. KASSEBAUM, Mr. KENNEDY, and Mr. HATCH) (by request):

S. 1246. A bill to amend the Higher Education Act of 1965 to target Federal grant assistance on the lowest-income students, to reward excellence and success in education, to enhance choice and flexibility, to promote greater accountability, to reduce waste and abuse in the use of public funds, to extend the Act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DODD (for himself, and Mr. GRAMM) (by request):

S. 1247. A bill to amend the Securities Exchange Act of 1934 to extend the regulatory authority of the Secretary of the Treasury under the Government Securities Act of 1986, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LAUTENBERG:

S. 1248. A bill to prevent theft of motor vehicles by establishing a national framework for a program under which law enforcement officials are authorized to stop vehicles operated under specified conditions, such as during certain night hours, when operation of the vehicle under those conditions, according to a certification signed voluntarily by the owner, establishes a reasonable suspicion that the vehicle is being operated unlawfully; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. BIDEN, Mr. LEVIN, Mr. SIMON, Mr. PACKWOOD, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. JEFFORDS, Mr. ADAMS, Mr. AKAKA, Mr. CRANSTON, Mr. GLENN, Mr. HARKIN, Mr. KERRY, Mr. PELL, and Ms. MIKULSKI):

S. 1249. A bill to amend title 28 of the United States Code to prohibit racially discriminatory capital sentencing; to the Committee on the Judiciary.

By Mr. SIMON (for himself and Mr. BIDEN):

S. 1250. A bill to require court clerks to report the posting of bail in an amount exceeding $10,000 in certain criminal cases, and for other purposes; to the Committee on the Judiciary.

By Mr. BREAUX:

S. 1251. A bill entitled the "Disaster Assistance Act of 1991"; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MURKOWSKI (for himself, Mr. BURNS and Mr. CRAIG):

S. 1252. A bill to amend the National Park Foundation Act (16 U.S.C. 19e through 19n, P.L. 90-209 (December 18, 1967)); to the Committee on Energy and Natural Resources.

By Mr. SIMON (for himself, Mr. ADAMS, Mr. AKAKA, Mr. CONRAD, Mr. DODD, Mr. GRAHAM, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Mr. PELL, Mr. SARBANES, Mr. DECONCINI, Mr. SANFORD, Mr. DIXON, Mr. INOUYE, Mr. CRANSTON, Mr. BRADLEY, Mr. RIEGLE, Mr. LAUTENBERG, Mr. MOYNIHAN, Mr. SHELBY, Mr. BIDEN, Mr. SASSER, Mr. FOWLER, Mr. GLENN, Mr. NUNN, Mr. KERRY, Mr. LEVIN, Mr. BREAUX, Mr. BINGAMAN, Mr. HOLLINGS, Mr. BENTSEN, Mr. BURDICK, Mr. CHAFEE, Mr. COCHRAN, Mr. COHEN, Mr. HATCH, Mr. DOLE, Mr. DURENBERGER, Mr. JEFFORDS, Mr. MACK, Mr. SPECTER, Mr. DOMENICI, Mr. MURKOWSKI, Mr. THURMOND, Mr. GRASSLEY, Mr. CRAIG, Mr. STEVENS, Mr. D'AMATO, Mr. BURNS, Mr. WARNER, Mr. GORTON, Mr. SEYMOUR, and Mr. BOND):

S.J. Res. 156. Joint resolution to designate the week of October 6, 1991 through October 12, 1991, as "Mental Illness Awareness Week"; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mr. AKAKA, Mr. KERRY, Mr. BRADLEY, Mr. CRANSTON, Mr. BUMPERS, Mr. DASCHLE, Mr. JEFFORDS, Mr. BENTSEN, Mr. BYRD, and Mr. MITCHELL):

S.J. Res. 157. Joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. SASSER:

S. Res. 138. A resolution expressing thanks and appreciation to the Exchange Club of Murfreesboro, Tennessee; to the Committee on the Judiciary.

By Mr. DOLE:

S. Res. 139. A resolution to make a minority party appointment to the Special Committee on Aging; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATFIELD (for himself and Mr. BRADLEY):

S. 1228. A bill to provide for a comprehensive review by the Secretary of the Interior of western water resource problems and programs administered by the Geological Survey, the Bureau of Reclamation, and other operations of the Department of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

WESTERN WATER POLICY REVIEW ACT

Mr. HATFIELD. Mr. President, in tandem with my good friend and colleague on the Energy and Natural Resources Committee, Senator BRADLEY of New Jersey, I am about to introduce, or reintroduce, the Western Water Policy Review Act, a bill that I first introduced in 1989 as Senate bill 1996.

Mr. President, basically this legislation established an advisory commission to the Secretary of the Interior that will study the institutional framework surrounding Federal water policy affecting the 19 Western States. In addition to studying the current policy, the commission will be charged with recommending changes to establish a more coherent decisionmaking process.

Conserving and coordinating the views over finite water resources in an age of growing demand is critical and I feel is fast reaching crisis proportions. The frightening possibility of this water crisis is both a national and international issue and it looms larger every day.

In America's Western States, particularly California, a fifth-year drought threatens to virtually shut down large sectors of the State's agricultural industry. Additionally, this drought has had severe effects on California's fish and wildlife populations and water-consumptive urban industries.

Internationally, the recent war in Iraq confirms my theory that war over access to raw materials is a reality. And while countries can diversify their energy resources such as oil and others, and even get to the point where hopefully someday they can function without dependency on oil, or fossil fuel, they cannot survive, no living organism can survive, without water. And unlike other resource shortages, a water crisis cannot be solved through the development of alternatives. We have only one option available, the conservation and wise distribution of existing water resources.

Drought conditions in the Western United States, particularly California, again serve to underscore the desperate need for a coordinated and comprehensive water policy. In mid-February of this year, just a couple of months ago, in 1991, the Federal Central Valley Water Project in California had to reduce its water allocations by 75 percent following a 50 percent cutback in 1990.

Many fear this year's drought could cost farmers throughout the State of California approximately $642 million in direct crop revenues; thereby increasing consumer food costs by as much as $207 million.

In addition, California fish and wildlife could be experiencing irreparable harm as a result of extremely low streamflow levels.

California is not the only Western State to be experiencing drought conditions. My own State of Oregon is currently tied with Nevada as the second lowest in water availability of the Western States. Six Oregon counties have formally requested emergency drought status from the Governor's office of my State. Streamflow conditions in much of southern and eastern Oregon range from 30 to 50 percent of normal. And irrigation reservoirs throughout the State average 57 percent of normal storage capacity.

Contrary to the popular image that Oregon is a place of water surplus, or that it rains all the time in my State, we are now experiencing the status of a deficient water State.

I would remind my colleagues that a great portion of my State, the greatest portion of my State, gets less than 20 inches of rainfall per year. A third of the State gets less than 10 inches of rainfall per year, and yet another segment of the State can get up to 100 inches of rainfall per year. These varying levels of rainfall serve to illustrate how very, very disparate Oregon's average rainfall actually is.

Despite these problems, water usage in the Western United States and, indeed, of all America is increasing exponentially. Per capita consumption of water has grown to about 1,400 gallons per day, including a personal consumption average of approximately 100 gallons of water per day.

Unfortunately, our Nation's overburdened water supply is not infinite. The current supply problems in California and Oregon point to an impending water crisis.

Additionally, water problems throughout the rest of the country are increasing. The Ogallala aquifer, the largest aquifer in this country, distributes water to the 13 Midwestern States. This area of our Nation is the breadbasket of the world, and is also experiencing water supply problems of crisis proportions. In fact, the Presiding Officer is from that part of the country.

How can we cope with a dwindling water supply? Traditionally, water supply policy has been made to State interest and has been handled at the State level. The Federal Government, however, has been involved in three specific aspects of local water systems: No. 1, funding water impoundment and storage systems; No. 2, setting safe drinking water standards; and No. 3, providing funding to assist local governments in construction of wastewater treatment facilities.

In addition, the Federal Government has played a major role in assuring the safe navigation of our waterways.

Despite this involvement in local water supply and the development policy surrounding it, Federal water-related policy is extremely fragmented. This fragmentation prohibits us from achieving smooth and coordinated responses to meeting the Nation's water supply objectives.

Mr. President, and my colleagues, please take notice of the chart beside me. I am sorry that those who are viewing the proceedings of the Senate will probably not be able to see the fine print. And I want to assure the recorder of the CONGRESSIONAL RECORD that I am not going to ask that this be reproduced in the RECORD.

This chart illustrates the labyrinth of congressional and executive cross-jurisdictions relating to existing water

law and policy. Put simply, this chart shows that currently at least 13 congressional committees deal with water resource issues. In the executive branch of Government, there are eight Cabinet-level Departments, six independent agencies, and two White House offices all charged with responsibilities relating to national water policy. Needless to say, as you can see by this chart, it has led to some confusion.

In addition to the laws, we have treaties that govern our water supply policies in many ways, treaties with the American Indian nations for example. And these treaties have not only been established in long periods of time but they have been, in effect, validated by recent court actions, validated in the sense that they are operative today where they have not often been operative in the past. One such treaty, or a series of such treaties, engaged many years ago in the 1850's with the Indian nations of the Northwest, has recently been validated by Federal court action as providing the Indians with 50 percent of the salmon run in the Columbia River.

Now, obviously from the 1850's to the 1980's and 1990, the traditions of the Pacific Northwest have drastically changed. Yet, when we consider the water supply of the Columbia River and its multiplicity of uses, we are now governed by treaties as well as State laws, Federal policy, and Federal laws.

These large, colored circles on this chart attempt to identify some of those very specific policies that have impacted drought response in more recent days. How do we respond to the drought problems of the Western States that have been put on track as far as asking or requesting Federal help, Federal action?

One important thing we have to address is the ground water. Ground water problems are increasing. For example, we have found traces of iodine—129 on the Oregon side of the Columbia River that obviously started at Hanford with the handling, the mishandling, or lack of handling of the nuclear waste of the Hanford reactor, the oldest reactor in the United States.

We have, as I said, current tribal reserve rights and settlements that are continuing with the Indian nations.

And then, of course, we have the non-Federal water supply, and its effects on urban developments. Just look at the Pacific Southwest and the enormous growth patterns of population, housing developments, and water demands that go with all of that. These urban water concerns, also apply to the Pacific Northwest, namely the Portland and Seattle areas.

I have listed here, just as an example, those Departments at the executive level: the Department of Transportation, the Department of State, the Department of Justice, the Department of the Interior, the Department of Energy, the Department of Defense, the Department of Commerce, and the Department of Agriculture. And then there are lines that go down to the various subdivisions of their Departments, and then the sub-sub divisions of these Departments. All of these things are part of the various and sundry agencies of the Federal Government. Additionally, here on this side are the independent agencies: Federal Emergency Management Agency, FEMA; Nuclear Regulatory Commission; Tennessee Valley Authority; International Joint Commission; International Boundary Waters Commission; and the Environmental Protection Agency.

Finally, you get down here into the Senate and the House committees at the bottom of the chart, and all the lines feed in and feed out, duplicating, overlapping, with no coordination.

Then we ask ourselves, why do we not have a comprehensive water policy as it relates at least to the West, the 19 Western States? For this very reason, Mr. Chairman, Mr. BRADLEY and I are introducing this Western Water Policy Review Act.

Realizing that the West is not the only area of the country experiencing water supply and allocation problems, our bill can be expanded to include national water policies as well, as we develop the interests of other States with Members from other States. In other words, we are not locked into restricting this purely for the Western States. But Senator BRADLEY, I and others, feel that we must begin to address what I consider to be one of the great crises this country is facing. This bill is our humble attempt at beginning a process which I hope will bear great results.

Mr. President, I ask that the text of my legislation and the attached articles be included in the RECORD.

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

S. 1228

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Western Water Policy Review Act of 1991".

CONGRESSIONAL FINDINGS

SECTION 1. The Congress finds that—

(1) the Nation needs an adequate water supply for all States at a reasonable cost;

(2) the demands on the Nation's finite water supply are increasing;

(3) coordination on both the Federal level and the local level is needed to achieve water policy objectives;

(4) not less than fourteen agencies of the Federal Government are currently charged with functions relating to the oversight of water policy;

(5) the diverse authority over Federal water policy has resulted in unclear goals and an inefficient handling of the Nation's water policy;

(6) the conflict between competing goals and objectives by Federal, State, and local agencies as well as by private water users is particularly acute in the nineteen Western States which have arid climates which include the seventeen reclamation States, Hawaii, and Alaska;

(7) the appropriation doctrine of water allocation which characterizes most western water management regimes varies from State to State, and results in many instances in increased competition for limited resources;

(8) the Federal Government has recognized and continues to recognize the jurisdiction of the several States over the allocation, priority, and use of water resources of the States and that the Federal Government will, in exercising its authorities, comply with State laws;

(9) Federal agencies, such as the Bureau of Reclamation, have had, and will continue to have major responsibilities in assisting States in the wise management and allocation of scarce water resources; and

(10) the Secretary of the Interior, given his responsibilities for management of public lands, trust responsibilities for Indians, administration of the reclamation program, investigations and reviews into ground water resources through the Geologic Survey, should initiate a comprehensive review, in consultation with appropriate officials from the nineteen Western States, into the problems and potential solutions facing the nineteen Western States and the Federal Government in the increasing competition for the scarce water resources of the Western States.

SECRETARIAL REVIEW

SEC. 2. (a) The Secretary of the Interior is directed to undertake a comprehensive review of Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources, whether surface or subsurface and to submit a report on his finding, together with his recommendations, to the President, the President of the Senate, and the Speaker of the House of Representatives.

(b) Such report shall be submitted within five years from the date of enactment of this Act.

(c) In conducting his review and preparing his report, the Secretary is directed to consult with the Advisory Commission established under section 3 of this Act, and may request the Commission to undertake such studies or other analyses as he determines would assist in his review.

(d) The Secretary shall consult periodically with the Commission, and upon the request of the Secretary, the heads of other Federal agencies are directed to cooperate with and assist the Commission in its activities.

THE ADVISORY COMMISSION

SEC. 3. (a) There is established the Western Water River Commission (hereafter in this Act referred to as the "Commission").

(b) The Commission shall be composed of fourteen members, as follows:

(1) The ranking majority and minority member from the Senate Committees on Energy and Natural Resources and Appropriations.

(2) The ranking majority and minority member from the House Committees on Appropriations and Interior and Insular Affairs.

(3) Six persons who are not now, and for a period of one year immediately preceding their appointments, have not been, officers or employees of the United States; but, the foregoing or any other provision of law notwithstanding, there may be appointed under this paragraph, any person who is retained,

designated, appointed, or employed by any instrumentality of the executive branch of the Government or by any independent agency of the United States to perform, with or without compensation, temporary duties on either a full-time or intermittent basis for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days; said persons shall be appointed by the President of the United States.

(4) Of the aforementioned Commission members, one shall be elected, by majority vote, to serve as Chairman of the Commission (hereafter in this Act referred to as the "Chairman").

(c) Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made.

(d) The organization meeting of the Commission shall be held at such time and place as may be specified in a call issued jointly by the ranking majority and minority members of the Commission of both the Senate and the House of Representatives.

(e) Ten members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

(f) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(g) The members appointed by the President shall each receive a per diem in the amount equal to the daily rate of pay for a GS-18 position on the executive schedule when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence and other necessary expenses incurred by them in the performance of such duties.

DUTIES OF THE COMMISSION

SEC. 4. (a) The Commission shall—

(1) review present and anticipated national water resource problems affecting the nineteen Western States, making such projections of water requirements as may be necessary and identifying alternative ways of meeting these requirements—giving consideration, among other things, to conservation and more efficient use of existing supplies, innovations to encourage the highest economic use of water and recent technological advances;

(2) examine the current Federal programs affecting such States and recommend to the Secretary whether they should be continued and, if so, how they should be managed for the next twenty years, including the possible reorganization or consolidation of the current water resources development and management agencies;

(3) review the need for additional storage or other arrangements to augment existing water supplies;

(4) review the history, use, and effectiveness of various institutional arrangements to address problems of water allocation, water quality, planning, flood control and other aspects of water development and use, including interstate water compacts, Federal-State regional corporations, river basin commissions, the activities of the Water Resources Council, municipal and irrigation districts and other similar entities with specific attention to the authorities of the Bureau of Reclamation under reclamation law;

(5) review the legal regime governing the development and use of water and the respective roles of both the Federal Government and the States over the allocation and use of water, including an examination of riparian zones, appropriation and mixed systems, market transfers, administrative allocations, ground water management, interbasin transfers, recordation of rights, Federal-State relations including the various doctrines of Federal reserved water rights (including Indian water rights and the development in several States of the concept of a public trust doctrine); and

(6) review the activities, authorities, and responsibilities of the various Federal agencies with direct water resources management responsibility, including but not limited to the Bureau of Reclamation and those agencies whose decisions would impact on water resources availability and allocation, including, but not limited to, the Federal Energy Regulatory Commission.

GOVERNOR'S REPRESENTATIVES

SEC. 5. The Chairman of the Commission shall invite the Governor of each State to designate a representative to work closely with the Commission and its staff in matters pertaining to this Act.

INTEREST GROUP REPRESENTATIVES

SEC. 6. The Commission, at its discretion, may invite appropriate public or private interest groups to designate a representative to work closely with the Commission and its staff in matters pertaining to this Act.

POWERS OF THE COMMISSION

SEC. 7. (a) The Commission may—

(1) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it may deem advisable;

(2) acquire, furnish, and equip such office space as is necessary;

(3) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States;

(4) without regard to the civil service laws and regulations and without regard to chapter 51 of title 5, United States Code, employ and fix the compensation of such personnel as may be necessary to carry out the functions of the Commission;

(5) procure services as authorized by section 3109 of title 5, United States Code, at rates not to exceed an amount equal to the daily rate of pay for a GS-18 position on the executive schedule;

(6) purchase, hire, operate, and maintain passenger motor vehicles;

(7) enter into contracts or agreements for studies and surveys with public and private organizations and transfer funds to Federal agencies to carry out such aspects of the Commission's functions as the Commission determines can best be carried out in that manner; and

(8) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this title.

(b) Any member of the Commission is authorized to administer oaths when it is determined by a majority of the Commission that testimony shall be taken or evidence received under oath.

POWERS AND DUTIES OF THE CHAIRMAN

SEC. 8. (a) Subject to general policies adopted by the Commission, the Chairman shall be the chief executive of the Commission and shall exercise its executive and administrative powers as set forth in paragraphs (2) through (8) of section 6(a).

(b) The Chairman may make such provision as he shall deem appropriate authorizing the performance of any of his executive and administrative functions by the Executive Director or other personnel of the Commission.

OTHER FEDERAL AGENCIES

SEC. 9. (a) The Commission may, to the extent practicable, utilize the services of the Federal water resource agencies.

(b) Upon request of the Commission, the Secretary may request the head of any other Federal department or agency to assist the Commission and such head of any Federal department or agency is authorized—

(1) to furnish to the Commission, to the extent permitted by law and within the limits of available funds, including funds transferred for that purpose pursuant to section 4(a)(7) of this Act, such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and

(2) to detail to temporary duty with this Commission on a reimbursable basis such personnel with his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(c) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services, except that—

(1) the regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514) shall apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of such Administrator for the administrative control of funds (31 U.S.C. 655(g)) shall apply to appropriations of the Commission; and

(2) the Commission shall not be required to prescribe such regulations.

APPROPRIATIONS

SEC. 10. There are hereby authorized to be appropriated not to exceed $18,000,000 to carry out the purposes of this Act.

[From the National Geographic, June 1991]

AGE-OLD CHALLENGE: WATER AND THE WEST—THE WASTEFUL USE OF WATER RESOURCES MAY BE HOW THE WEST IS LOST

(By Bruce Babbitt)

Each night as the sun goes down and the desert darkens, the neon lights of Las Vegas, Nevada, flare into the sky. Beneath the lurid glow of giant casino signs, water splashes in Roman fountains, runs into acres of swimming pools, and overflows into street gutters.

Las Vegas, prodigal playground of the West, illustrates the conflict between man and nature in the Colorado River basin. Within just ten years the metropolitan area could be using virtually every drop of Nevada's legal share of the Colorado River's flow. City leaders, expecting the population of 800,000 to double in the next 40 years, are searching far and wide for new water supplies.

City water engineers are advocating a traditional solution: an engineering project to tap into the underground waters beneath re-

mote valleys of eastern Nevada. They propose a system of 145 huge wells spread across nearly 20 percent of the state and connected by a thousand miles of pipeline. Cost estimates range from 1.5 billion to four billion dollars.

Environmental costs may be as high or higher, if less easy to quantify. Critics contend that groundwater pumping will lower the water table, destroying streams and marshes that sustain migratory waterfowl and nourish plant and wildlife oases in desert basins, including distant Death Valley National Monument in California. Even there, in the hottest desert in North America, water lies beneath the ground. Fearful for the future, the National Park Service has filed formal protests against the project.

Water reformers throughout the West are beginning to question these expensive, environmentally damaging water-transfer projects. They insist that there is a better way. If westerners would strongly promote conservation and develop plans to recycle and reuse existing water supplies, there would be no immediate need for more such projects.

Reformers point to Tucson, Arizona, as a good example of a desert city that today supports growth by conserving and reusing water. More and more streets and parks are planted with the trees and flowering plants of the surrounding Sonoran Desert. Residents receive free pamphlets explaining xericscaping, the art of landscaping with low-water-use plants. City ordinances require low-flow toilets, shower heads, and faucets, and the city has even shared the cost of more efficient toilets for older homes. Many golf courses and parks are watered with treated sewage effluent.

Tucson residents are proud of their distinctive "desert city" image. The payoff is clear: On a per capita basis, Tucson now consumes about half the water of Las Vegas, where conservation is still voluntary.

As the following article makes starkly clear, communities dependent on the Colorado River are facing a crisis. The river is being used to the fullest, and the region is now in its fifth year of drought.

As urban populations continue to grow, the battle between the traditional water engineers, known in the West as "water buffaloes," and the emerging reform movement will surely intensify. The question, as yet unanswered, is whether man can live and prosper with nature, respecting the limits of our desert environment.

[From the National Geographic, June 1991]

THE COLORADO: A RIVER DRAINED DRY

(By Jim Carrier)

The man they call El Coyote pushed his blue dinghy away from the bulrushes, stroked through the murky brown residue of the Colorado River, and began to pull up his gill net. Halfway through pulling in the 130-foot net, he found an eight inch mullet that landed with a lonely plunk in an orange pail at his feet. Minutes passed before I heard the plastic thud again, and by the time the whole net lay empty in the boat, there were just three fish in his bucket.

"At least it's breakfast," Ricardo Sandoval said to me. "The net's been out here two days." El Coyote, so nicknamed for his days as a crafty baseball player, paddled back home to El Mayor, the ramshackle settlement of the Cucapá Indians, the "river people" who are last in line for the waters of the Colorado River system (map, pages 16–17).

Fifty miles south of the U.S. border in Mexico's Baja California, the great river of the West that I had followed from beginning to end was gone, the water in its bed a shallow, narrow sump of salt and pesticide-laced runoff from crop irrigation.

"*Es nuestra vida*—It is our life," said El Coyote, summing up 2,000 years of his people's sustenance from this area. But for half a century the delta had been dying, and with it the Cucapá culture. No longer can tribal members hunt mule deer, plant squash with the floods, harvest wild salt grass, or eat fish three times a day. Several species of fish and plant life have disappeared. The settlement has shrunk to about 85 families. The once rich estuary is filled with weeds, trash, and occasional swamps of unhealthy water—barely enough to float their boats. Last year, the fourth year of drought, the water dropped to its lowest level in tribal memory. The Cucapá were lucky to eat fish once a week.

"We are the river people. We're still here," said Ricardo. "But what river? I haven't seen it. It doesn't get this far."

While most mapmakers draw a vibrant blue line from the central Rocky Mountains to the Gulf of California, the nets of the Cucapá tell a poignant truth about the Colorado River:

Demand has finally exceeded the river's capacity to support the Southwest.

For a river bigger than life such a condition seems unthinkable. Plunging from frozen heights of 14,000 feet on the continental spine, the Colorado writhes for 1,450 miles. It etches the Rocky Mountains, it carves the mile-deep Grand Canyon. For only 56 years have its red-mud floods been under control.

European explorers thought the land it flowed through was useless. "Ours has been the first and will doubtless be the last party of whites to visit this profitless locality," wrote Lt. Joseph C. Ives of the Army Engineers in 1858, after steaming upriver to the present site of Hoover Dam in search of a navigable route between the Rockies and the Pacific. "The Colorado River, along the greater portion of its lonely and majestic way, shall be forever unvisited and undisturbed."

As rivers are measured, the Colorado has only a few superlatives: Its elevational drop is the greatest in North America; it is one of the siltiest (before the dams, it carried an average load of 380,000 tons a day); and it is one of the saltiest, carrying nine million tons a year. Although it ranks seventh in length in the U.S., its water volume has averaged only 15 million acre-feet of water yearly since 1905. (The Columbia empties 192 million and the Mississippi more than 400 million.)

The Colorado system binds the Southwest in a semiarid 244,000-square-mile drainage (an area larger than France) and divides the region as no other element; state against state, rural against urban, Indian agaist white. It has earned the reputation as the most legislated, litigated, and debated river in the world.

In two years of tracing the Colorado I was stunned by the magnitude of what it was asked to do. The Colorado grows grapes in New Mexico, brews beer in Colorado, raises minnows in Utah, floats rafts in Arizona, lights jackpots in Nevada, nurses elk in Wyoming, freezes ice for California, sweetens cantaloupes in Mexico. In bringing life to 21 million people and more than two million acres of farmland in seven states and two countries, the river has reached a dammed and diverted denouement.

There is only so much water, and demands are increasing. Conflicts are constant among water users. The 1922 Colorado River Compact that divides its waters into two basins for use by seven bordering states—Wyoming, Utah, Colorado, New Mexico, Arizona, Nevada, and California—no longer seems adequate as Americans flood the Sunbelt. New rules must be written in a time of environmental concern and heightened awareness of Native American rights and claims. A new strategy is needed for western water. As the Colorado River nears the end of a fruitful century in which it was harnessed to human needs, it enters an era of limits.

"These glaciers really did a number on this country," said John Barlow, a rock-and-roll lyricist and former Wyoming rancher, as we looked out the window of a small plane, nearly touching the gouged granite of Gannett Peak. Sunrise had just topped Wyoming's Wind River Range, one of the Colorado's main sources, and down in the shadows I could see stretch marks on Mammoth Glacier as it slowly ebbed into the Green River, the most northern reach of the Colorado system.

"You could say that the Green was the central river in settling the West," said Barlow. It was the heart of the beaver trade, and John Wesley Powell began his historic exploration of the Colorado in 1869 at the town of Green River in the Wyoming Territory.

Unlike most other Colorado tributaries, which are diverted at their headwaters, the Green has wild beginnings. I could see a moose and her calf clomping at the edge of Upper Green River Lake, a brilliant turquoise reflected from glacial silt. Two miles more and the river leaves the wilderness, weaving its way through a sage plain. This is where is virginity ends: Here the first irrigation ditches cut into its banks.

Over a ridge, on the New Fork of the Green, John Barlow's grandfather, Perry W. Jenkins, built his ranch in 1905. He organized Sublette County around the Green's watershed and later helped represent Wyoming in negotiations for the historic 1922 Colorado River Compact. Each summer John flood-irrigated 2,200 acres to grow grass for 1,100 cows. But he lost the ranch to high debt and low beef prices in the late 1980s. The new, absentee owners sold the cattle, and the unused water slipped into the Green, where almost 60 percent of Wyoming's compact share goes for lack of use.

"I would like my kids' kids to live here," said John, who makes a living writing songs for the Grateful Dead. "I don't think the national interest is served by running all the water to where it cleans off driveways in Los Angeles. But I think the compact will be abrogated, and Wyoming will be the loser. This is heretical, but I don't know how we can justify our need for the water under present circumstances."

Three hundred miles to the southeast in Colorado, along the Continental Divide, the 12,000-foot Never Summer Mountains have beautiful names: Cumulus, Nimbus, Stratus. With the heart of a poet and big snowshoes, I'd hoped to find one of the river's sources near Lake of the Clouds in Rocky Mountain National Park, which lies below these peaks. The birth here is difficult: The runoff of the serrated mountains is interrupted by a big gouge 14 miles across the mountain breasts. This Grand Ditch runs water eastward across the divide at 10,186 feet, then sends it down the east face of the Rockies to Fort Collins and 30,000 acres of sugar beets, corn, and barley on the Great Plains.

"Some people thought it was awful to tear up the side of the mountain," said Harvey Johnson, 95, chairman of Water Supply and

Storage Company, which owns the water in the ditch. "I tell them we're growing food, and they'd go hungry without it."

First dug by Asian laborers, the ditch carried water by 1900. "We were quite desperate, and the Western Slope was flush with water," Johnson told me. "The company decided they'd just go get it." That was both the mentality and legal status quo. The primary law of the arid West, "first in time first in right," gives the oldest users of water nearly ironclad seniority and ownership. Johnson, one of the grand men of the river, arrived in Colorado in a covered wagon and spent his life making the semiarid plains bloom. "It's very productive soil," he told me, "if you put good water on it."

Colorado's entire Front Range is a rich farm belt and a growing urban area because of water diverted across the Great Divide. The Grand Ditch is one of the oldest transmountain diversions, but there are 20 others, draining a third of the Colorado's high tributary flows. Denver, where I live, gets half its water from the Colorado system.

The most improbable diversion lies 2,000 feet below the Grand Ditch, where snowmelt collected in Lake Granby is literally pumped backward, up the old Colorado riverbed to Grand Lake. A beautiful, natural mountain lake is thus made part of a plumbing system that takes 90 percent of the fledgling main stem's water. A tunnel 13 miles long and nearly ten feet wide, part of the Colorado-Big Thompson Project, takes the lake water under the Continental Divide to the east face of the Rockies. The water then flows to cities like Boulder, serving a population of 500,000, and to Weld County, the fourth richest agricultural county in the U.S. But draining so much water leaves the Colorado a small stream in the mountains, with just enough water to meet the state requirement for keeping trout alive.

"Without that requirement you would have dry streambeds on the Western Slope for sure," said Rolly Fisher of the Colorado River Water Conservation District, which has carried on a half-century water war with Denver and the Front Range. Formed as a "protective association" when the Colorado-Big Thompson was built, the district has fought nearly every transmountain diversion. "The fear has been that the Western Slope would be dewatered just as California's Owens Valley was dried up by Los Angeles," said Fischer.

Denver's suburban neighbor Aurora has proposed tapping the Gunnison River, the one remaining Western Slope river not diverted to the Front Range. "The Gunnison is one of the last frontiers in the water wars," said Bill Trampe, one of the local ranchers who increased their own taxes for 1991 to fight Aurora in water court. "Recreation is the Gunnison's leading industry," he said. "It requires water in the streams. And half of Aurora's water would go on lawns."

But Aurora's population of 222,000 could triple by the year 2050, and the city is already using the water from 20,000 acres of mountain ranchland and has bought other farm water. "The Western Slope views it as their water, while in reality state law provides for diverting water to where it can be used," explained Aurora's utilities director, Tom Griswold.

In the spring of 1990, the signs of drought came early in the mountains, where snow depths are watched like a water stock market. On April 1, when I skied through the Fraser Experimental Forest west of Denver measuring snow with U.S. Forest Service scientists, the Colorado's predicted flow was 45 percent below normal.

Within days George Anderson was making tough decisions downstream about ranchland water in Roan Creek, just one small tributary near Grand Junction, Colorado. "I'd rather do anything than go tell a guy I've got to shut his water off," said Anderson, a soft-spoken, friendly water commissioner with a gold tooth in his grin. "If you don't have water up here, you don't have nothing," he said as he drove me around the irrigated valley.

In a drought, George Anderson is judge, jury, and executioner. On about a hundred ditches that in a good year carry Roan Creek to 8,000 acres of grass sprouted from sagebrush range, he had to close all but six of the guillotine-shaped headgates in April.

As the Colorado's two main branches—the upper Colorado and the Green—converge, the landscape becomes increasingly arid and lonely; precipitation drops from as much as 55 inches in the mountains to as little as 10 on the Colorado Plateau, where the rivers sink to serpentine cracks.

The greatest pollution is salt. Starting with snowmelt quality of 50 parts per million, both rivers grow saline as the water is extracted, evaporates from reservoirs, passes over natural salt beds, and pours through soil that was once the bottom of an ancient sea. By the time the Green reaches Green River, Utah, 600 miles from its source, its salinity exceeds the federal 500 parts per million salt standard for drinking water.

The river used to flood silty cold in the spring and trickle warm and clear in the fall. Now, below dams like Flaming Gorge, it runs clear and cold year-round. The dams trap silt, reservoirs release frigid water from their depths back into the river, creating excellent trout habitat but contributing to the near extinction of several native species sensitive to the temperature change.

"We're not talking about one or two fish," said Harold Tyus, who runs the U.S. Fish and Wildlife Service laboratory on the Green River near Vernal, Utah. "We're talking about the loss of an entire fauna. More than half the endemic fish in the upper basin are endangered. This is the last stronghold."

Before sunrise in a rose-colored canyon I watched Tyus's biologists seine the Green for tiny Colorado squawfish larvae—"threads with eyeballs." That they exist at all there is due to the Yampa River, the only major undammed tributary in the Colorado drainage. It joins the Green in Dinosaur National Monument and runs warm and low enough for squawfish spawning. Proposals to dam the Yampa—one company wanted to sell the water to San Diego—would probably eliminate the fish, said Tyus, who favors giving the fish a water right of their own.

Where the Green and Colorado meet, in the remote labyrinth of Canyonlands National Park near Moab, Utah, a powerful river results. I could see the pistachio color of one mixing with the red-silt-laden flow of the other, a total of 13,000 cubic feet a second swirling and gathering strength for a plunge through Cataract Canyon. In a life jacket and rubber raft I joined a group of thrill seekers through Big Drops 1, 2, and 3—rolling, muddy rapids guaranteed to soak to the skin.

In side canyons we examined the ruins of Anasazi Indians, the "ancient ones" who lived along the river a thousand years ago. The best explanation for their disappearance is a combination of drought, overpopulation, and internal strife—elements present in the West today.

"The Colorado has defined what the West became," the rafters heard from Sally Ranney, president of American Wildlands, after a steak dinner on the beach. "And because of the water shortage it will define what the West will not become. We have a saying out here that water flows toward money. It has nothing to do with gravity."

Near the end of our trip the river widened into Lake Powell. Capable of holding nearly two years' flow in a red sandstone bathtub 1,900 miles around, Powell is just upstream from Lees Ferry, the dividing point between the upper and lower basins. The 1922 compact apportioned 7.5 million acre-feet to each basin, from an annual flow then thought to average about 17 million. In years of drought, the lower basin gets its share first, sometimes resulting in a shortfall for the upper basin.

Virtually all the water that will enter the Colorado has done so by now, and the lake is a quick look at demand and supply. In 1990, the fourth year of drought, a ring was showing in the bathtub 66 feet above the water level (evaporation alone takes five feet a year). Less than 5.5 million acre-feet of water flowed into Lake Powell, not nearly the 8.25 million required downstream by the compact and a later treaty.

Lake Powell's creation in 1963 was the crowning act of the U.S. Bureau of Reclamation's 30-year, big-dam era. Built for water storage, flood control, and power, Glen Canyon Dam flooded caverns and canyons that only a few thousand people had ever seen. Today more than three million people visit the vast desert lake each year, and I could see a new conflict on the river, as the traditional water users—the irrigators and power interests—bumped heads with the enormous economic force of leisure time. Boaters wanted their docks in the water, not draped on silt.

Downriver, in the Grand Canyon, the dam was exacting another price. With most of the silt blocked off, the clear, deep-green "hungry" water ate away existing sand and silt, the base for the canyon's ecosystem. "Some of the worst erosion came early, in 1964," said Martin Litton as he maneuvered a dory through the rapids below the dam for perhaps the 75th time in his 74 years. The Grand Canyon curmudgeon has long been a burr under the saddle of dam interests.

Without the usual feast-and-famine flows of the natural river, wildlife changed abruptly. Fish used to warmer waters and muddy bottoms died off. Beaver disappeared because entrances to their homes, built underwater in the riverbanks, were regularly exposed as the water level rose and fell. Tamarisk invaded and songbirds increased; trout were introduced and bald eagles began to make winter stopovers.

Litton glanced up at the violet-green swallows looping about for bugs: "They're doing fine, but most cliff swallows left after the water cleared. Not enough mud for their nests. With fewer beaches for boaters to camp on, the national park limited visitors to 22,000 a year, outlawed driftwood fires except in winter, and made everyone carry out all waste."

On our second morning we awoke to find our boats high and dry on the narrow beach. The water had receded nearly 13 feet during the night. Glen Canyon's hydroturbines are used when power demand peaks, causing the water in the Grand Canyon to go up and down like a tide. Less demand for power, less water. "See, the water is low today because it was cool in Phoenix yesterday and they didn't want as much air-conditioning. The beaches can't take this daily up-and-down stuff," explained Litton, who argued for a

shift of peaking power away from Glen Canyon.

But Lloyd Greiner, a manager with the Western Area Power Administration, later countered: "I don't believe there is enough evidence that fluctuating flows are a major contributor to the damage. The river drops 2,000 feet in the canyon. With water rushing through, there will be erosion."

On a Sunday morning we awoke in the canyon to bad news: Low weekend demand for electricity in Phoenix meant that low "Saturday water" was reaching us 87 miles from the dam. In Unkar Rapids, Litton hit a rock. A few miles farther the river looked worse. "I've never seen Hance Rapids this low. This is basically unrunnable in dories," he said when he saw the boulders sticking out of the water.

So we waited, with environmentalist Litton praying, ironically, that Phoenix would suffer a heat wave so we could float the river. That night I stared up into a heaven cut by the cleavage of the canyon. I watched satellites inch across the star-sprinkled sky and thought that mine was the last generation to have seen a night sky uncluttered by man-made things—or the Grand Canyon's water unregulated. Two days later Litton's prayers were answered.

When Maj. John Wesley Powell emerged from the Grand Canyon in 1869, he met Mormon colonists who gave him melons and other food from ground that received only four inches of rain a year. Powell later foretold the opportunities and limits of western water: "All the waters of all the arid lands will eventually be taken from their natural channels," he wrote. The Mormons believed that irrigation fulfilled the prophecy of Isaiah, that when Christ returned "the desert shall rejoice, and blossom as the rose. . . . for in the wilderness shall waters break out, and streams in the desert."

Like a miracle the river plugged by Hoover Dam, on the border of Nevada and Arizona, achieved that promise. The "grande dam" reined in the Colorado, fostered what was the richest irrigation project in the world, and watered and powered the Sunbelt. As I followed the waterway 150 miles below Hoover, I could almost hear the slurping straws of distant cities. On one side of Lake Havasu is the Central Arizona Project (CAP), which carries river water 335 miles eastward to Phoenix and, soon, to Tucson. On the other is the Colorado River Aqueduct, emerging from a pump house able to suck up one billion gallons of water a day for southern California.

Until 1990 those California intake pipes, run by the Metropolitan Water District (MWD) of Southern California, took pretty much what they needed—over one million acre-feet a year, twice MWD's right to the river. Arizona wasn't using its full share. With the CAP nearing completion in 1990 it looked like Arizona would come close. When dry California asked for more water, the Bureau of Reclamation, with its hand on the Hoover spigot, said no. It was a historic announcement. As 1990 began, the lower basin had, for the first time, used up its full share of the Colorado River. Six months later, with generous rains in Arizona, the spigot to California was reopened.

Given these limits, it was strange to me to travel west along the Colorado River Aqueduct and find its waters spread in chevron-shaped shallow ponds near Palm Springs, California, soaking into the ground! Like a desert mirage, the waste wasn't what it appeared: The water was recharging the desert's huge underground aquifer.

Because of the rich aquifer, wealth beyond all imagining has come to Palm Springs. On Country Club Drive, I passed developments with names like "The Lakes" and "Desert Falls." At Marriott's 400-acre Desert Springs resort the lobby contains a ten-foot-deep indoor lagoon, complete with boats, and the resort pumps one and a half million gallons of water a day onto its golf course in summer.

In Los Angeles I found serious attempts to conserve water as the California drought entered its fourth year. Squads from the city's Drought Busters enforced new ordinances against washing sidewalks, serving unsolicited water in restaurants, and watering lawns during the day.

I spent one morning cruising the streets with Drought Buster Tony Marufo, who would brake to a halt at the first sign of a damp spot on a hot sidewalk. "Some people say I can smell water," he said, grinning. In 1990, in a city long known for its profligate water use, Marufo and his 25 colleagues wrote 8,862 citations from May to October. By late summer Los Angeles had reduced its water use by more than 10 percent.

But MWD's Tim Quinn told me that conservation is a limited tool, that per capita use is up in most western cities. Newer houses actually push water use up—all have automatic dishwashers—and higher income families use more water. "We're trying to find ways to flatten those numbers out," he said, "but lowering them may be impossible. It would cross the line of fundamental changes in life-style—no green yards, for example."

And that, I learned, was a line that no one in the California water establishment wanted to cross. Controlling growth, they said, is not a water agency's job; finding more water is. The population of 15 million served by MWD is growing by 300,000 a year, and officials fear running short of water by the year 2000 if serious drought conditions continue.

The Sacramento River is a likely source of relief but an unpopular choice with many northern Californians who think southern Californians are stealing their water. The drought has also raised anew such possibilities as seagoing tankers bringing fresh water from the Pacific Northwest, ships hauling icebergs, and a pipeline to tap the Columbia River. Desalination plants have been started to turn Pacific Ocean water into fresh water.

Another prospect is water marketing—trading water like a commodity, a relatively new concept in California. In its first deal MWD agreed to finance the lining of irrigation canals and the upgrading of Imperial Irrigation District plumbing at a cost of 223 million dollars. The deal will save 100,000 acre-feet from seeping into the ground, thus increasing water available to MWD. The agency might also pay farmers not to grow crops in dry years: Agriculture draws 80 to 90 percent of the Colorado.

"The phone rings three times a week from landowners in other states, wanting to sell their water," said Tim Quinn. Wyoming might use its water after all, I thought—by selling it to California. But State laws would have to change for that.

Everywhere I went along the river, a new breeze was blowing on water policy. At the end of the pipeline, where I expected a hurricane force, it was but a whisper. One of the fastest growing communities in southern California is Chula Vista, outside San Diego—highly dependent on the Colorado River. EastLake, a development being built there on barren land a few miles from the Mexican border, is an example of how water leverages growth. EastLake's water cost of $525 an acre-foot (a western family of four uses one acre-foot of water a year) helps turn worthless ground into a thriving community. Projections for the year 2004 show 25,000 people living on 3,200 acres in 8,900 homes, a five-fold population increase.

"This is going to be our downtown here," said developer Robert Snyder, pointing to a gully of sand. In an area called EastLake Hills and Shores, with 1,834 houses ranging in the price from $70,000 to $600,000, peer pressure keeps most homes surrounded by verdant bluegrass, and Snyder says he could not force xeriscaping, the use of water-miser desert plants, on EastLake homeowners: "In five years maybe I can."

Snyder, an athletic third-generation California builder, drove me by the EastLake Shores Beach Club, where palms and grass surrounded a sandy beach. "This is the kind of amenity that brings people to EastLake. We've spoiled ourselves, no doubt about it. There has been enough water in California for whatever we wanted to do."

Saguaro cactuses stand guard in Arizona along the Central Arizona Project. The 3.5-billion-dollar water network administered by the Bureau of Reclamation is considered by environmentalists the ultimate in desert folly. In order to pump 1.5 million acre-feet of water clear to Tucson and subsidize its cost so farmers can irrigate economically, the bureau helped build a coal powerplant near Page, which taints the air over the Grand Canyon and the Navajo Reservation.

But south of Phoenix, on the tiny Ak-Chin Indian Reservation, that same CAP is a godsend, I learned. Water from the Colorado has turned a dirt-poor community into a prideful, self-sufficient farming community with low unemployment and no welfare.

"We're using it to farm cotton, small grains, alfalfa—even fish—and 95 percent of our people work on our farm," said Leona Kakar, a strong woman whose family led the way to this Indian-country success. She spoke to me in the shade of a tamarisk tree after ceremonial basket dances to celebrate groundbreaking for a tribal museum. A mile away workers were harvesting cotton. "I've given 26 years of my life for this fight," she said with a shake of her graying, curly hair. "It's made a world of difference."

Until the 1960s a few hundred Ak-Chin subsisted in the Sonoran Desert around shallow wells. But pumping around Phoenix lowered the water table hundrds of feet, making farming too expensive. Citing the 1908 Supreme Court Winters doctrine, which reserves enough water for Indians to irrigate their land, the tribe sued the federal government. Congress awarded the Ak-Chin CAP water, which first arrived in 1987. Within two years a 38 percent unemployment rate had dropped to 4 percent, and the tribal farm had tripled its acreage.

Encouraged by the Ak-Chin success, other Arizona tribes, which have been without adequate water for a century, are following suit. Their claims total more than all the water in Arizona, which arguably could make them the American Arabs of water. The huge Navajo Indian Reservation alone could claim most of the flow of the Colorado, based on the Winters doctrine. "It's certainly a cloud of uncertainty that hangs over our water management programs," said Larry Linser, deputy director of Arizona's Department of Water Resources.

But a water right without wet water is useless, and several tribes have compromised in order to get canals built and water delivered. The CAP carries Colorado water for ten tribes. "We are doing what we did in A.D.

200, just a little more modern," said Leona Kakar. "Water is our lifeline, our blood."

Below the Colorado River Aqueduct, the Colorado runs like a sluice, wide and sluggish, the banks riprapped in places and lined with tamarisk and occasional rows of cottages. Near Yuma, Arizona, it backs up behind the Imperial Dam, which takes more than 20 percent of the water, the single biggest chunk of the river, and pushes it through the All American Canal about 80 miles west to California's Imperial Valley.

Driving west, I watched dune buggies race over sand dunes sliced by the canal, where an estimated 70,000 acre-feet of water soaks into the sand each year. Congress has authorized the Bureau of Reclamation to stop the leakage on the canal; lining it is a likely solution.

California cities can't understand how so much water can just disappear into the ground—or how nearly one million acre-feet of water runs off and under irrigated fields in the Imperial Irrigation District and into the briny Salton Sea. The state of California has found that the district, at the far end of the canal, wastes about 15 percent of its water and has required it to conserve 100,000 acre-feet. Some 700 farmers there, who generate nearly one billion dollars each year, have a very senior right to the river's water. After 90 years, they are worried.

"We do live in a democracy," said Larry Cox, a 32-year-old cotton, alfalfa, and vegetable producer I found weighing onion seed. "If you've got 16 million voters up there in L.A., who's to say they can't change the laws? I think it's a definite possibility."

The land is so salty and the river water is so saline (averaging more than 700 parts per million) at the end of its journey that extra water is poured through the soil to flush salt away from roots. Each field gets about four feet of water. Pipes buried four to eight feet below the surface then carry the excess, salty water away.

Cox, whose onions will be used on McDonald's hamburgers, said he resisted more efficient irrigation methods until he felt forced to try the drip system on a tomato field plagued by waterborne soil disease "It was fairly easy" he said, "and the yield went up substantially."

Nowhere on the Colorado did I get a greater sense of the dividing of the waters between the haves and have-nots than below Morelos Dam in Mexico, south of Yuma, Arizona. The last of the Colorado River is pushed into the Canal Central here, and the riverbed becomes shallow enough to wade across. Many Mexicans hoping to start a new life with the water and wealth of the U.S. have waited in the riverbed until dark before crossing the border.

Without a real river, the poor have built makeshift homes along the canal. They are called *avecindados*—squatters. I watched an old man wash his clothes and hang them on a *cachanilla*, or arrowwood, plant. A woman carried a bucket of water for her garden, a skimpy row of corn and squash. Their homes were part adobe made from canal mud, cardboard, and car parts.

For some 20 miles the nearly empty riverbed is the border betwen the U.S. and Mexico, but metaphorically the Colorado has divided the two countries since the first attempts to divert the river into California. A 1944 treaty guarantees Mexico 1.5 million acre-feet of water a year. After return flows from the irrigation district east of Yuma raised salinity in Mexico to more than a thousand parts per million, killing crops, an agreement was signed controlling salt levels. Rather than take the saline U.S. soil out of production, Congress authorized a 260-million-dollar desalination plant.

Under the treaty, Mexican officials don't expect more water from the U.S. "The States aren't interested in giving up anything," said Luis Lopez Moctezuma, a planning official for Baja California. Only two-thirds of irrigable land in Baja gets water from the river, which is divided among 14,000 farmers, each of whom can plant only 40 of their 50 acres. There also is an increasing demand for urban water: An aqueduct takes Colorado River water to Tijuana.

It was in the river delta that I saw the real effect of the water shortage. The delta was once a series of green lagoons that ecologist Aldo Leopold described as a "milk-and-honey wilderness" where egrets gathered like a "premature snowstorm," jaguars roamed, and wild melons grew. That was in 1922, the year the Colorado River's interstate compact was signed and plans were laid for Hoover Dam. In the years since, marine ecologist Cuauhtemoc Leon Diaz told me, the ecosystem has changed completely.

Two marine animals became endangered species: a fish called the totoaba and a porpoise called the vaquita. The totoaba used to grow as long as six feet and weigh 300 pounds; its flesh and bladder were a delicacy. Adults migrated to the mouth of the delta in thick schools, and the tides sent their eggs back, deep into the natural nursery of the delta. When the river was cut off, the nursery mechanism was cut off too.

Other, unknown species may have disappeared, according to saltwater agronomist Nicholas Yensen, who rediscovered a wheatlike salt grass thought extinct. Through selective breeding he improved the yield from one or two pounds an acre to one or two tons an acre. The grass grows best when irrigated with full-strength seawater, making it valuable in arid and saline areas worldwide.

"When the Colorado stopped flowing, we lost the main population of the plant—it could have gone extinct, and we'd never have known," he said. The river was like the Nile in its importance to the delta. "We probably never will know what we lost."

In my last days on the river I talked with Cucapa Indians at their village, aided by Anita Alvarez de Williams, a self-taught expert on the small tribe. It had been six months since they had been able to catch enough fish to sell. Still, at every home, a boat lay expectantly in the gravel. "I don't have much hope for the future," said Rosendo Carrillo Oliveras. "The older ones fish, the younger ones goof off—there is no work."

Anita introduced me to Inocencia Gonzales Saiz, a 53-year-old woman who makes traditional beaded collars, worn in ceremonies. Instead of fish, she said, they eat frijoles and junk food. The water can't be used effectively on melons or squash because it is too salty. They eat a diet high in sugar and fat. Many of the people have diabetes.

I thought back to all that I had seen on the Colorado. The river could produce so much—and promise so little. As we left El Mayor, Anita said to me, "There are important things to learn from apparently simple cultures. These guys have been around for a couple thousand years. But barring a miracle, you're seeing the last of them."

Aldo Leopold, at the end of his essay on the Colorado Delta, wrote: "Man always kills the thing he loves. . . . I am glad I shall never be young without wild country to be young in."

With what water it had, the Colorado created a new civilization in the Southwest. Now it is beset by the needs of a mature and burgeoning community. There is talk of renegotiating the compact to move more water where the people are and of creating new ways to exchange, augment, conserve, and manage. The river above the delta reminded me of an aging prima donna eking out a little more time, refusing to face the inevitable.

"What river?" I remembered the fisherman El Coyote asking me.

I knew the answer, but had no reply.

PLUMBING THE WEST

"We have in the Colorado an American Nile awaiting regulation," said Los Angeles water investigator Joseph B. Lippincott in 1912. Since that time the river has been "regulated" almost out of existence and now rarely empties into the Gulf of California. With scores of reservoirs and diversion dams, hundreds of miles of aqueducts and tunnels, dozens of pumping stations, thousands of miles of canals, and more than 30 hydroelectric plants, the river basin contains one of the world's most controlled river systems.

Riverwide regulation began with the 1922 Colorado River Compact, which divided seven western states into upper and lower basins (map) and allocated 7.5 million acre-feet of water a year to each. A 1944 treaty with Mexico guaranteed that country 1.5 million acre-feet annually. Although the Colorado was committed to deliver 16.5 million acre-feet, its annual flow has averaged only 14 million since 1930, and evaporation from reservoirs removes another 2 million.

As long as some states continue to use less than their share (inset), others can siphon off more. But as populations rise and states in both basins complete water projects, the Colorado will be virtually tapped out.

[From the National Journal, Jan. 30, 1988]

WHERE'S THE WATER?

(By Lawrence Mosher)

Ever since Ronald Reagan came to Washington seven years ago, his Administration has consistently opposed the development of a national water policy. With an eye cocked on the West's disdain for federal intervention, James G. Watt stripped six river basin commissions of federal support and killed an interagency water council during his tenure as Interior Secretary. But the nation's growing water problems may eventually reverse this Reagan doctrine.

Water scarcity is no longer just a western dilemma best left to western states and federal courts to sort out. In recent years, the East has suffered from a series of droughts that have alarmed cities up and down the Atlantic seaboard. The result is increasing agitation over the issue of water management.

The looming question is whether the current systems that control the nation's water should be changed—and if so, to what.

A prime example of the rising interest in water management can be found in a potentially radical set of recommendations involving New York City's future supplies. The plan, presented to Mayor Edward I. Koch in January, comes from an intergovernmental task force that he appointed during the last eastern drought, in 1984-85, when the city's supplies ran so low that police helicopters used infrared scopes to direct illegal nighttime lawn watering. The plan's key recommendations—to draw heavily on the Hudson River and possibly integrate the city's system with the dwindling aquifers of Long Island—were offered by the Army Corps of

Engineers during the Carter Administration, but no action was taken.

The Koch task force's plan represents a move toward managing water more by its hydrological than its political boundaries—even though the proposed New York City "watershed" is a hydrological fiction embracing two river basins and an island's aquifers.

Meanwhile, the twin pressures of fiscal and resource constraints are fast eroding water's traditional power base in Congress, built on the West and South, with potentially far-reaching consequences for changing the national approach to water management. In 1986, Congress dealt pork-barrel water politics a hard blow by enacting significant cost-sharing requirements for the first time, breaking a 10-year moratorium on new water project authorizations.

"What has happened," said Rep. George Miller, D-Calif., chairman of the Interior and Insular Affairs Subcommittee on Water and Power Resources, "is that western water development, or Mississippi River basin development or various inland waterway improvements are no longer the sole purview of the Members of Congress and Senators from that state. Because of the [budget] deficit, the community of review now involves many more Members of Congress than it did when I came here more than a decade ago."

An eastern Senator, Bill Bradley, D-N.J., took over the chairmanship of the Energy and National Resources Subcommittee on Water and Power last year, and he is trying to sharpen the full committee's oversight role. At a hearing last October, Bradley prodded committee chairman J. Bennett Johnston Jr., D-La., to probe the Interior Department's implementation of the 1982 Reclamation Reform Act. Bradley accused Interior officials of caving in to California agribusiness that he said were circumventing the law, which requires farmers with more than 960 acres to pay "full cost" for water provided by the federal government, which in California can increase water costs fivefold.

Bradley has said that he wants to broaden his subcommittee's membership to include more Senators from the North and East. He also is looking for "the right federal role" in water management, according to an aide, and is helping the Delaware River Basin Commission augment its reservoir capacity.

PLANNING BY BASINS

River basins are natural hydrological planning and management units for water. Congress first recognized this in establishing the Tennessee Valley Authority in 1933, which manages the nation's fifth-largest river. The Delaware commission was established by Congress in 1961 after a fight between New York and New Jersey resulted in a Supreme Court consent decree in 1954. The commission was set up to manage the Delaware watershed in Delaware, New Jersey, New York and Pennsylvania, plus a bit of Maryland. Its members are the governors of the first four states and the Interior Secretary.

In 1965, Congress passed the Water Resources Planning Act, which set up six more commissions covering New England, the upper Mississippi River, the Missouri River, the Ohio River, the Great Lakes and the Pacific Northwest. Congress added the Susquehanna River Basin Commission in 1970.

River basins make more sense as water planning and management units than states do because water is naturally self-contained within basins. "Budgets" can be drawn up to show the availability of water and how and where it's used, and "deficits" can be predicted to allow better management.

The Missouri River Basin Commission, one of the six new units later abandoned by the Reagan Administration, in the 1970s predicted the Denver area's current water shortage, but it had no power to execute a solution. Now the Denver area wants to impound more water, including water in the Colorado River watershed, setting off more western water wars in the courts.

As the Delaware decree and other settlements have shown, the courts are not the ideal arena for getting the most efficient yield from rainfall and aquifers.

"The water of the upper Delaware are locked up by the 1954 Supreme Court consent decree," said Daniel P. Sheer, a prominent hydrology engineer who crafted agreements in 1982 to assure adequate supplies for the Washington (D.C.) area well into the 21st century.

The Delaware commission had to incorporate the Court's rules, which turned out to be unrealistic. The Court allocated 800 million gallons a day to New York City and 100 million gallons a day to northern New Jersey, regardless of variations in the river's flow. When the "drought of record" hit the region in the mid-1960s, Philadelphia almost ended up with no drinking water when the "salt front"—the unacceptable level of salinity in the Delaware estuary—moved upriver to within a few miles of the city's intake pipe because fresh water needed to dilute the estuary's ocean water went to New York City and northern New Jersey instead.

New York City draws half its water from three upper Delaware reservoirs that lie in New York state. At the height of the drought, the city violated the 1954 decree by reducing for one week its releases downstream substantially below the required flow, demonstrating the ultimate water law: Who controls the valve owns the water. The decree also requires that the city release enough water to maintain a flow of 1,750 cubic feet per second at the U.S. Geological Survey gauging station at Montague, N.J., just below the New York state line.

The 1960s drought spurred Congress to authorize a vast Corps of Engineers study, the Northeastern United States Water Supply Study. It pinpointed the metropolitan areas of Washington, New York City and eastern Massachusetts-Rhode Island as "critical." The region's population of 50 million would grow to 80 million by the year 2020, the Corps predicted, making those areas even more vulnerable to recurring droughts.

"Droughts had occurred in the past and had caused inconvenience and economic losses," the 1977 study said. "But not until the 1960s had the great urban centers perceived themselves to be vulnerable to a water system breakdown—a situation involving not inconvenience with severe but acceptable monetary losses, but involving potential loss of life through fire, disease and deprivation along with economic losses of disastrous proportions."

The Corps acknowledged the value of river basin management but shied away from recommending it for the Hudson. The reason was opposite from New York City, which had torpedoed a similar proposal by a state commission in 1973. The Corps said that "regionalization generally is not perceived as desirable, except in the largest urban area, where it is a matter of necessity."

Enter the drought of 1984-85, which hit New York City hard.

WATCHING THE FLOW

In July 1985, Koch convened the Intergovernmental Task Force on New York City Water Supply Needs, chaired by a deputy mayor and including representatives from four city departments, neighboring Westchester County, two state agencies and two federal agencies, the Geological Survey and the Corps. In 1986, Koch added 11 counties from Long Island, the Hudson River valley and the upper Delaware basin.

"We expanded the task force membership because we recognize that in water supply, as in so many other ways, New York City is part of a larger region," Koch said in a statement. "We are committed to an open, negotiated process with the rest of the region as we study our options for increasing our water supply. Any significant new sources of water for the city will be located outside our borders. Any solution to our water supply problems will be a regional solution."

The "region' Koch put together embraces two river basins and an island's aquifers. Gotham, in effect defined its own "watershed," an imperious maneuver that nevertheless was executed more democratically than past water grabs were. Not unexpectedly, those affected outside the city have reached with both praise and alarm.

"Finally, after decades of resisting calls to conserve water, New York City is beginning to act," said Mary Ellen Noble, an officer of the Watershed Association of the Delaware River. "Everyone here is delighted, but we are now waiting to see what they do. People here have grown bitter watching New York waste water over the years. It's ironic, too, because they are now looking to their own river, which means the concerns we have long faced will now come a lot closer to their home."

New York City has never metered its residential water service; users are billed on the basis of building frontages and the number of water-using fixtures. The city's average residential water bill comes to only $112 a year. A 10-year metering plan is now under way, with completion scheduled for 1996. Although metering is more a water management tool then a conservation measure, it is considered a mandatory step toward controlling demand.

Water conservation measures, however, are high on the list of the task force's recommendations. They include stepping up a leak detection survey and enforcing the state's low-flow water fixtures law.

Plumbing manufacturers have opposed stringent state enforcement, and so the city is now trying to get state authority to enforce the state code with its own inspectors. The state code regulates some 500 water fixtures—requiring, for example, toilets, in new buildings, that use less water. A pilot retrofitting program also is planned to test lower-flow toilets. The National Wildlife Federation, meanwhile, is promoting legislation to establish federal performance standards for new plumbing fixtures and major appliances.

How much water metering and conservation measures will save in New York City is a matter of speculation. The 1977 study by the Corps estimated that New York City metering alone would save about 50 million gallons a day—less than a 4 per cent savings based on the city's current usage of 1.4 billion gallons a day. But Jeffrey L. Sommer, first deputy commissioner of the city's Environmental Protection Department, predicts a 10-30 percent savings.

The city's major planning problem is that it doesn't really know what happens to its water after it enters the city. A preliminary study two years ago predicted a rise in demand by the year 2025 ranging from 250 million-1 billion gallons a day, or up to 71 per cent. "The task force concluded that we

needed to do a very detailed demand study, which is under way now and will be ready in another year," Sommer said.

EYEING THE HUDSON

What bothers the city's neighbors up the Hudson River is both the "softness" of its water data and the possibility that the city will decide to take up to one billion gallons a day from the river. Currently, the city draws water from the Hudson only during drought emergencies.

The task force's "high-flow" proposal—to take water when the river is full—is environmentally preferable to taking water during droughts, when the river is low, because the water's quality is better and the impact on salinity is less. But 1 billion gallons a day is a lot to draw out of a river—even the Hudson, whose average flow at Poughkeepsie exceeds 12 billion gallons a day.

The Hudson is tidal all the way to Troy, 153 miles upriver. Unacceptable salinity "spikes," or momentary high levels, already have been recorded at Poughkeepsie, which, along with a half-dozen other nearby communities, depends on the river for drinking water. Unlike, New York City, these communities have no other source of high-quality water. The city enjoys extremely high-quality water because most of it comes from the relatively undeveloped counties of the Catskill and upper Delaware watersheds.

The aqueducts that bring this water to the city pass through some of the upper Hudson counties that are getting increasingly nervous about the city's future demands. These counties now make up the fastest-growing region in the state: Dutchess County predicts a 42 percent increase in water demand in 20 years. But because they have the right to buy water from city-owned aqueducts, these localities are torn between going along with New York City and opposing it.

"These counties are concerned that New York City doesn't get the jump on them concerning Hudson River water," said Cara Lee, environmental director of Scenic Hudson Inc. "They want to make sure the city makes the best use of its present water supplies before it develops new ones. But they see New York going ahead to develop new supplies while it is still just talking about conservation. Metering is not a comprehensive conservation plan."

Scenic Hudson, an environmental group based in Poughkeepsie, hosted a symposium last June called Touching Bottom: New York City's Water Crisis. "Continuing to meet New York's great thirst poses a water allocation problem that is unprecedented in the eastern United States," Lee wrote in a pamphlet. The pamphlet included a proposal by Dutchess County Executive Lucille Pattison to create a Hudson River Basin Water Commission.

Pattison faulted the New York State Environmental Conservation Department for failing to organize a long-term plan for the region's water needs. "There is no single agency, state or otherwise, responsible for such an effort," she wrote. "While it is commendable that the city has included other communities, . . . the process is theirs, not ours."

Since then, the state environmental agency has proposed a "draft strategy" that Scenic Hudson's Lee considers flawed because of its reliance on "soft" city data and a "failure to address the institutional question." Whether the upstate counties can move the state their way is not yet clear. Cornell University professor Walter Lynn, chairman of the New York State Water Resources Planning Council, said, "If one has to develop other sources of water, then it is clear that in this day and age, New York City cannot arbitrarily throw its weight around and do whatever it pleases."

The city's Environmental Protection Department says there is room for compromise. "There is some level of water we can take without any detrimental impact to anyone or environmentally," Sommer said. "The real question is finding out how much. This is the prime option being considered. There clearly are legitimate concerns by the people along the Hudson."

TAPPING THE DELAWARE

But New York City's "watershed" also includes another river basin—the Delaware. In this case, a "good faith agreement" of 1983 between the basin's four governors and Koch established more realistic rules for allocating water during droughts. Instead of 800 million gallons a day, New York City is gradually whittled down to 540 million gallons a day, a decrease that in fact took place from July 25–Oct. 2, 1985. At the same time, releases from the three city reservoirs into the Delaware were cut below the Court-set 1,750 cubic feet per second. Fortunately, the "salt front" didn't migrate upriver far enough to threaten the drinking water of Philadelphia and Camden, N.J., as it did in the mid-1960s.

The critical question is what will happen in a severe drought. Will New York City honor the Delaware Basin's "good faith agreement" or break the rules again?

Then there is the problematical impact of the greenhouse effect, an ecological wild card that could throw off anyone's best plans. This is the future effect of the planet's gradually rising sea level caused by increasing amounts of carbon dioxide, methane, chlorofluorocarbons and other gases in the atmosphere that are warming the globe, speeding the melting of polar ice caps.

A 1986 study ordered by the U.S. Environmental Protection Agency (EPA) and the Delaware River Basin Commission said a 21-inch rise in the global sea level by 2050 would "imply" a rise of 2.4 feet in the estuary, which would send the "salt front" up the Delaware about five miles beyond Philadelphia in a 1960s-type drought. The study said that salinity increases could be offset by additional reservoir capacity. But the commission abandoned a huge reservoir project, Tocks Island, in 1977 because of local opposition. The commission's current reservoir expansion planning to the year 2000 does not include greenhouse-effect predictions.

By expanding a reservoir and bringing a new one on line, commission executive director Gerald M. Hansler said, "we can easily meet" a more stringent chloride standard by the year 2000. However, this prediction assumes only the historical sea-level rise of 0.1 inch per year. The greenhouse-effect study assumes an annual rise three times greater.

Neither the New York City task force nor the Delaware commission has so far cranked the greenhouse effect into its planning, although Sommer said the city's long-term study would include it. "Frankly, at this point there is not enough information to allow us to plan anything about the effects," he said.

Are the New York groups and the Delaware commission doing everything possible to deal with future droughts? Sheer thinks not, but not because of lack of intent. Sheer faults the system.

"There's no movement at all at a scale necessary to resolve the problem," he said. "Nobody has yet tried to look at New York, Long Island and the Delaware as a single water system. The mayor's task force is looking at Long Island and New York, and that's not sufficient. Unless you look at the Delaware too, New York doesn't have the flexibility to operate the Hudson River well. Unless you integrate the operation of the Delaware reservoirs into the development of alternative supplies for New York City, you can't operate the new facilities very well."

Sommer and Hansler disagree. "Sheer has told the commission we could save more water in those three New York City reservoirs if we didn't have to meet the Court-set 1,750 cubic feet per second rule at Montague," Hansler said. "Well, the downbasin states want that flow. They need it for recreation, fisheries, wildlife and domestic use. That's what they bargained for, and that's what they won."

Sheer responded: "Those rules were set in 1954, when we were much less sophisticated about how to operate reservoir systems. . . . They struck a deal that seemed fair at the time. But now we can make releases that are predicated on actual measurements of salinity. This could increase the effectiveness of those releases. But we are stuck with this rule of using the flow at Montague, and half the time, we are releasing water when we don't need it to check the salinity downstream. Sometimes they are releasing too much water, and sometimes not enough. So the rules are not letting us utilize the water in the best possible way."

Whether and when the federal government will step into such water management issues in a more aggressive way under the next Administration is still an open question.

Under Reagan, the only discernible national water policy has been budgetary restraint. Reagan's first appointee at the Corps, William R. Gianelli, came to Washington to sell cost-sharing and left disappointed. His successor, Robert K. Dawson, succeeded, aided by an alliance with environmental organizations. But he is not optimistic about government's willingness to make changes. Dawson, now an associate director of the Office of Management and Budget in charge of natural resources, energy and science, predicted:

"It's going to get tougher, not easier. Unfortunately, it will take a much bigger crisis than we now have before people will really make some of the tough moves to do this cross-pollination in thinking. This is too bad, but it may take some more publicized problems before we can really do anything more. . . . There are so many toes that get stepped on when you start making institutional changes."

[From the New York Times, March 10, 1991]

HIGH AND DRY IN CALIFORNIA: NATURE HUMBLES A STATE OF MIND

(By Robert Reinhold)

LOS ANGELES.—Californians yet again have cause to ponder the consequences of the profligacy, recklessness and greed that have long dulled the California dream of hope, renewal and optimism. In what the historian Kevin Starr has called "the intensified pursuit of human happiness" that marks the energetic history of California, insult after insult has been inflicted on this earthly paradise. The great Gold Rush left the mountains scarred like a battlefield. Lumbermen denuded the magnificent stands of redwood to the point that the few remaining trees are tourist curiosities. Automobiles have exhausted the air of Southern California. And now, it seems, the water is nearly all gone.

It did not have to be this way. For four dry years, water officials gambled that the rain and snow would resume soon, treating

drought as a temporary inconvenience. To maintain near-normal deliveries, they drew down reservoirs to dangerously low levels. Even as drought tightened its grip in 1990, California farmers racked up record receipts and income. California remained the nation's second largest grower of rice, a monsoon crop that can be grown here only with cheap subsidized water and Federal crop supports. And there seemed plenty of water for Angelenos to fill their pools and wash their sidewalks.

Only now, well into the fifth dry year, when it may be too late, has concerted reaction set in with panicky attempts to conserve water and find additional sources. A few days ago, the Napa Valley wine town of St. Helena, with only a 125-day supply left in its reservoir, imposed rationing for the first time in history. In the San Joaquin Valley, the city of Merced adopted an odd-even outdoor watering rule on Monday, the same day the State Water Project cut off supplies to all farmers. Cities throughout Southern California last week were preparing rationing plans.

The state government's response so far has been hesitant and confused. The Water Resources Control Board twice set dates to impose statewide restrictions and twice postponed them amid doubts about its authority, ultimately deferring to Gov. Pete Wilson, who has appointed a special water panel to make emergency recommendations by Friday. His short-term options are limited, the long-term ones painful.

Few places on earth offer a more improbable setting for vast industrialized cities and prosperous farms than this mostly desertified state. Even as the American settlement of the Pacific frontier was gathering momentum a century and a half ago, a United States naval officer, Lieut. Henry Augustus Wise, pronounced California's future bleak. "Under no contingency," he wrote in 1849, "does the natural face of Upper California appear susceptible of supporting a very large population; the country is hilly and mountainous; great dryness prevails during the summers, and occasionally excessive droughts parch up the soil for periods of 12 or 18 months."

With great disdain for such negativism, Californians rearranged the environment to get the water they needed. Dams and reservoirs snatched water from the snows of the Sierra of Northern California and funneled it into thick aortas, the mighty aqueducts that course through the deserts making rich farms out of the malarial bogs of the Central Valley and sprouting powerful cities where none were naturally meant to be. Not even mountains stood in the way of the engineers. Huge pumps, like throbbing heart muscles, thrown the water of the Tehachapi Mountains and down into that arid tract known as the Los Angeles Basin, land of car washes, swimming pools and now home to 15 million. The result is perhaps the most problematic and vulnerable urban conglomeration in America today, threatened by the twin terrors of earthquake and drought.

"There is something disturbing about this corner of America, a sinister suggestion of transience," wrote the British author J. B. Priestly. "There is a quality, hostile to men in the very earth and air here. As if we were not meant to make our homes in this oddly enervating sunshine." He went on: "California will be a silent desert again. It is all as impermanent and brittle as a reel of film."

That may or not be true. But the means by which the water problem is solved will speak volumes about whether California, in its maturity, will learn from its youth or repeat its mistakes.

"In Iowa there is a humility about the farmer's reliance on nature—he embraces nature and allows himself to be embraced by its generosity," J. S. Holliday, historian of California's rambunctious Gold Rush past, said in an interview. "But here there is an entirely different attitude. The miners brought the attitude that nature had to be cracked open, that nature is a bounteous force from which we will take whatever we can get however we can get it. We were so flagrant, so arrogant, so profligate."

Already, history is repeating itself. Five years of water profligacy in the face of drought have taken an environmental toll. According to the Natural Resources Defense Council in San Francisco, striped bass counts in the Sacramento Delta and San Francisco Bay are at their lowest levels in history, and numerous birds, sea animals and plants have become candidates for the endangered species list because reduced fresh water flows to estuarine waters have raised salinity.

But the solution that is so obvious to conservationists—to change the outdated system of water rights and impose new incentives for more efficient agriculture—may not be the most politically feasible outcome. It is sobering to realize that even if every household in California, population 30 million, cut its annual water use by 25 percent that would reduce overall use by only 2 percent; agriculture consumes 85 percent of all available water.

"It is an empty exercise to put cities through elaborate conservation exercises," argues William L. Kahrl, author of "Water and Power," the definitive chronicle of California water wars. "That picks the course that causes the maximum inconvenience to the largest number of people, rather than looking at the reality of the deliveries. The lesson is they are very likely going to say: 'I don't care about the Sacramento Delta. That's a long way away. Give me more water.'"

Southern California, with the bulk of the population and political power, has long coveted the water of the north. The largest new potential for water would come from building the long-delayed peripheral canal that would channel more water to the south from the Sacramento Delta, water that would otherwise flow into San Francisco Bay. Talk about tapping the rivers of rural far-northern California has also been revived, a course that would please the farmers as much as urban leaders, but that would rearrange the environment even more than it has been.

"I do not have any thought of giving up water—it's a matter of how we get it," said Carl Boronkay, the general manager of the Metropolitan Water District of Southern California. His is the largest and most politically powerful of the state's 2,000 water districts, supplying half the water used by 15 million people in the fast-growing region from Ventura to the Mexican border. Mr. Boronkay talks of taking water away from rice farmers, of voluntary transfers between regions—easier said than done because water cannot be transferred like money between accounts. Reclamation, rationing and conservation are fine, he said, but "we need wet water."

The water crisis gives Californians one more reason to contemplate the state's failure to prepare for uncertainty and for growth that seems as inevitable as it is unwanted. Schools, social programs, freeways, bridges, prisons—none has kept pace with the exploding population. "There are a full raft of problems we have failed adequately to plan for," said Bill Bradley, author of the forthcoming book "The United States of California." "California is the quintessence of the American dream," he said. "Its history has been based on betting on the prospect of things going one's way. There is a lot of strength in being optimistic. But the down side is what we are confronting now."

THE FIGHT FOR MORE WATER

With the announcement last week that irrigation authorities were cutting off all water to farmers, including those in the huge Central Valley, and with Southern California cities preparing rationing plans, the drought that is now in its fifth year has exposed more starkly than ever the precarious assumption on which California's civilization is built: that even in a desert an endless stream of water is an inalienable right.

Even in the wettest times, providing water for California's agriculture industry and its growing megalopolises is a heroic (some would say hubristic) act involving hydrology, geography and power politics that sometimes seems to border on civil war. Northern California may have been born in the Gold Rush but the resource that has become the most coveted is the water that falls on its mountaintops. But while three-fourths of the state's rain and snow falls north of Sacramento, three-fourths of the population is in the southern part of the state. In a mammoth feat of civil engineering, water is funneled by a labyrinth of dams and reservoirs into aqueducts that lead to the politically powerful south.

The Northerners ask why they should make such a sacrifice for the Southerners, whom they like to stereotype as water-guzzling users of swimming pools and car washes. And both the Northerners and the Southerners resent having to share water with the farmers, who have long insisted on growing cotton, alfalfa, rice and other crops requiring huge amounts of water. About 85 percent of the water in California is, or rather was, used by farmers, who produce half the fruits and vegetables in the United States.

And so the effects of the drought ripple beyond California. Halfway through the so-called rainy season, the snowpack in the Sierra Nevada stands at 13 percent of normal, making hopes of a spring runoff seem an elusive dream.

[From the Fresno Bee, Nov. 10, 1989]

ABUSES AS CLEAR AS WATER

The General Accounting Office's lastest investigation of maladministration of federal irrigation programs merely confirms—again—what critics of the Department of the Interior have been saying all along.

In detailing the methods by which huge agricultural corporations in California's San Joaquin Valley and elsewhere have managed to keep collecting hundreds of millions of dollars in water subsidies that were intended to go to small family farmers, the GAO report notes dryly that "Congressional expectations have not been met." That's doubly disappointing since those expectations, in recent years at least, have not been very high.

The compromise on the so-called reform act that the Reagan administration hammered out with Congress in 1982 gutted most of the original intent of federal reclamation law. And the few protections it retained for the taxpayers were immediately extracted by the Department of the Interior in its administrative regulations for carrying out the new statute.

Absolutely no one has been fooled or misled about what was going on. Congress stood by and let it happen. Under pressure from wealthy agricultural interests, federal reclamation officials rewrote their own rules to ensure that the big companies would neither have to change their operations nor pay full cost for the water they're getting.

As a result, through phony trust arrangements that the Department of the Interior regards as perfectly legitimate, corporate farmers such as the J.G. Boswell Co. can keep right on collecting double benefits from the taxpayers by using cheap federal water to grow federally subsidized crops on the same lands they've always controlled. And now Interior Secretary Manuel Lujan wants to perpetuate some of those rip-offs for another 40 years by issuing new water service contracts without even considering the effects.

Rep. George Miller, Sen. Bill Bradley and some of the other members of Congress who've been interested in reclamation reform seem to be waiting to see what reaction the new GAO report draws before deciding what to do about it. The report itself explains how to put a stop to abuses like the Boswell trust. But many feel that kind of tinkering doesn't go far enough.

Some congressional reformers have proposed forcing agribusiness to decide whether it wants water subsidies or crop subsidies—but not both. Others want to simplify things by saying that any farm above a fixed size will have to pay full price for its water with no exceptions. In the past, agribusiness and its political allies have staved off such proposals for fundamental reform by contending that there's no evidence that the abuses were as bad as the reformers claimed.

The GAO report should silence that argument.

[From the Los Angeles Times, Nov. 3, 1989]

ENVIRONMENTAL SHOWDOWN

The Bush Administration's schizophrenia over the environment and natural resources is nowhere more apparent right now than in the proposed renewal of 40-year irrigation contracts between the U.S. Bureau of Reclamation and California farmers. The internal struggle represents a major conflict between the Environmental Protection Agency and Secretary Manuel Lujan Jr.'s Department of the Interior, with the Council on Environmental Quality siding with EPA. This is viewed by many in the Administration as a critical test case. The issue has not caught much attention outside of selected California constituencies, but its outcome could determine the Administration's future course on environmental matters and Lujan's ability to survive as a politically viable secretary of interior.

If the Administration follows logic and apparent legal precedent, it will order a full environmental impact study of the contract renewals and their considerable effect on California's complex water distribution system. If the Administration elects to hew to the narrow and tenuous legal claims of the Department of the Interior, it will reject an environmental study. The question is whether the Administration will relent now and maintain President Bush's desire to be a friend of the environment. Or whether it will side with mostly Republican friends in the agricultural community, give away considerable environmental credibility, and possibly lose the issue in the courts anyway.

The only reasonable answer is to proceed with the environmental impact report. This may embarrass Secretary Lujan, but it will not necessarily mean the farmers will lose any of the water they have been using from the Bureau of Reclamation's Central Valley Project the past 40 years. For the Administration to uphold Lujan's defiance of EPA would have the same effect as saying it believes in the National Environmental Policy Act, the keystone of American environmental law, only when it chooses to. From that point on, any claim by Bush that he is a friend of the environment will have quite a hollow ring.

The somewhat unfortunate scapegoat of the affair is the Orange Cove Irrigation District on the east side of the San Joaquin Valley, the first of some 300 districts to sign water deliverly contracts with the Central Valley Project, in July, 1949. Orange Cove is not typical of the agribusinesses that have been the principal targets of conservation organizations such as the Natural Resources Defense Council for receiving subsidized federal irrigation water, sometimes for growing subsidized crops. Most Orange Cove farms are small family operations that use water efficiently. Lujan issued a new 40-year contract to Orange Cove last summer in defiance of EPA's decision. The Department of Interior claims that other federal law requires it to renew the contracts and that no formal impact study was required. The Council on Environmental Quality, an arm of the White House that attempts to settle intra-Administration disputes of this sort, has sided with EPA. Lujan has had the matter under review ever since and is expected to announce a decision soon.

The EPA position reportedly also has struck a sympathetic chord within the Justice Department where Richard Stewart is the chief environmental lawyer, a former Harvard Law professor and former chairman of the board of the Environmental Defense Fund. Stewart, however, must defend the Department of Interior against a Natural Resources Defense Council lawsuit that seeks to force Interior to do the environmental analysis.

While only the one irrigation district is directly involved, the outcome of the dispute will set a precedent for hundreds of contracts that will be expiring throughout the West. The Central Valley Project of California alone distributes some 7 million acre-feet of water a year, or more than seven times as much water as the city of Los Angeles uses annually.

To ignore the environmental effects of such diversions is to show indifference to massive alterations in California's water system over the years and to defy the changing nature of its water needs. The Bush Administration could set national water policy ahead by years if it approved the environmental studies, perhaps in a joint venture with California, and used them as the centerpiece for the reconciliation of a variety of water problems affecting both farmers and city folk.

[From the Los Angeles Times, Nov. 6, 1989]

GAO WOULD SHUT WATER LAW LOOPHOLE

(By Marlene Cimons)

WASHINGTON.—Congress should close a loophole in the law that regulates use of federally subsidized water supplies, the General Accounting Office said in a report released Sunday. The congressional watchdog agency said that the government is losing millions of dollars in revenue because some farmers are taking advantage of the law to qualify for cheap irrigation rates.

The 1982 Reclamation Reform Act, designed to help states where water is scarce, primarily in the West, allows farms of 960 acres or less to receive water at low, subsidized rates. Some owners of large farms, particularly in California, have circumvented the size limit by reorganizing their holdings into smaller parcels so that they qualify for the cheap water.

"Congressional expectations have not been met," the report said in recommending that the loophole be closed.

In one case study cited in the report, Alpha Farms, one of California's leading cotton producers, reorganized its 12,345 acres into separate landholdings through 18 partnerships, 24 corporations and 11 trusts. The GAO said there were indications that the smaller holdings, all in the Central Valley, continued to be operated as one large farm.

In another case, the GAO said, a father, son, daughter and her husband each owned parts of a 4,638-acre farm and applied for the subsidized water as four landholdings of less than 960 acres each.

"However, the family continued to operate the four landholdings as one farm," the GAO said.

In the sample cases it reviewed, the GAO found that owners or lessees in 1987 paid about $1.3 million less for federal water than they would have paid if their respective multiple landholdings had been considered collectively as large farms subject to the legal size limit.

"Reduced revenues likely will continue to occur annually unless the act is amended," the GAO said.

Rep. George Miller (D-Martinez), chairman of the House Interior and Insular Affairs subcommittee on water, power and offshore energy resources, blamed the Interior Department for allowing farmers to get around the law.

"Wealthy farmers in California's Central Valley have subverted the intent of federal water laws and top Interior Department officials, aware of the abuse, declined to take corrective action," he told the Associated Press.

Steven Goldstein, a spokesman for the Interior Department, said Sunday that Interior officials had not yet seen the report. "However, if Rep. Miller believes the law should be changed, that is certainly within his purview as a member of Congress," he said. "The secretary has a responsibility to carry out the law as it is written."

The law does not "preclude multiple landholdings, each of which is within the act's 960-acre limit, to continue to be operated collectively as one large farm while individually qualifying for federally subsidized water," the GAO said.

"Some farmers have taken advantage of this loophole by reorganizing their farms into multiple, smaller landholdings to be eligible to receive additional federally subsidized water * * * using various partnerships, corporations, and/or trust arrangements," the report continued. "For all practical purposes, these smaller landholdings continue to be operated collectively as single large farms, much as they were before being reorganized."

Mr. BRADLEY. Mr. President, I am pleased to join the senior Senator from Oregon [Mr. HATFIELD] in sponsoring the Western Water Policy Review Act of 1991. No one familiar with the subject of western water policy can be satisfied with the current state of affairs. Although the Federal Government and the States have invested billions of dollars in water supply infrastructure, important contemporary needs are ig-

nored or served only with the greatest difficulty. Facilities are not the central problem, policies are.

Western water policy has changed little from the turn of the century, while the West itself has changed dramatically from the underpopulated agrarian region with simple needs which defined the Federal Reclamation Program and other manifestations of western water policy. The West is now the most urbanized region in the Nation. The 17 Western States which host the reclamation program are home to about 76 million people, about 60 million of whom, or 80 percent, live in metropolitan areas. In California, the percentage is over 95. More than 80 percent of the residents of Washington, Colorado, and Texas live in metropolitan areas. Overall, the West's cities grew at almost twice the national rate during the 1980's. To use Oregon as an example, between 1980 and 1987, Oregon's urban population grew at almost four times the pace of that State's rural population.

The cities' rise is matched by striking declines on the farm and in rural areas. A century ago, almost half of the U.S. population lived on farms. As recently as 1950, about 15 percent lived on farms. By 1988, only 2 percent of the total U.S. population and less than 10 percent of the entire rural population resided on farms. Farming is the third fastest declining job category in the Nation's labor force, just ahead of stenographers. Between 1979 and 1985, the number of jobs in rural areas grew by only 3 percent, while the number of jobs in urban areas grew by 10 percent. Rural areas have been losing population for years. In fact, between 1982 and 1987, net outmigration from rural areas to urban areas totaled almost 2 million people, with the majority of those leaving being the youngest and best-educated.

These numbers mean something. They mean that the principal need for new water supplies lies in the West's cities, not rural areas. The numbers mean also that continued Federal investment in agricultural irrigation may no longer be the best means of helping develop western rural economies. Perhaps the assets of the reclamation program—water, power, storage and conveyance facilities, repayment revenues, and human talent—could be helpful in new ways. Without a doubt, it is time to explore comprehensively the policy adjustments which will provide the West with the best and broadest range of public benefits.

At the same time, it is vital for this Nation to reshape western water policy to grant environmental protection its rightful place as an equal—and essential—partner to economic development. Senator HATFIELD is all too aware of the environmental costs of antiquated Federal water policies in the Columbia River basin. The Committee on Energy and Natural Resources regularly confronts critical environmental problems created by traditional western water policies which discourage efficient water use and ignore public values in fish, wildlife, and environmental quality. The Nation is spending millions of dollars to clean up after the Federal Reclamation and water development programs. This legislation offers us a welcome chance to move away from piecemeal remedial actions toward broadly applicable preventive measures.

I look forward to working with Senator HATFIELD on this beneficial measure.

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

S. 1229. a bill to exempt certain small employer purchasing groups from certain requirements of State laws relating to health benefit plans and to amend the Internal Revenue Code of 1986 to equalize tax benefits for self-employed persons participating in such groups; to the Committee on Finance.

SMALL EMPLOYER HEALTH INSURANCE INCENTIVE ACT

• Mr. MCCAIN. Mr. President, I rise today to introduce important legislation to address the growing problem our Nation's small businesses are facing in the ability to purchase affordable health insurance for their employees. This legislation, the Small Employer Health Insurance Incentive Act of 1991, will provide incentives and make it possible for small businesses, including the self-employed, to form groups for the purpose of purchasing affordable health insurance.

Today, between 32 and 37 million Americans are without adequate health insurance. Because of the continuing escalation of health care costs in this country, many of these people are forced to go without routine and needed medical care.

The result is more acute health problems in some individuals, including children. These increased health problems, the result of inadequate health insurance, then cause an increased drain on government resources.

Contrary to what most of us believe, the bulk of uninsured Americans are not unemployed. Rather, between 70 and 80 percent are employed or are dependents of employed individuals. The vast majority of these work for small businesses. Also, contrary to general opinion, these people are without insurance not because small business owners are unwilling to provide coverage, but in large part because the business is unable to pay the high cost of health coverage as mandated by most States.

I believe the best approach to this problem is providing employees with the coverage they need, giving small firms affordable options for covering their employees, helping insurance providers as they struggle to keep pace with rising health care costs, and reducing the health cost drain on our government resources. On March 20, I joined with Senator DURENBERGER in introducing S. 700, the American Health Security Act of 1991—legislation to assist small businesses with under 50 employees by providing them with alternatives to existing insurance plans, eases the cost of buying insurance by providing tax incentives, and limits premium increases.

This legislation in no way mandates coverage. While some believe mandates are the way to go, I do not. I believe mandates would only make it more difficult for small businesses to purchase affordable health care coverage for their employees.

State mandates imposed on insurance coverage lead to a great deal of the cost of small group health policies. These mandates have made those policies too costly for many small businesses. In fact, premium rate increases of 50 to 100 percent are not uncommon for these policies.

The legislation I am introducing today, the Small Employer Health Insurance Incentive Act of 1991, goes beyond the American Health Security Act to address the issue of whether we should permit small businesses to band together to purchase insurance. And, where the American Health Security Act covers those businesses with up to 50 employees, this legislation would cover businesses with as many as 100 employees.

Mr. President, this issue of permitting small businesses to band together to purchase health insurance is very important. The model for this legislation is based on the Council of Smaller Enterprises [COSE] in Cleveland, OH. COSE is a group that makes health insurance available and affordable to 10,000 small employers and over 120,000 employees and their dependents.

Because of its administrative efficiencies and purchasing power, premium rates for COSE increased by only 34 percent between 1981 and 1990, compared with a 176-percent increase for commercial insurance rates during the same period. These cost savings have enabled approximately 2,000 small employers in the Cleveland area to offer employee health insurance that could not do so before joining COSE.

State regulations such as mandated health benefits, health insurance premiums taxes, and restrictions on managed care make it difficult for small employers to contain costs. In contrast, larger employers have the economic wherewithal to self-insure under the Employee Retirement Income Security Act [ERISA] and are therefore exempt from State regulation of health insurance.

Under the bill, the following incentives would be offered to encourage the

formation of small employer purchasing groups:

Exemption from State-mandated health benefits;

Exemption from State taxes on health insurance premiums; and

Exemption from State laws that prohibit certain types of managed care activities.

Unlike the self-insured ERISA plans, the small employer purchasing groups would only be allowed to purchase health insurance and could not bear any risks for actually insuring their members.

All small employer purchasing groups must be certified by the Secretary of the Department of Health and Human Services. To acquire such certification, the small employer purchasing group must apply with the Secretary and demonstrate that it meets the above criteria.

To encourage self-employed individuals to join small employer purchasing groups, the tax deduction for health insurance for the self-employed would be increased from 25 percent to 100 percent for those that join such a group. These particular provisions are similar to those contained in S. 88 and S. 89 which I also recently introduced with Senator DURENBERGER.

Mr. President, this bill I am introducing today, which was just introduced in the House by Congressman CHANDLER, together with the other three I have just discussed, forms a comprehensive package which will go a long, long way in resolving the difficulty our Nation's small businesses are having in obtaining affordable health insurance. And, in the process, this package significantly addresses the uninsured problem we are facing in this country. I believe it is time that we take this issue on in a head-on fashion, which these bills do.

This is fair legislation. It does not seek to penalize employers or insurers. No mandatory coverage is called for, and premium rates are capped within ranges that will reflect the marketplace and actual experience. This package of bills represents a real, working solution for millions of uninsured Americans.

I hope that my colleagues will examine these bills closely and consider adding their names as a cosponsor.

I ask unanimous consent that the entire text of the Small Employer Health Insurance Incentive Act of 1991 be printed in the RECORD.

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

S. 1229

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 Employer Health Insurance Incentive Act of 1991."

SEC. 2. PREEMPTION FROM INSURANCE MANDATES FOR QUALIFIED SMALL EMPLOYER PURCHASING GROUP

(a) QUALIFIED SMALL EMPLOYER PURCHASING GROUP DEFINED.—For purposes of this section, an association is a qualified small employer purchasing group if—

(1) the association submits an application to the Secretary of Health and Human Services at such time and in such form as the Secretary may require; and

(2) on the basis of information contained in the application and any other information the Secretary may require, the Secretary determines that—

(A) the association is administered solely under the authority and control of its member employers,

(B) the association's membership consists solely of employers with not more than 100 employees (except that an employer member of the group may retain its membership in the group if, after the Secretary determines that the association meets the requirements of the paragraph, the number of employees of the employer member increases to more than 100),

(C) with respect to each State in which its members are located, the association consists of not fewer than 100 employees, and

(D) at the time the association submits its application, the health benefit plans with respect to the employer members of the association are in compliance with applicable State laws relating to health benefit plans.

(b) PREEMPTION FROM INSURANCE MANDATES.—

(1) FINDINGS.—Congress finds that employer purchasing groups organized for the purpose of obtaining health insurance for employer members affect interstate commerce.

(2) PREEMPTION OF STATE MANDATES.—In the case of a qualified small employer purchasing group described in subsection (a), no provision of State law shall apply that requires the offering, as part of the health benefit plan with respect to an employer member of such a group, of any services, category of care, or services of any class or type of provider.

(3) PREEMPTION OF TAXES ON PREMIUMS.—In the case of a qualified small employer purchasing group described in subsection (a), no provision of State or local law shall apply that requires a provider of insurance to pay a tax on premiums received from employer members of the group under a health benefit plan obtained by the group from the insurer for its employer members.

(4) PREEMPTION OF PROVISIONS RELATING TO MANAGED CARE.—In the case of a qualified small employer purchasing group described in subsection (a), the following provisions of State laws are preempted and may not be enforced against the health benefit plan with respect to an employer member of such a group:

(A) RESTRICTIONS ON REIMBURSEMENT RATES OR SELECTIVE CONTRACTING.—Any law that restricts the ability of a carrier to negotiate reimbursement rates with providers or to contract selectively with one provider or a limited number of providers.

(B) RESTRICTIONS ON DIFFERENTIAL FINANCIAL INCENTIVES.—Any law that limits financial incentives that a health benefit plan may require a beneficiary to pay when a nonplan provider is used on a non-emergency basis.

(C) RESTRICTIONS ON UTILIZATION REVIEW METHODS.—(i) Any law that—

(I) prohibits utilization review of any or all treatments and conditions;

(II) requires that such review be made by a resident of the State in which the treatment is to be offered or by an individual licensed in such State, or by a physician in any particular speciality or with any board certified speciality of the same medical specialty as the provider whose services are being rendered:

(III) requires the use of specified standards of health care practice in such reviews or requires the disclosure of the specific criteria used in such reviews;

(IV) requires payments to providers for the expenses of responding to utilization review requests; or

(V) imposes liability for delays in performing such review.

(ii) Nothing in clause (i)(II) shall be construed as prohibiting a State from requiring that utilization review be conducted by a licensed health care professional, or requiring that any appeal from such a review be made by a licensed physician or by a licensed physician in any particular specialty or with any board certified specialty of the same medical specialty as the provider whose services are being rendered.

(c) EFFECTIVE DATE.—This section shall take effect 60 days after the date of the enactment of the Act.

SEC. 3. EXPANDED TAX BENEFITS FOR SELF-EMPLOYED PERSONS PARTICIPATING IN QUALIFIED SMALL EMPLOYER PURCHASING GROUPS.

(a) INCREASE IN DEDUCTION.—Paragraph (1) of section 162(1) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "25 percent" and inserting "25 percent (or 100 percent for insurance which is obtained by a qualified small employer purchasing group)".

(b) DEDUCTION MADE PERMANENT.—Subsection (1) of section 162 of such Code is amended by striking paragraph (6).

(c) DEDUCTION LIMITED TO QUALIFIED SMALL EMPLOYER PURCHASING GROUPS.—Subsection (1) of section 162 of such Code, as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(6) QUALIFIED SMALL EMPLOYER PURCHASING GROUP DEFINED.—In paragraph (1), the term 'qualified small employer purchasing group' means an association that is a qualified small employer purchasing group for purposes of section 2 of the Small Employer Health Insurance Incentive Act of 1991.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.•

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

S. 1230. A bill to authorize additional appropriations for land acquisition at Monocacy National Battlefield, MD; to the Committee on Energy and Natural Resources.

LAND ACQUISITION AT MONOCACY NATIONAL BATTLEFIELD, MD

• Mr. SARBANES. Mr. President, today I am introducing legislation, together with my colleague, Senator BARBARA MIKULSKI, to authorize additional appropriations for land acquisition at Monocacy National Battlefield. This legislation is the companion to a measure introduced by Representative BEVERLY BYRON, H.R. 990, which was recently approved by the House of Representatives. I want to commend Congresswoman BYRON for her leadership

in crafting this measure to preserve and protect a Civil War battlefield that is an important part of our Nation's heritage.

Monocacy National Battlefield Park in Frederick County, MD, is the site of a little-known but important Civil War battle referred to as the "Battle that saved Washington." It was here on July 9, 1864, that Union soldiers blunted a bold Confederate thrust at the Nation's Capital. Although outnumbered by some 14,000 Confederates under Lt. Gen. Jubal Early, 6,000 Union troops under the command of Maj. Gen. Lew Wallace, delayed the Confederate forces for a day, enabling Gen. Ulysses S. Grant to strengthen Washington's defenses and warding off the Confederacy's last attempt to bring the war to the North.

Congress first recognized the importance of the Battle of Monocacy by establishing the Monocacy National Military Park in 1934. In 1975, the battlefield area was placed on the National Register of Historic Places as a national landmark. Legislation introduced in the 1970's by the late Representative Goodloe Byron, authorized funding for land acquisition and the Park Service has acquired or obtained scenic easements on over half of the 1,670 acres that lie within the boundaries of the battlefield.

Unfortunately, the acreage presently authorized for acquisition by the Park Service is seriously threatened by encroaching development. Only 30 miles from Washington, and 46 miles from Baltimore, the battlefield is at the hub of an historic and well-traveled area. The site is virtually bisected on a north-south axis by I-270, the major route from the west to the Nation's Capital. The battlefield's superb location along an interstate highway corridor and within easy reach of major population concentrations also provides the basis for the serious and growing threat to the parkland.

Two major parcels of land in private ownership remain within the battlefield's authorized boundaries. The owners of one of the parcels, the Trail Farm, which encompasses approximately 300 acres and is zoned for industrial development, have indicated that family circumstances may force the sale of the property this year. Private developers have expressed an interest in acquiring the property, but the family would prefer to sell to the Park Service. However, the Park Service's authorized ceiling for acquisition of battlefield property is inadequate to purchase the tract. The legislation we are introducing today, simply provides the National Park Service with additional authority for this land acquisition.

Mr. President, a recent article in the Frederick Post entitled "The Case for the Monocacy Battlefield" and authored by Representative BEVERLY BYRON, presents very cogent arguments for protecting Monocacy National Battlefield Park. I ask unanimous consent that the article and a related editorial from the Frederick Post be printed in the RECORD immediately following my statement. This beautiful area—so important to the history of this country—must be protected before the opportunity to preserve and interpret this battlefield is lost forever. I urge my colleagues to join me in supporting this legislation.

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

[From the Frederick News-Post, May 29, 1991]

THE CASE FOR THE MONOCACY BATTLEFIELD

(By Beverly B. Byron)

Several years ago in a much and deservedly publicized situation, the National Park Service purchased from a developer a critical piece of land adjacent to Manassas National Battlefield in Virginia. The developer paid $10.5 million for the 542-acre tract in 1982, and it quickly jumped on the joyride of escalating land values that characterized the decade.

The ride ended in 1988 when Congress authorized the funds for the park service to pay the developers $100 million for the very same parcel it could have purchased six years earlier in order to achieve the same goal—to give the battlefield a buffer zone of protection from the area's growth.

As it exists today, the situation at the Monocacy National Battlefield is different from that at Manassas, but should we fail to act, they will have very much in common in the future. The National Park Service was at first uninterested in acquiring the land at Manassas. By contrast, it has targeted the Monocacy parcel as its top priority for land acquisition for the mid-Atlantic region.

And then there is this difference: The parcel of land that is being put up for sale at Monocacy is within the boundaries of the park and is therefore not, as some have understood it, the target of a federal land grab. But as with the land adjacent to Manassas, the property at Monocacy is of great interest to developers. At least two, in fact, have expressed interest in purchasing its 294 acres. Make no mistake about it. The market factors that resulted in the federal government paying close to 10 times the original asking price at Manassas are a possibility now at work at Monocacy if we do not move soon.

Assuming that it's considered unseemly to have development take place within the boundaries of a national park, to what length should we be willing to go to afford such historical places protection?

An editorial that appeared in your paper in August 1982 suggested this: "Development of Monocacy National Battlefield Park will someday provide an open, living textbook on the importance of this event in the outcome of the Civil War and the history of America. There are priorities, however, and these include first—buying outright or securing scenic easements of the land in the actual battle zone."

I agree, and that is why I have offered legislation to raise the authorization ceiling.

Without my bill the National Park Service cannot even entertain an offer from the land's seller, because it does not have the legal authority to do so at the current authorization level. But let's be clear about this so that your readers understand. My legislation does not appropriate one penny of federal money. It does not add to the federal budget deficit. It says only that Congress agrees that $27.8 million is the maximum that may be spent for all park operations and activities for an unspecified future time. Expenditures above that level would require another congressional authorization. For the record, the last such authorization was in 1980.

To some this may seem just a shell game or a matter of semantics, but it is an extremely important distinction, especially in view of last year's budget package that virtually set spending levels for the next five years. The actual funds that are available for land acquisition at Monocacy and other parks around the country will have to come out of the discretionary allocation of the Interior Appropriations Subcommittee. That funding level was set last October in the budget agreement.

So the real battle for preserving Monocacy is not my legislation though, as I have said, it cannot even begin without my bill. It will, instead, be in the Interior Appropriations process and how persuaded those legislators are that Monocacy represents a timely and critical priority on what is their very long list. I and the Maryland congressional delegation have been at work reminding our colleagues that a very expensive clock is ticking on Monocacy.

Though it is not certain, it is likely that the Trail Farm property within the battlefield's boundaries will be sold this year. We can delay and let developers move in. But whether they build or not, the value of the Trail Farm will almost certainly rocket right into the stratosphere.

Unless we deem it not worthy of preservation, the time for Monocacy is now. I voted against the legislation that provided the $100 million for Manassas, because its time had passed.

Should we lose this opportunity at Monocacy, I would be hard pressed to vote for an exorbitant purchase price later. Let us not again step wide-eyed into the trap we set for ourselves at Manassas, to then one day years hence say we made a costly mistake at Monocacy and then pay for it 10 times over. The high road in this case is to choose among our priorities and have the conviction to see that they are achieved.

[From the Frederick Post, Nov. 18, 1989]

A "GATEWAY" TO HISTORY

National Park Service Superintendent Richard Rambur had some good news for those who share an interest in saving the site of the "battle that saved Washington" and thereby preserving a part of our Frederick County heritage.

Within a year or two, the park service expects to have all 1,670 acres of the Monocacy National Battlefield under ownership or scenic easement, the superintendent noted in an Associated Press story Friday. Also, there are plans to build a visitor center at the site within four years.

Mr. Rambur envisions the Monocacy battlefield eventually becoming a "gateway to the Civil War" for tourists traveling from Washington and Baltimore on their way to the more familiar war landmarks of Gettysburg, Antietam and Harper's Ferry.

The park could attract more visitors than the 350,000 people who visited Antietam National Battlefield last year, Mr. Rambur said. And that means more tourist dollars and attention coming to Frederick County.

But it also means that the small clash between Union and Confederate forces that went unrecorded by Civil War correspondents, unnoticed by historians and untouched for so long by the federal government will finally get the recognition it deserves.

The Battle of the Monocacy, while not one of the major engagements of the Civil War, was a crucial encounter in that bloody four-year struggle. With a few thousand troops rushed from Baltimore, Union Maj. Gen. Lew Wallace blunted Confederate Gen. Jubal Early's bold thrust at the federal capital. Although the rebels beat the small Yankee army, the battle bought time for Gen. Ulysses S. Grant to reinforce the defense of Washington and save the panic-strickened city.

Now thanks to efforts by the park service, the local tourism council and others, those momentous events of 125 years ago will be rescued from obscurity and preserved for future generations to study and contemplate.●

By Mr. BENTSEN (for himself and Mr. ROCKEFELLER):

S. 1231. A bill to amend title XVIII of the Social Security Act to provide for coverage of colorectal screening examinations and certain immunizations under part B of the Medicare Program, and for other purposes; to the Committee on Finance.

MEDICARE PREVENTIVE BENEFITS ACT OF 1991

● Mr. BENTSEN. Mr. President, I am introducing today, with Senator ROCKEFELLER, the Medicare Preventive Benefits Act of 1991, which will improve the package of preventive services currently available to Medicare beneficiaries and establish mechanisms to promote future progress on health prevention as well.

Our colleague, Chairman DAN ROSTENKOWSKI of the House Ways and Means Committee, plans to introduce a companion measure today.

Under current law, preventive care services are generally excluded from the Medicare benefit package. This exclusion dates back to the inception of the program, when health insurance was seen primarily as protection against the expense of treating acute illnesses.

In recent years, Congress has enacted piecemeal expansions of the Medicare benefit package to include several preventive services: pneumonia and hepatitis B vaccines, pap smears, and mammography screening.

This bill will make a number of services newly available to Medicare beneficiaries.

First, it will extend coverage to screening services for colon cancer, as has been recommended by both the National Cancer Institute and the American Cancer Society.

In addition, it will cover influenza and tetanus/diphtheria vaccinations, and—for the small number of children who are entitled to Medicare—well-child visits and immunizations. These expansions follow the advice of the U.S. Preventive Services Task Force, an expert group appointed by the Secretary of Health and Human Services.

Finally, it will also make mammography screening available once a year, rather than once every 2 years as under current law. This change follows the recommendations of many groups, including the National Cancer Institute, the American Cancer Society, the American College of Obstetricians and Gynecologists, and the American Medical Association.

Equally important, the bill calls for the establishment of an ongoing research program under which the Department of Health and Human Services would evaluate the merits of additional preventive services for which there is currently insufficient evidence to warrant coverage.

Finally,. the bill looks beyond the current situation—in which new benefits are legislated on an ad hoc basis—to a time in which the Department makes preventive care coverage decisions administrative—in much the same manner as other types of coverage decisions are currently made for Medicare.

Because of the uniqueness and complexity of many of the issues involved in the establishment of such a process for preventive care, however, the bill provides for a detailed study of the way in which this process should work.

While S. 1231 does not specify the manner in which the new benefits will be financed, I want to assure my colleagues that, when the Finance Committee takes up the provisions of this bill, it is my intention to seek an offset that fully finances the costs of this initiative—as we have with all initiatives that have originated in the Finance Committee during my tenure as chairman.

One of the financing options under consideration will be adding a flat dollar amount onto the monthly premium that is paid by Medicare beneficiaries who are enrolled in part B of the program. Preliminary Congressional Budget Office estimates place the amount of such an add-on at $1.10 in 1992, with it rising to $1.60 in 1996.

In his fiscal year 1992 budget, President Bush identified enhanced prevention as an administration priority and a national goal. "By not waiting for people to require treatment," the budget states, "prevention can both improve lives and reduce medical treatment costs."

The President and Secretary Sullivan are correct—it is time to pay greater attention to the important goal of improving health care through early intervention and treatment when necessary. I encourage my colleagues to join us in support of this initiative, and I ask that the full text of the bill, as well as a section-by-section description be printed immediately following this statement.●

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

S. 1231

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 "Medicare Preventive Benefits Act of 1991".

SEC. 2. COVERAGE OF COLORECTAL SCREENING.

(a) IN GENERAL.—Section 1834 of the Social Security Act (42 U.S.C. 1395m), as amended by section 4163(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (hereafter referred to as "OBRA-1990"), is amended by inserting after subsection (c) the following new subsection:

"(d) FREQUENCY AND PAYMENT LIMITS FOR SCREENING FECAL-OCCULT BLOOD TESTS AND SCREENING FLEXIBLE SIGMOIDOSCOPIES.—

"(1) SCREENING FECAL-OCCULT BLOOD TESTS.—

"(A) PAYMENT LIMIT.—In establishing fee schedules under section 1833(h) with respect to screening fecal-occult blood tests provided for the purpose of early detection of colon cancer, except as provided by the Secretary under paragraph (3)(A), the payment amount established for tests performed—

"(i) in 1992 shall not exceed $5; and

"(ii) in a subsequent year, shall not exceed the limit on the payment amount established under this subsection for such tests for the preceding year, adjusted by the applicable adjustment under section 1833(h) for tests performed in such year.

"(B) FREQUENCY LIMIT.—Subject to revision by the Secretary under paragraph (3)(B), no payment may be made under this part for a screening fecal-occult blood test provided to an individual for the purpose of early detection of colon cancer—

"(i) if the individual is under 50 years of age; or

"(ii) if the test is performed within the 11 months after a previous screening fecal-occult blood test.

"(2) SCREENING FLEXIBLE SIGMOIDOSCOPIES.—

"(A) PAYMENT AMOUNT.—The Secretary shall establish a payment amount under section 1848 with respect to screening flexible sigmoidoscopies provided for the purpose of early detection of colon cancer that is consistent with payment amounts under such section for similar or related services, except that such payment amount shall be established without regard to subsection (a)(2)(A) of such section.

"(B) FREQUENCY LIMIT.—Subject to revision by the Secretary under paragraph (3)(B), no payment may be made under this part for a screening flexible sigmoidoscopy provided to an individual for the purpose of early detection of colon cancer—

"(i) if the individual is under 50 years of age; or

"(ii) if the procedure is performed within the 59 months after a previous screening flexible sigmoidoscopy.

"(3) REDUCTIONS IN PAYMENT LIMIT AND REVISION OF FREQUENCY.—

"(A) REDUCTIONS IN PAYMENT LIMIT.—The Secretary shall review from time to time the appropriateness of the amount of the payment limit established for screening fecal-occult blood tests under paragraph (1)(A). The Secretary may, with respect to tests performed in a year after 1994, reduce the amount of such limit as it applies nationally or in any area to the amount that the Secretary estimates is required to assure that such tests of an appropriate quality are readily and conveniently available during the year.

"(B) REVISION OF FREQUENCY.—

"(i) REVIEW.—The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening fecal-occult blood tests and screening flexible sigmoidoscopies based on age and such other factors as the Secretary believes to be pertinent.

"(ii) REVISION OF FREQUENCY.—The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which such tests and procedures may be paid for under this subsection, but no such revision shall apply to tests or procedures performed before January 1, 1995.

"(4) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS.—

"(A) IN GENERAL.—In the case of a screening flexible sigmoidoscopy provided to an individual for the purpose of early detection of colon cancer for which payment may be made under this part, if a nonparticipating physician provides the procedure to an individual enrolled under this part, the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B), or, if less, as defined in section 1848(g)(2)).

"(B) LIMITING CHARGE DEFINED.—In subparagraph (A), the term 'limiting charge' means, with respect to a procedure performed—

"(i) in 1992, 120 percent of the payment limit established under paragraph (2)(A); or

"(ii) after 1992, 115 percent of such applicable limit.

"(C) ENFORCEMENT.—If a physician or supplier knowing and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).".

(b) CONFORMING AMENDMENTS.—(1) Paragraphs (1)(D) and (2)(D) of section 1833(a) of such Act (42 U.S.C. 1395l(a)) are each amended by striking "subsection (h)(1)," and inserting "subsection (h)(1) or section 1834(d)(1),".

(2) Section 1833(h)(1)(A) of such Act (42 U.S.C. 1395l(h)(1)(A)) is amended by striking "The Secretary" and inserting "Subject to paragraphs (1) and (3)(A) of section 1834(d), the Secretary".

(3) Clauses (i) and (ii) of section 1848(a)(2)(A) of such Act (42 U.S.C. 1395w-4(a)(2)(A)) are each amended by striking "a service" and inserting "a service (other than a screening flexible sigmoidoscopy provided to an individual for the purpose of early detection of colon cancer)".

(4) Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (E), by striking "and" at the end,

(ii) in subparagraph (F), by striking the semicolon at the end and inserting ", and", and

(iii) by adding at the end the following new subparagraph:

"(G) in the case of screening fecal-occult blood tests and screening flexible sigmoidoscopies provided for the purpose of early detection of colon cancer, which are performed more frequently than is covered under section 1834(d);"; and

(B) in paragraph (7), by striking "paragraph (1)(B) or under paragraph (1)(F)" and inserting "subparagraphs (B), (F), or (G) of paragraph (1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to screening fecal-occult blood tests and screening flexible sigmoidoscopies performed on or after January 1, 1992.

SEC. 3. COVERAGE OF CERTAIN IMMUNIZATIONS.

(a) IN GENERAL.—Section 1861(s)(10) of the Social Security Act (42 U.S.C. 1395x(s)(10)) is amended—

(1) in subparagraph (A)—

(A) by striking ", subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987,", and

(B) by striking "; and" and inserting a comma;

(2) in subparagraph (B), by striking the semicolon at the end and inserting ", and"; and

(3) by adding at the end the following new subparagraph:

"(C) tetanus-diptheria booster and its administration;".

(b) LIMITATION ON FREQUENCY.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)), as amended by section 2(b)(4)(A), is amended—

(1) in subparagraph (F), by striking "and" at the end;

(2) in subparagraph (G), by striking the semicolon at the end and inserting ", and"; and

(3) by adding at the end the following new subparagraph:

"(H) in the case of an influenza vaccine, which is administered within the 11 months after a previous influenza vaccine, and, in the case of a tetanus-diptheria booster, which is administered within the 119 months after a previous tetanus-diptheria booster;".

(c) CONFORMING AMENDMENT.—Section 1862(a)(7) of such Act (42 U.S.C. 1395y(a)(7)), as amended by section 2(b)(4)(B), is amended by striking "or (G)" and inserting "(G), or (H)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to influenza vaccines and tetanus-diptheria boosters administered on or after January 1, 1992.

SEC. 4. COVERAGE OF WELL-CHILD CARE.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by section 4201(d)(1) of OBRA-1990, is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by striking the semicolon at the end of subparagraph (P) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(Q) well-child services (as defined in subsection (ll)(1)) provided to an individual entitled to benefits under this title who is under 7 years of age;".

(b) SERVICES DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended—

(1) by redesignating the subsection (jj) added by section 4163(a)(2) of OBRA-1990 as subsection (kk); and

(2) by inserting after subsection (kk) (as so redesignated) the following new subsection:

"WELL-CHILD SERVICES

"(ll)(1) The term 'well-child services' means well-child care, including routine office visits, routine immunizations (including the vaccine itself), routine laboratory tests, and preventive dental care, provided in accordance with the periodicity schedule established with respect to the services under paragraph (2).

"(2) The Secretary, in consultation with the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and other entities considered appropriate by the Secretary, shall establish a schedule of periodicity which reflects the appropriate frequency with which the services referred to in paragraph (1) should be provided to healthy children.".

(c) CONFORMING AMENDMENTS.—(1) Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)), as amended by sections 2(b)(4)(A) and 3(b), is amended—

(A) in subparagraph (G), by striking "and" at the end;

(B) in subparagraph (H), by striking the semicolon at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(I) in the case of well-child services, which are provided more frequently than is provided under the schedule of periodicity established by the Secretary under section 1861(ll)(2) for such services;".

(2) Section 1862(a)(7) of such Act (42 U.S.C. 1395y(a)(7)), as amended by sections 2(b)(4)(B) and 3(c), is amended by striking "or (H)" and inserting "(H), or (I)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to well-child services provided on or after January 1, 1992.

SEC. 5. ANNUAL SCREENING MAMMOGRAPHY.

(a) ANNUAL SCREENING MAMMOGRAPHY FOR WOMEN OVER AGE 64.—Section 1834(c)(2)(A) of the Social Security Act (42 U.S.C. 1395m(b)(2)(A)), as added by section 4163(b)(2) of OBRA-1990, is amended—

(1) in clause (iv), by striking "but under 65 years of age,"; and

(2) by striking clause (v).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to screening mammography performed on or after January 1, 1992.

SEC. 6. DEMONSTRATION PROJECTS FOR COVERAGE OF OTHER PREVENTIVE SERVICES.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (hereafter referred to as the "Secretary") shall establish and provide for the conduct of a series of ongoing demonstration projects under which the Secretary shall provide for coverage of the preventive services described in subsection (c) under the medicare program in order to determine—

(1) the feasibility and desirability of expanding coverage of medical and other health services under the medicare program to include coverage of such services for all individuals enrolled under part B of title XVIII of the Social Security Act; and

(2) appropriate methods for the delivery of those services to medicare beneficiaries.

(b) SITES FOR PROJECT.—The Secretary shall provide for the conduct of the demonstration projects established under subsection (a) at the sites at which the Secretary conducts the demonstration program established under section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and at such other sites as the Secretary considers appropriate.

(c) SERVICES COVERED UNDER PROJECTS.—The Secretary shall cover the following services under the series of demonstration projects established under subsection (a):

(1) Glaucoma screening.

(2) Cholesterol screening and cholesterol-reducing drug therapies.

(3) Screening and treatment for osteoporosis, including tests for bone-marrow density and hormone replacement therapy.

(4) Screening services for pregnant women, including ultra-sound and clamydial testing and maternal serum alfa-protein.

(5) One-time comprehensive assessment for individuals beginning at age 65 or 75.

(6) Other services considered appropriate by the Secretary.

(d) REPORTS TO CONGRESS.—Not later than October 1, 1993, and every 2 years thereafter, the Secretary shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives describing findings made under the demonstration projects conducted pursuant to subsection (a) during the preceding 2-year period and the Secretary's plans for the demonstration projects during the succeeding 2-year period.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Supplementary Medical Insurance Trust Fund for expenses incurred in carrying out the series of demonstration projects established under subsection (a) the following amounts:

(1) $4,000,000 for fiscal year 1992.
(2) $4,000,000 for fiscal year 1993.
(3) $5,000,000 for fiscal year 1994.
(4) $5,000,000 for fiscal year 1995.
(5) $6,000,000 for fiscal year 1996.

SEC. 7. OTA STUDY OF PROCESS FOR REVIEW OF MEDICARE COVERAGE OF PREVENTIVE SERVICES.

(a) STUDY.—The Director of the Office of Technology Assessment (hereafter referred to as the "Director") shall, subject to the approval of the Technology Assessment Board, conduct a study to develop a process for the regular review for the consideration of coverage of preventive services under the medicare program, and shall include in such study a consideration of different types of evaluations, the use of demonstration projects to obtain data and experience, and the types of measures, outcomes, and criteria that should be used in making coverage decisions.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Director shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on the study conducted under subsection (a).

THE MEDICARE PREVENTIVE SERVICES BENEFIT ACT OF 1991—SECTION-BY-SECTION ANALYSIS

SECTION 1. TITLE

SECTION 2. COVERAGE OF COLORECTAL SCREENING

The bill would provide for coverage of fecal occult blood tests (FOBT) and screening sigmoidoscopies for the early detection of colorectal cancer. The FOBT would be covered on an annual basis; the screening sigmoidoscopies would be covered every 5 years. Payment for the FOBT would be under the laboratory fee schedule, subject to a $5 limit in 1992. The screening of sigmoidoscopies would be reimbursed under the RB RVS, without regard to the RB RVS transition provisions. That is, the sigmoidoscopies would be paid based fully on the RB RVS rate in 1992.

The Secretary would be permitted to modify the frequency criteria after 1994.

SECTION 3. COVERAGE OF CERTAIN IMMUNIZATIONS

The bill would provide for coverage of annual influenza vaccinations, and for tetanus-diphtheria vaccinations every ten years.

SECTION 4. COVERAGE OF WELL-CHILD CARE

The bill would provide for coverage of pediatric well-child care, including appropriate immunizations for Medicare beneficiaries up through age 6. In general, beneficiaries eligible for these benefits would be children entitled to Medicare benefits who have kidney failure as a result of end-stage renal disease.

SECTION 5. ANNUAL SCREENING MAMMOGRAPHY

The bill provides for Medicare coverage of screening mammography on an annual basis for individuals age 65 or older. Current law coverage provides for annual coverage for women ages 50 through 64, but only every two years for older women.

SECTION 6. DEMONSTRATION PROJECTS FOR COVERAGE OF OTHER PREVENTIVE SERVICES

The bill would provide for the establishment of an ongoing series of demonstrations that would evaluate the appropriateness of coverage of additional services under Medicare.

SECTION 7. OTA STUDY OF PROCESS FOR REVIEW OF MEDICARE COVERAGE OF PREVENTIVE SERVICES

The Office of Technology Assessment, subject to the approval of the Technology Assessment Board, would conduct a study and recommend a process for determining when other preventive services should be covered under Medicare.

SECTION 8. EFFECTIVE DATE

The benefits would apply to services provided on or after January 1, 1992. All other provisions would be effective on enactment.

By Mr. DOMENICI (for himself, Mr. DANFORTH, Mr. RUDMAN, Mr. CHAFEE, and Mr. GRAMM):

S. 1232. A bill to provide for medical injury compensation for health care provided under the Social Security Act and other Federal health programs, to amend the Internal Revenue Code of 1986 to implement like reforms in employer-provided health plans, and for other purposes; to the Committee on Finance.

MEDICAL INJURY COMPENSATION FAIRNESS ACT

Mr. DOMENICI. Mr. President, I rise today to introduce a bill on behalf of myself, Senator DANFORTH, Senator RUDMAN, Senator CHAFEE, and Senator GRAMM that will dramatically reform the medical liability system in this country.

It is just a coincidence, Mr. President, that the Senator from New Mexico introduces this measure proximate to the time that the Democratic leadership introduced a so-called health reform package. This is not a Republican health care package, that which the Senator from New Mexico will soon address, but, rather, an initiative by some of us which we hope will become bipartisan, that we think stands on its own. We do not need to wait for a major medical delivery system reform that attempts to take care of more Americans and change the cost spiral that is presently festering health care in America. We think a reform of the tort liability standing on its own ought to be done. Its time has arrived. Over the long run, it will be a very valuable tool as we put together comprehensive health care, because without question no one suggests that the current tort liability system on which we go to court in this Nation, is not pushing the cost of health care upwards day by day.

Now, there may be a few, and they are principally trial lawyers, who say even though that is happening, it is for the good. I submit it is not for the good. There is little or no good coming to the American people. Average Americans who are desperately in need of health care and can hardly afford what they are currently buying know they are not being helped. They are not getting better medical treatment, and they know that. They are not getting cheaper health care, and they know that. They are not getting malpractice awards, and they know that. A few people are. In fact, we think 1 out of every 16 where there is liability, negligence of one sort of another, we think 1 out of 16 in this system of trying these cases in court with juries, with all the emotions and risks and legalized lottery that is attendant, have real results forthcoming.

But where the results are forthcoming, the rewards that is, they are more in cases where there has been an untoward event that nobody is really responsible for but it is truly untoward. An adverse event, a malformed baby is born, and a jury awards $7 million.

Average Americans understand they are not getting anything out of that, not even a better delivery system. They understand somebody is getting something out of it. And really I believe it is time that we fix it.

Frankly, what the Senator from New Mexico is going to do with this bill—and I have asked a number of Senators to help. In addition to the help of former surgeon general, Dr. Koop, who worked with me and others on my staff, and others in the Senate for about 6 months on this bill. What we are saying is, forget the past decade of concern about whether we should take these issues away from the State courts. Should we preempt tort liability in New Mexico, or in Maryland, or Connecticut? We say forget about all of that rhetoric.

Yes, there is a Federal interest, Medicare, Medicaid, veterans health, the insurance that we pay for Federal employees, and Federal retirees. And, yes, the tax deductible that the employers of America are taking under our Tax Code is paying for enormous numbers of health care packages for their employees. All of those have a Federal interest. By capitalizing on the interest we will take at least 80 percent of all medical injury claims out of court.

We say it is time we recognize the interest, and that the interest is sufficient for us here in the Congress to direct any effort to collect for negligence under any of those kinds of relationships stemming from those federally related programs. There is no jurisdiction in any State court. It will go to arbitration in our sovereign States, and will be determined by an arbitra-

tion under the well-established rules of arbitration in the United States. And those arbitration councils across this land will be supervised by the Secretary of Health of the United States.

And we really believe, Mr. President, that when we get this in the United States in lieu of tort liability the remaining 20 percent or so that are not part of the federal system touched by Federal moneys, touches by Federal programs that I have just described out there are permitted under this law that I am introducing today, this statute, to join voluntarily. We think they will all join. We will have everyone in a system of arbitration where, in my humble opinion, it should have been all along.

There is probably no set of liability relationship, in this country that are more tortuous under the system, the common law system, and the jury system than the tort liability for the medical delivery system, and the doctors of this Nation. Probably it should never have been there to begin with.

Having said that, I have a very detailed analysis of where we were, and where we hope we will be if this kind of law gets adopted. I think everyone understands that the cost of health care in America is skyrocketing. I think everyone understands that many, many Americans cannot afford it. Many have no coverage whatsoever. And those that are paying for it are day-by-day reminding us as their representatives that it is outrageously high. We know that. And something must be done about that.

Twelve percent of our gross national product in health care is moving up so rapidly that by the turn of the century, it will be 15 percent of gross national product—unheard of. Twelve percent compares with the Japanese at a little over 6. If the Chair is interested in an economic issue, every automobile that comes down the assembly line in the United States, American made, has about 750 dollars' worth of health care in it. Every Japanese car coming down the assembly line—just over $200. Right off there is a $500 difference in competition in the world market just on the health care costs.

I do not do this because of automobile health care costs but rather that a first step has to be taken to reduce the costs. There are many other steps to be taken but no one doubts that we ought to dramatically reform the malpractice, and the tort liability.

It will distribute our doctors better. They will get back into delivering babies in rural areas where currently they have left in droves because they cannot afford to live there, deliver the babies, and pay the cost of health care. That will get straightened out rather quickly.

The costs will eventually come down, and justice will be served because more people will get fair treatment for the right kind of claims, not the kind that are ostentatious, showboat claims, and adverse events for which no one is liable but cannot be kept from the jury, and they rule.

More people will get swift justice against the doctors and hospitals for negligence, all at a lower cost and all without moving defensive medicine up to new thresholds each year where more and more service is performed for people in order to avoid and minimize the risk of liability.

So all of these will be minimized if the proposal that I am recommending to the Senate today, for which four very distinguished Senators have joined—and I believe before we are finished there will be many, many more. Some were interested and have asked a few questions. They will get answers.

Let me give you a couple that I think Senators would be interested in. Yes, there is a cap, even in arbitration on noneconomic damages; pain and suffering, $250,000. We believe that in the overall interests of society, and the reasonable costs of health care, somebody injured by medical negligence ought to get every penny they are entitled to for economic loss. If they have an arm that has been injured, they ought to get every bit of economic loss for the rest of their lives from that injury. But we believe that the pain and suffering, the intangible, should be minimized in this overall system.

Then there is the issue of punitive damages—that is, flagrant damages, damages for negligent conduct. It seems to many that this also is abused under the current system, and many thought it should disappear if you redo the system.

But what the Senator from New Mexico has done, and after much consultation we have the following: Punitive damages are allowed. But if they are recovered they do not go to the claimant but rather to the State in which the injury occurred if that State has set up a system, a process for improving the quality of doctors, policing doctors. That punitive award goes to that agency to be used for that effort. And if there are some who would like to improve upon that approach as part of this package, the Senator in New Mexico is more than willing to discuss it.

Obviously, this is a tough issue. This is an issue that nobody should be part of it they are not prepared to take a little bit of guff. There will be some around who will claim that this is anticonsumer. There will be lawyers around who will claim it is anticivil rights. There will be some around who will contend that it is just an inherent part of our system that people should be able to go to court and get these matters ajudicated. We are prepared to address all of those issues.

Frankly, we believe the consumers, the consumers being the American citizens who are entitled to health care, from the smallest children who may have parents who have money, or to those children whose parents are poor, to the most senior American citizen and everyone in between, we are entitled to the best health care that our magnificently educated people in the medical profession can deliver. But we are also entitled to that at reasonable costs.

We think the first step is saying to our doctors, our hospitals, and others, this is a real war on excessive costs. The first step is to reform this tort system and do something much fairer, much more reasonable. Give more people an opportunity to get awards but get them quickly, and take the lottery, the big-time adverse event, and the system that is attached to that—which I think is really sensational—take that out of the picture.

Mr. President, I send the bill that does what I have just described to the desk and ask that it be appropriately referred.

I ask unanimous consent that a letter from Dr. Koop explaining his support, and why, be printed in the RECORD, along with one from the former Secretary of HEW, Joseph A. Califano, who supports the proposal; and a letter from the National Federation of Independent Businesses; and one from the American Hospital Association, Physicians Insurers Association, American Medical Association, and a legal opinion by the law firm of Sidley & Austin out of Chicago, IL, and Los Angeles. They have looked at the bill in depth with reference to its effectiveness and its constitutionality.

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

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, June 4, 1991.

Re Medical Injury Compensation Fairness Act of 1991.

Hon. PETE V. DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: The American Medical Association commends you for assuming a leadership role in the current national discussion on medical liability reform.

As the architect of the Medical Injury Compensation Fairness Act of 1991, you have demonstrated a commitment to addressing many of the perplexing issues in the medical liability arena which have resulted in increased health care costs, higher liability insurance premiums and the continued practice of defensive medicine. We applaud provisions in your bill which: (1) establish alternative dispute resolution mechanisms; (2) reduce damage awards for payments received through collateral sources; and (3) lower the cap on noneconomic damages to $250,000.

The American Medical Association looks forward to working with you to achieve the kind of medical liability reform that will lead to elimination of unnecessary defensive medical tests, adoption of appropriate alternative dispute resolution programs and enhanced care for all of our patients.

Sincerely,

JAMES S. TODD, M.D.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, June 4, 1991.

Senator PETE V. DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: The American Hospital Association, on behalf of its nearly 5,500 member hospitals, wishes to applaud your efforts in the area of medical liability reform. Your proposal, the Medical Injury Compensation Fairness Act of 1991, represents a bold and innovative approach for addressing one of the leading health care issues of our day.

The current system for dealing with undesired medical outcomes is expensive and often inequitable. It encourages defensive medicine, lengthy and expensive courtroom litigation, excessive awards, and exorbitant malpractice insurance premiums. Individuals often litigate because they want satisfaction for an untoward but non-negligent outcome or one that fails to meet expectations. As a result, health care costs are driven up, and access to care often is undermined. AHA backs medical liability reform that permits:

Cost-effective and equitable resolution of claims;

Limits on noneconomic damages and attorneys' fees;

Elimination of legal requirements that hospitals pay for damages caused by others;

Payment of malpractice awards over time rather than in a lump sum; and

Arbitration as an alternative to litigation for claimants.

Your proposal contains many of these reform measures and seeks to create an efficient and speedy system for resolution of most malpractice claims. AHA commends you for taking this important first step, and urges you to seek a system which would ensure like treatment for all claims and contain all of the reforms listed above. We look forward to continuing to work with you and your staff in your efforts.

Very truly yours,

PAUL C. RETTIG,
Executive Vice-President.

PHYSICIAN INSURERS
ASSOCIATION OF AMERICA,
Pennington, NJ, May 31, 1991.

Hon. PETER V. DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: On behalf of the Physician Insurers Association of America (PIAA), I wish to express our gratitude for your leadership in recognizing the need to restore common sense and fairness to the nation's medical liability system, and in taking the positive step of introducing the Medical Injury Compensation Fairness Act of 1991. We believe your bill represents a constructive approach to solving problems with the current system, and we are committed to working with you and other interested members of Congress to improve the availability and affordability of health care for all Americans.

There is no question that the current system of resolving medical liability claims is a disaster. It is much too costly, too time consuming and inequtable. More dollars are devoted to the costs of litigation than to compensating injured claimants. The system, in its present form, does not serve the public's interest. Further, the threat of lawsuits and the rising costs of medical liability insurance premiums have led to the expensive practice of "defensive medicine," and have made many physicians reluctant to practice in high-risk specialties, particularly obstetrics. This has added billions of dollars annually to the national health care bill, and has denied many Americans access to the health care they need. Moreover, the fear of litigation has discouraged medical innovation and volunteerism.

As you know, PIAA member companies were formed in the mid-1970's in response to the medical liability crisis, and they now write liability coverage for over 50% of physicians nationwide. For the most part, our companies are not in business to make a profit and devote their energies to enhancing patient safety and reducing claim costs. From its inception, the PIAA has continually sought reform of the current medical liability system, and has worked recently with the Bush Administration and interested members of Congress who have taken the lead on this important issue. The recent proposal by the President and his commitment to push for enactment of a medical liability reform package, coupled with the introduction of your bill, are evidence of the broad recognition of the need for a legislative solution. The time for action has arrived, and the PIAA stands ready to work with you and your like-minded colleagues to achieve our common goals.

Very truly yours,

W. MAURICE LAWSON, M.D.,
President.

NATIONAL FEDERATION OF
INDEPENDENT BUSINESS,
Washington, DC, June 5, 1991.

Hon. PETE DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: On behalf of the over 500,000 small business members of the National Federation of Independent Business, I want to thank you for introducing the Medical Injury Compensation Fairness Act of 1991.

The high price of health insurance is the primary barrier small business owners face when trying to set up health care coverage for their employees, and health care costs continue to spiral upward, threatening continued coverage. Between 1987 and 1990, small business health insurance premiums rose from an average of $1,942 per employee to $3,192 per employee.

The Small Business Administration has estimated that the threat of malpractice claims adds $4 billion to the cost of health care each year and that defensive action on the part of doctors costs $100,000 per year per physician. By virtually eliminating multimillion dollar jury awards, the Medical Injury Compensation Fairness Act of 1991 could limit the need for physicians to practice defensive medicine. With health care costs skyrocketing, this country can no longer afford the millions of useless tests doctors currently perform to protect themselves from malpractice suits.

One of NFIB's top priorities is to reduce the cost of health insurance in this country so that small business owners can afford to purchase it for their employees and for themselves. The Medical Injury Compensation Fairness Act could help bring down the cost of health care by reducing the cost of medical malpractice suits, lowering medical malpractice insurance and reducing the practice of defensive medicine.

Again, thank you for introducing this important legislation.

Sincerely,

JOHN J. MOTLEY III,
Vice President, Federal Governmental Relations.

JOSEPH A. CALIFANO, Jr.,
June 5, 1991.

Hon. PETE V. DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: Your proposal to reform the medical malpractice system wisely builds upon the legitimate Federal interest in reducing escalating health costs.

There are many unnecessary costs associated with our current health care system, including billions of dollars in unnecessary defensive medicine. In order to expand access and more efficiently use the $750 billion Americans will spend on health care this year, we must begin to make changes in many areas, including our medical malpractice system. We have the resources to provide health care to all Americans, if we free up funds that are being needlessly spent.

Using Federal programs to spur medical liability reform is appropriate. The Federal government spends $220 billion directly on health care. Federal subsidies for private health insurance, which finances another $185 billion in health care, exceed $50 billion annually. The current malpractice system is inefficient. Sixty percent of malpractice insurance premiums pay lawyer's fees and administrative costs for malpractice cases. That leaves only forty percent for those people who are injured. Your bill would correct this inequity and give more to injured patients.

I applaud the provisions in your bill that encourage the development of practice guidelines for physicians. Standards of care for physicians offer the promise of higher quality medical care for patients, as well as a fair defense against charges of malpractice.

Your legislation is an excellent step towards making health care in our nation more effective and efficient.

Sincerely,

JOSEPH A. CALIFANO, Jr.

WASHINGTON, DC,
June 6, 1991.

Hon. PETE V. DOMENICI,
U.S. Senate, 434 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DOMENICI: I want to commend you for your proposal to reform the medical liability system in this country. Your bill would provide more reasonable health care costs for consumers, fairer and more timely awards for injured patients and more rational liability decisions for physicians.

As you know, the current medical liability system has many flaws, including the inducement of costly defensive medicine. Some estimates indicate that as much as 25 percent of health expenditures are unnecessary, and defensive medicine is responsible for much of these costs. We cannot afford to continue spending hundreds of billions of dollars needlessly on health care if we are to have resources available for other important needs, like providing health care for those who don't have it and educating our children.

Furthermore, the current medical liability system is unfair for many patients. As many as 15 out of 16 persons who have been injured due to negligent medical treatment never get compensation through the litigation system, and 60 percent of malpractice insurance premiums pay for administrative expenses and lawyers' fees, leaving only 40 percent for injured patients.

To address these problems, I am convinced that we need to take these cases out of court and resolve them instead in arbitration-type arrangements with some constraints on awards. Your bill would do just that. It would also give health care consumers and

providers the flexibility to agree early on about dispute resolution arrangements specific to their needs.

I also applaud those provisions in your bill which encourage the development and use of practice guidelines to help determine the appropriate standard of care in specific situations. These guidelines can help eliminate the confusion of opposing expert witnesses presenting conflicting opinions on the appropriate standards.

Again, I congratulate you for developing this excellent piece of legislation. I believe it is critical that we move quickly to address the obvious failings of the current liability system, and I fully support the approach you have taken in your bill. I look forward to helping you advance this important proposal.

Sincerely,

C. EVERETT KOOP, M.D.

Washington, DC, June 4, 1991.

Re Medical Injury Compensation Fairness Act of 1991.

Senator PETE V. DOMENICI,
SD-434 Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR DOMENICI: You have asked me to provide you with my opinion concerning the constitutionality of the Medical Injury Compensation Fairness Act of 1991, which you have prepared in draft form and which you plan to introduce in the near future. I have studied the proposal with some care and have concluded that, although the bill would raise several constitutional issues, none of them is substantial. In short, there is no significant constitutional obstacle to your proposal to remove a significant number of medical liability cases from the civil justice system and have them resolved through less formal methods of dispute resolution.

In my opinion the proposed legislation raises questions concerning six separate constitutional provisions: the Commerce Clause in Article I, Section 8; the Spending Clause in Article I, Section 8; the Supremacy Clause in Article VI, Clause 2; the right to due process in the Fifth Amendment, the right to equal protection that has been incorporated into the Fifth Amendment and the right to a civil jury trial in the Seventh Amendment. I will discuss the issues associated with each provision in turn.

I. Commerce Clause. Since the infancy of the Constitution, it has been accepted that Congress' power over interstate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." *Gibbons* v. *Ogden*, 9 Wheat. 1, 196 (1824). Based on this principle, it is settled that Commerce Clause authority reaches "'those activities intrastate which * * * affect interstate commerce or the exercise of the power of Congress over it.'" *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 258 (1964), quoting *United States* v. *Darby*, 312 U.S. 100, 118 (1941).

The Court in dicta has indicated that "a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities" might not be permissible under the Commerce Clause. *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n, Inc.*, 451 U.S. 264, 310-311 (1981) (Rehnquist, J., concurring); see *Maryland* v. *Wirtz*, 392 U.S. 183, 196, 197 n.27 (1968). Nevertheless, the Court's holdings consistently have approved congressional actions even though the nexus between intrastate activity and interstate commerce was neither direct nor obvious. See Virginia Surface Mining (surface mining legislation permissible because erosion and loss of farmland affects interstate commerce); *Wickard* v. *Filburn*, 317 U.S. 111, 127-138 (1942) (restriction on wheat growing for home consumption justified by potential effect on interstate prices for wheat). In fact, during the past 50 years the Supreme Court has not found a single intrastate activity beyond the reach of Congress' commerce power.

Based on these authorities, Congress could readily determine that any one of a number of the social and economic costs of the current malpractice system burdens interstate commerce in a manner sufficient to warrant a federal regulatory response. In the first place, the federal government is the largest purchaser of health care, which means that Congress can directly act to protect its own interest. This interest is most directly related to the Spending Clause (see infra), but it also provides a significant basis for Congress to exercise its Commerce Clause authority.

Less directly, because health care providers purchase goods moving in interstate commerce as a regular part of their business, escalating premiums for professional liability insurance necessarily reduce the amount of purchases these entities can make. See *Maryland* v. *Wirtz*, 392 U.S. at 194-195 (burdens on the free flow of goods justifies congressional action); *Katzenbach* v. *McClung*, 379 U.S. 294, 300 (1964) (racial discrimination by restaurants reduces sales to blacks in interstate commerce). In addition, the adverse effect of malpractice on access to health care, especially in obstetrics, has forced patients to travel interstate in order to obtain medical care. See *Virginia Surface Mining*, 452 U.S. at 276-277.

These burdens are more than sufficient to bring medical malpractice liability within the reach of Congress' Commerce Clause power. The remaining question, then, is whether the bill is a reasonable and appropriate means of regulating these burdens. As a practical matter, that question is for Congress alone to answer. *Fullilove* v. *Klutznick*, 448 U.S. 448, 480 (1980) ("'In no matter should we pay more deference to the opinion of Congress than in its choice of instrumentalities to perform a function that is within its power'"). Moreover, there is no serious doubt that an alternative dispute resolution process with some restraints on the severity of damages that can be imposed for malpractice is a reasonable method of reducing the obstacles to interstate commerce that are posed by the current tort system. The proposed bill reasonably is designed to reduce professional liability premiums by providing some limits on liability. There is substantial evidence that reforms in the tort system in California similar to those you proposed have caused reductions in insurance premiums in California. Cohn, "Tort Reform: Past, Present, and Future," Am. Coll. Surgeons Bull. 13, 15-16 (June 1989) (discussing comparative data). See P. Danzon, Medical Malpractice: Theory, Evidence, and Public Policy (1985) (showing that caps on non-economic damages significantly reduce severity of malpractice claims).

In sum, there is little doubt that Congress can enact legislation such as the type you propose without creating any serious constitutional issue under the Commerce Clause of the Constitution.

II. Spending Clause. The analysis under the Spending Clause basically follows, a fortiori, from what has been said above about the Commerce Clause. This is because, if anything, Congress has broader authority in the exercise of its power over the purse than it does when acting simply to unburden interstate commerce. See *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937); *Oklahoma* v. *United States Civil Service Comm'n*, 330 U.S. 127 (1947); *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980).

Nevertheless, there is a question whether the Spending Clause is satisfied and it clearly is. The only issue is whether the condition placed on federal funds or tax benefits is rationally related to the purpose of the program. See *Harris* v. *McRae*, 448 U.S. 297 (1970). Here, Medicare and Medicaid are both designed to increase the public's access to health care and the problems of professional liability directly interfere with that objective. Use of a condition in a federal program as a means of eliminating this obstacle is certainly a rational means of furthering Congress' overall aims under Medicare and Medicaid.

III. Supremacy Clause. It is well settled that so long as Congress acts within one of its enumerated powers, it may completely displace all state law relevant to the federal enactment. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941). This is the essential meaning of the Supremacy Clause of the Constitution. Thus, the preemptive effect of the bill is simply a matter of legislative intent. Preemption is "'compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.'" *Fidelity Federal Savings & Loan Ass'n* v. *De La Cuesta*, 458 U.S. 141, 153 (1982), quoting *Jones* v. *Rath Packing Co.*, 435 U.S. 519, 525 (1977). In its latest version, the bill contains language expressly preempting state malpractice actions and under the Supremacy Clause that declaration ends any doubt on this issue.

IV. Due Process Clause. The Due Process Clause of the U.S. Constitution specifies that no person "shall be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The proposed bill raises two separate due process issues. First, it abolishes a common-law cause of action. Second, the bill conditions the receipt of federal money on the relinquishment of certain personal interests which raises a separate issue.

A. A common-law case of action (i.e., a suit against a doctor for malpractice) is considered a property right which cannot be restricted or abolished without due process. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) ("a cause of action is a species of property protected by the * * * Due Process Clause"). When a common-law cause of action is abolished, most state constitutions require that a substitute remedy or quid pro quo be provided. It is not clear, however, whether the federal Due Process Clause contains a similar requirement.

The Supreme Court addressed this issue in *Duke Power Co.* v. *Carolina Environmental Study Group*, 438 U.S. 59 (1978), when it examined the Price-Anderson Act's limitation on liability for nuclear accidents. The Court noted that "it is not at all clear that the Due Process Clause in fact requires that a legislatively enacted compensation scheme either duplicate the recovery at common law or provide a reasonable substitute remedy." Id. at 88. Nevertheless, the Court concluded that the Price-Anderson Act provided "a reasonably just substitute," since Congress replaced state tort law remedies with a $560 million recovery fund and mandatory waiver of defenses.

An analogous case is *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981), in which the Supreme Court upheld President Carter's nul-

lification of prejudgment attachments on Iranian assets. While the holding of Dames & Moore specifically concerned the limits of executive power, implicit in the Court's reasoning was that the nullification of the attachments was balanced by the availability of a $1 billion fund held by an international tribunal and the right to sue the federal government under the Tucker Act. L. Tribe, American Constitutional Law §9-7 (2d ed. 1988).

Your bill provides a reasonably just substitute in exchange for eliminating a common-law cause of action. Mandatory arbitration would compensate plaintiffs more quickly and equitably. A relatively inexpensive system of arbitration also would allow more patients to bring claims. For health providers and their insurers, a cap on non-economic damages reduces the risk of unpredictably high jury verdicts, thus stabilizing the cost of liability insurance and promoting access to quality medical services.

B. The second possible violation of the Due Process Clause occurs when the government conditions the receipt of a benefit on the nonassertion of a constitutional right. "[T]he constitutional interest at issue must rise to the level of a recognized right—indeed a *preferred* right normally protected by strict judicial review." Sullivan, "Unconstitutional Conditions," 102 Harv. L. Rev. 1413, 1427 (1989) (emphasis in original). While the benefit involved here (e.g., Medicare, Medicaid, and tax deductions) is obvious, the right to sue for malpractice is more amorphous. Even if this right is a common-law right, it is not a fundamental right protected by the Constitution.

When conditions have been struck down in the past as unconstitutional, they have involved such fundamental rights as the right to interstate travel, free exercise of religion, and freedom of speech. See *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) (invalidating denial of welfare benefits to residents who had lived in-state for less than one year); *Sherbert* v. *Verner*, 374 U.S 398 (1963) (invalidating denial of unemployment benefits to woman who would not work on her sabbath); *Speiser* v. *Randall*, 357 U.S. 513 (1958) (invalidating requirement that veterans take loyalty oath as condition for property-tax exemption). As Professor Sullivan notes, "[a]part from these cases and those applying them to very similar facts, not a single other challenge to a condition on a government welfare program has succeeded in the Supreme Court." Sullivan at 1437. See, e.g., *Wyman* v. *James*, 400 U.S. 309 (1971) (AFDC requirement that recipient permit home visitation by caseworker does not violate Fourth or Fourteenth Amendments).

The Court's most recent statement on the issue was its decision on May 23 in *Rust* v. *Sullivan*, 51 CCH S. Ct. Bull. B2025 (1991), which upheld the Title X regulations forbidding abortion counseling. As for the issue of unconstitutional conditions, Chief Justice Rehnquist's decision noted: "here the government is not denying a benefit to anyone, but is instead simply insisting that public funds be spent for the purposes for which they were authorized." Id. at B2047. Given that Rust seems to allow government restrictions on free speech, it is unlikely that abrogating the right to sue for malpractice would be viewed as an unconstitutional condition.

V. Equal Protection Component of Due Process Clause. It has long been held that the Due Process Clause of the Fifth Amendment contains an equal protection component that applies to the federal government in the same way the Equal Protection Clause in the Fourteenth Amendment applies to state governments. See *Bolling* v. *Sharpe*, 347 U.S. 497 (1954). Equal protection dictates that the government treat similar individuals in a similar manner. Any classifications used by the government must "not be based upon impermissible criteria or arbitrarily used to burden a group of individuals." R. Rotunda, J. Nowak & J. N. Young, 2 Treatise on Constitutional Law: Substance and Procedure §18.2 (1986). This bill contains at least three classifications that must be subjected to equal protection analysis: health providers and other tortfeasors; victims of medical malpractice and victims of other torts; and victims of malpractice with high non-economic damages (i.e., those whose damages would exceed the $250,000 caps) and victims with low non-economic damages.

Because none of those classifications involves a suspect class, such as a racial group, or touches a fundamental right, an equal protection challenge to the bill must be examined under a rational basis test. *Duke Power*, 483 U.S. at 93-94. Under this test, the court must find only that it is "conceivable that the classification bears a rational relationship to an end of government which is not prohibited by the Constitution." Id. at §18.3. Under this extremely deferential standard, there is a "strong presumption of validity for classifications in the economic and social welfare area." Id. See *Bowen* v. *Billiard*, 438 U.S. 587 (1987) (upholding reduced AFDC to families in which all members live in same home); *Lyng* v. *Castillo*, 477 U.S. 635 (1986) (upholding reduced allocation of food stamps to nuclear families and other people who purchase and prepare food together); *Schweiker* v. *Wilson*, 450 U.S. 221 (1981) (upholding reduced Medicaid benefits to people institutionalized in certain public mental care institutions).

Under the rational relationship standard of review, the bill's three classifications must be upheld, because they clearly bear a rational relationship to Congress' goal of solving the medical malpractice crisis, which uniquely impairs Congress' interest in containing health care costs and ensuing access to health care. See *Fein* v. *Permanente Medical Group*, 38 Cal. 3d 137, 695 P.2d 665, 211 Cal. Rptr. 368, appeal dismissed, 474 U.S. 892 (1985) (cap on non-economic damages does not violate equal protection.)

VI. Right to Jury Trial. In any major modification of the tort system, there is an immediate question raised concerning the right to trial by jury. This concern is diminished significantly by federal legislation because there is no federal constitutional right to a jury trial that applies to state court proceedings. The Seventh Amendment jury trial right "applies only to proceedings in courts of the United States and does not in any manner whatever govern or regulate trials by jury in state courts or the standards which must be applied concerning the same." *Minneapolis & St. Louis R.R.* v. *Bombolis*, 241 U.S. 211, 217 (1916). Thus, congressional action terminating a jury trial in state court would raise only a state constitutional objection, which is swept aside by the Supremacy Clause. Congress is as free to preempt state constitutional requirements as it is to preempt any other source of state law.

Accordingly, the Seventh Amendment issue would only arise in the setting of a medical malpractice case that could have been brought in federal court under diversity jurisdiction. 28 U.S.C. §1332. As a practical matter, this is a trivial number of cases. Most malpractice actions do not involve parties from different states. But even if there were more such cases, this category of litigation poses no serious obstacle to the proposed bill. Congress has full power to limit the Article III jurisdiction of federal courts without running afoul of the Seventh Amendment. "Congress need not create lower federal courts and, if it does, need not grant them to full Article III jurisdiction. In fact, it has never conferred the full Article III jurisdictional power." R. Rotunda, et al., §2.1. Thus, Congress has the power to limit what substantive matters the federal courts can hear. See *J & R Sportswear & Co.* v. *Bobbie Brooks, Inc.*, 611 F.2d 29 (3d Cir. 1979) (federal statute requiring stay of trial during arbitration does not violate the Seventh Amendment). By making clear that federal courts lack jurisdiction to hear malpractice cases subject to the bill, the proposed legislation permissibly avoids any serious claim that the arbitration system violates the jury trial right in the Seventh Amendment.

In sum, I am firmly convinced that your proposed Medical Injury Fairness Compensation Act is constitutional. It clearly falls within Congress' enumerated powers to enact, is at least a reasonable means of accomplishing Congress' objective of ensuring increased access to health care, and violates no fundamental rights of any of the participants of the federal programs affected by the proposed bill.

If you or any members of your staff have any questions about this opinion, please do not hestitate to contact me.

Sincerely,

CARTER G. PHILLIPS.

By Mr. BURNS (for himself, Mr. SYMMS, Mr. PACKWOOD, Mr. PRESSLER, Mr. KASTEN, Mr. DANFORTH, Mr. MCCAIN, Mr. GORTON, Mr. LOTT, and Mr. ROCKEFELLER):

S. 1233. A bill to promote the growth of travel and tourism in the United States through the establishment of a rural tourism development foundation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

RURAL TOURISM DEVELOPMENT FOUNDATION ACT

Mr. BURNS. Mr. President, I rise today to offer the Rural Tourism Development Foundation Act of 1991.

During the past 2 years the Bush administration has advocated the enhancement of rural tourism business development in the United States. In fact, the National Policy Study on Rural Tourism and Small Business Development was completed in September of 1989. This congressionally mandated study identified opportunities and recommendations for developing rural tourism through cooperative planning with Federal, State, and local government and private small business.

During many discussions with leaders in the tourism industry as well as Federal land agencies a concept was developed that would provide a central source for cooperation between public and private sector groups with similar goals for developing tourism; the rural tourism development foundation.

The rural tourism development foundation is a nonprofit, nongovernment managed foundation that will be supported by private financing for the purpose of planning, development, and implementation of projects and programs which have the potential to increase travel and tourism export revenues by attracting foreign visitors to rural America. Potential projects could produce educational and promotional materials pertaining to both private and public attractions that are located in rural locations across America.

Those eligible for funds will be Federal land managing agencies, private enterprises, State and local governments, including native American tribes or any other entities interested in promoting rural tourism to international markets.

A serious need exists within our Federal land agencies for outside help to promote their tourism and recreation sites, especially to foreign visitors. Each of these agencies has a varying degree of latitude for the development of promotional materials. None, however, are sufficient for measurable results.

An example of potential applications could include any of the following: A scenic loop tour could be developed selling a tour of Custer battlefield, Mount Rushmore, Wounded Knee, and Yellowstone National Park along with other sites within the old West trail region;

A driving tour of the Nez Perce Trail from Oregon, Idaho, Wyoming, and Montana; the Grand Circle in Utah, Colorado, Arizona, and New Mexico;

A co-op program between the States in the Appalachian region or a native American cultural trail including Indian reservations interested in tourism development.

The results of these promotions would be distributed to USTTA and foreign commercial service offices as well as foreign tour wholesalers.

As stewards of our public lands we all bear the responsibility of preserving its natural state as well as ensuring that it is managed in such a way that it will always be available for our children to enjoy.

It is not enough to dole out dollars to lay asphalt and paint the outbuildings in our Federal recreation sites. We must be aware of high traffic patterns and know why some sites are more highly used than others.

It is possible for us to manage this traffic. And we need to. People have a habit of going to popular places.

How does a place become popular? Well, for one thing, word gets out that it is an enjoyable experience to visit or take part in the activity.

Another is, it is publicized by media and promotion. If there is awareness, there is interest which equals demand for services from the traffic. Increased traffic equals business revenue and erosion of property, thus the need for increased maintenance which costs the taxpayer more money.

The common problem we are aware of in the National Park Service is the overcrowded conditions of some of our more well-known parks. We see roads and facilities that are embarrassingly in need of repair.

The flip side of this is the underutilization of some of our Forest Service, BLM- and Corps of Engineers recreation sites. If the general public is not informed about these alternatives they rarely seek them out on their own.

Today, we live in a world of convenience. From the time we get up in the morning until we go to sleep at night we are bombarded with media messages selling us everything from gasoline to McDonalds new lean burgers. Any time of the day we will find messages offering us getaways to anywhere in the world.

Americans have so little spare time today. Because of this they rely on these messages to give them a list of alternatives for their vacations.

This lifestyle directly affects our public lands. Whether it is our friends from foreign shores or our neighbors from next door—the result is the same. They want to go to the sites they hear so much about. We need to offer them alternatives to lessen the impact on our natural attractions as well as spread some of that revenue into the rural areas of this country.

A direct result of this lack of information is the impact of the overcrowded parks such as Yosemite and Yellowstone. Overuse not only causes erosion of our countries natural attractions, but is creating a heavy financial burden due to the excess use of roads, trails, and facilities in our most popular Federal land sites.

All Federal land agencies share this common hardship. We are witnessing the yearly failure to keep up with the maintenance of these publicly owned lands.

We are being handed the bill for irresponsible promotion of our Federal lands attractions. It is felt there is a great need to divert traffic to lesser known areas in both State and Federal parks and recreation sites to lessen the erosion of the natural environment, as well as control the demand on facility services.

Thus, the main purpose of the rural tourism foundation is to divert traffic to lesser known destinations. This bill will inform the public about alternatives to the overcrowded areas by promoting scenic loops into America's lesser known destinations.

This bill is designed to support and enhance S. 1204, the Surface Transportation Act of 1991, relating to tourism and recreation roads, trails, and scenic byways. Over the next 5 years Federal agencies and States will spend $2.25 billion to develop infrastructure to insure travel to and from Federal lands. In 1989, 1.8 billion tourist visits were recorded to these sites.

The demand will always be there. It is up to the Congress to responsibly monitor all programs that ultimately affect the use of these lands. We must not only build roads, but look beyond the asphalt and bridges to those who will use the finished product.

We are providing the infrastructure system that enables our small businesses and governments across the country to further develop this tourism market. Not only does this benefit the foreign visitor market, but obviously benefits the domestic market. Infrastructure benefits all users.

I hope that my colleagues will join me in cosponsoring this bill. I think we can all see that this completes the package that enables us as stewards of our public lands to preserve what is one of the most valuable assets we know today.

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

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

S. 1233

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 "Rural Tourism Development Foundation Act of 1991".

RURAL TOURISM DEVELOPMENT FOUNDATION

SEC. 2. (a) FINDINGS; ESTABLISHMENT OF FOUNDATION.—(1) The Congress finds that increased efforts directed at the promotion of rural tourism will contribute to the economic development of rural America and further the conservation and promotion of natural, scenic, historic, scientific educational, inspirational, or recreational resources for future generations of Americans and foreign visitors.

(2) In order to assist the United States Travel and Tourism Administration in the development and promotion of rural tourism, there is established a charitable and nonprofit corporation to be known as the Rural Tourism Development Foundation (hereafter in this section referred to as the "Foundation").

(b) FUNCTIONS.—The functions of the Foundation shall be the planning, development, and implementation of projects and programs which have the potential to increase travel and tourism export revenues by attracting foreign visitors to rural America. Initially, such projects and programs shall include but not be limited to—

(1) participation in the development and distribution of education and promotional materials pertaining to both private and public attractions located in rural areas of the United States, including Federal parks and recreational lands, which can be used by foreign visitors;

(2) development of educational resources to assist in private and public rural tourism development; and

(3) participation in Federal agency outreach efforts to make such resources available to private enterprises, State and local

governments, and other persons and entities interested in rural tourism development.

(c) BOARD OF DIRECTORS.—(1)(A) The Foundation shall have a Board of Directors (hereafter in this section referred to as the "Board") that—

(i) during its first two years shall consist of nine voting members; and

(ii) thereafter shall consist of those nine members plus up to six additional voting members as determined in accordance with the bylaws of the Foundation.

(B)(i) The Under Secretary of Commerce for Travel and Tourism shall, within six months after the date of enactment of this Act, appoint the initial nine voting members of the Board and thereafter shall appoint the successors of each of three such members, as provided by such bylaws.

(ii) The voting members of the Board, other than those referred to in clause (i), shall be appointed in accordance with procedures established by such bylaws.

(C) The voting members of the Board shall be individuals who are not Federal officers or employees and who have demonstrated an interest in rural tourism development. Of such voting members, at least a majority shall have experience and expertise in tourism trade promotion, at least one shall have experience and expertise in resource conservation, at least one shall have experience and expertise in financial administration in a fiduciary capacity, at least one shall be a representative of an Indian tribe who has experience and expertise in rural tourism on an Indian reservation, at least one shall represent a regional or national organization or association with a major interest in rural tourism development or promotion, and at least one shall be a representative of a State who is responsible for tourism promotion.

(D) Voting members of the Board shall each serve a term of six years, except that—

(i) initial terms shall be staggered to assure continuity of administration;

(ii) if a person is appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor, that person shall serve only for the remainder of the predecessor's term; and

(iii) any such appointment to fill a vacancy shall be made within 60 days after the vacancy occurs.

(2) The Under Secretary of Commerce for Travel and Tourism and representatives of Federal agencies with responsibility for Federal recreational sites in rural areas (including the National Park Service, Bureau of Land Management, Forest Service, Corps of Engineers, Bureau of Indian Affairs, Tennessee Valley Authority, and such other Federal agencies as the Board determines appropriate) shall be nonvoting ex-officio members of the Board.

(3) The Chairman and Vice Chairman of the Board shall be elected by the voting members of the Board for terms of two years.

(4) The Board shall meet at the call of the Chairman and there shall be at least two meetings each year. A majority of the voting members of the Board serving at any one time shall constitute a quorum for the transaction of business, and the Foundation shall have an official seal, which shall be judicially noticed. Voting membership on the Board shall not be deemed to be an office within the meaning of the laws of the United States.

(d) COMPENSATION AND EXPENSES.—No compensation shall be paid to the members of the Board for their services as members, but they may be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members out of Foundation funds available to the Board for such purposes.

(e) ACCEPTANCE OF GIFTS, DEVISES, AND BEQUESTS.—(1) The Foundation is authorized to accept, receive, solicit, hold, administer, and use any gifts, devises, or bequests, either absolutely or in trust, of real of personal property or any income therefrom or other interest therein for the benefit of or in connection with rural tourism, except that the Foundation may not accept any such gift, devise, or bequest which entails any expenditure other than from the resources of the Foundation. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of rural tourism.

(2) A gift, devise, or bequest accepted by the Foundation for the benefit of or in connection with rural tourism on Indian reservations, pursuant to the Act of February 14, 1931 (25 U.S.C. 451), shall be maintained in a separate accounting for the benefit of Indian tribes in the development of tourism on Indian reservations.

(f) INVESTMENTS.—Except as otherwise required by the instrument of transfer, the Foundation may sell, lease, invest, reinvest, retain, or otherwise dispose of or deal with any property or income thereof as the Board may from time to time determine. The Foundation shall not engage in any business, nor shall the Foundation make any investment that may not lawfully be made by a trust company in the District of Columbia, except that the Foundation may make any investment authorized by the instrument of transfer and may retain any property accepted by the Foundation.

(g) USE OF FEDERAL SERVICES AND FACILITIES.—The Foundation may use the services and facilities of the Federal Government and such services and facilities may be made available on request to the extent practicable without reimbursement therefore.

(h) PERPETUAL SUCCESSION; LIABILITY OF BOARD MEMBERS.—The Foundation shall have perpetual succession, with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and to be sued in its own name, but the members of the Board shall not be personally liable, except for malfeasance.

(i) CONTRACTUAL POWER.—The Foundation shall have the power to enter into contracts, to execute instruments, and generally to do any all lawful acts necessary or appropriate to its purposes.

(j) ADMINISTRATION.—(1) In carrying out the provisions of this section, the Board may adopt bylaws, rules, and regulations necessary for the administration of its functions and may hire officers and employees and contract for any other necessary services. Such officers and employees shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and may be paid without regard to the provisions of chapters 51 and 53 of such title relating to classification and General Schedule pay rates.

(2) The Secretary of Commerce may accept the voluntary and uncompensated services of the Foundation, the Board, and the officers and employees of the Foundation in the performance of the functions authorized under this section, without regard to section 1342 of title 31, United States Code, or the civil service classification laws, rules, or regulations.

(3) Neither an officer or employee hired under paragraph (1) nor an individual who provides services under paragraph (2) shall be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(k) EXEMPTION FROM TAXES; CONTRIBUTIONS.—The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of the Board, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of this subsection or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

(l) LIABILITY OF UNITED STATES.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

(m) ANNUAL REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for each of fiscal years 1991, 1992, and 1993 not to exceed $500,000 to—

(1) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Rural Tourism Development Foundation by private persons and Federal, State, and local government agencies; and

(2) provide administrative services for the Rural Tourism Development Foundation.

(o) DEFINITIONS.—As used in this section, the term—

(1) "Indian reservation" has the meaning given the term "reservation" in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d));

(2) "Indian tribe" has the meaning given that term in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(3) "local government" has the meaning given that term in section 3371(3) of title 5, United States Code; and

(4) "rural tourism" means travel and tourism activities occurring outside of United States Standard Metropolitan Statistical Area, including activities on Federal recreational sites, on Indian reservations, and in the territories, possessions, and commonwealths of the United States.

(p) ASSISTANCE BY SECRETARY OF COMMERCE.—Section 202(a) of the International Travel Act of 1961 (22 U.S.C. 2123(a)) is amended—

(1) by striking "and" at the end of paragraph (14);

(2) by striking the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(16) may assist the Rural Tourism Development Foundation, established under the Rural Tourism Development Act of 1991, in the development and promotion of rural tourism.".

By Mr. DIXON (for himself, Mr. BYRD, Mr. ROCKEFELLER, Mr. SIMON, Mr. SPECTER, Mr. FORD, Mr. BOND, and Mr. COATS):

S. 1234. A bill to amend the Internal Revenue Code of 1986 to provide tax relief to utilities installing acid rain reduction equipment; to the Committee on Finance.

ENVIRONMENT TAX CREDIT LEGISLATION

Mr. DIXON. Mr. President, I rise today to introduce the Environmental Tax Credit Act of 1991, a bill that will encourage utilities to build pollution control devices to comply with the acid rain provisions of the Clean Air Act amendments.

As we all know, the Clean Air Act amendments will require that certain utilities make extensive reductions in their sulfur dioxide emissions, and the majority of affected units are located in only a few States. I am sure you will also remember that my colleagues from those States and I were not satisfied that the costs of this national problem were being equitably distributed, but that is now water under the bridge. The task before us now must be how to most effectively meet the requirements of the new law, and it is with that in mind that we offer this legislation.

The bill we are introducing would provide the following incentives for utilities to build pollution control devices, such as scrubbers, to meet the strict environmental goals of the Clean Air Act amendments:

A 20-percent investment tax credit for qualifying pollution control devices;

Five-year amortization of qualified pollution control devices;

Tax-exempt bond financing for utilities that build qualifying pollution control devices;

A 20-percent credit for minerals and ores used in pollution control devices to clean coal;

And, in addition, our legislation will allow utilities to exclude from gross income the revenue received from the sale of emissions allowance credits.

Mr. President, our legislation does not ask for a handout, nor does it seek to evade the requirements to reduce sulfur dioxide emissions. On the contrary, our legislation will help to ensure that the environmental goals of the Clean Air Act are not only met but exceeded, without devastating the economies of our Nation's high-sulfur coal region.

The incentives provided in our legislation are not new. The investment tax credit [ITC] and tax-exempt pollution control bonds were eliminated in the 1986 Tax Reform Act. Prior to that act, over 50 billion dollars worth of pollution control municipal bonds were issued, ranging from $5,000 in Rhode Island to $5 billion in Texas.

Reinstatement of these tax measures will ease the financial burden on millions of rate payers and once again encourage utilities to build more pollution control devices. Building more scrubbers will save thousands of coal mining and related jobs, create hundreds of manufacturing jobs, and encourage utilities to reduce a greater amount of their emissions.

Mr. President, we made a long-term commitment to our environment when we passed the Clean Air Act amendments, and there is no doubt that the entire country will benefit from our work. But we continue to fear that without the incentives included in this bill, the economics will force utilities to switch fuel, causing the loss of thousands of jobs, closing businesses, disrupting the domestic coal market, and leaving certain regions of our country devastated.

As a result of the Clean Air Act, even with the concessions made to soften the blow to Midwest States, it is projected that Illinois coal production will be cut in half, and 6,000 miners will lose their jobs.

Mr. President, the technology exists to clean, or scrub, the sulfur dioxide out of the high-sulfur coal emissions, thus allowing our utilities to continue using high-sulfur coal. But this technology is prohibitively expensive, and without providing incentives to our utilities to employ such technology, they will have no choice but to switch fuel. This could have the effect of virtually eliminating the high-sulfur coal market.

Unable to use local, high-sulfur coal, the most practical alternative available to Midwest utilities would be switching to low-sulfur, western coal. But it, too, has its drawbacks. While the costs of building a scrubber can be accurately and effectively worked into a utilities operating costs and rate scales, the future cost of western coal, as well as its transportation costs, are much more unpredictable.

In addition, Mr. President, at a time when our Nation's energy policy has gained everyone's attention, we cannot underestimate the important role that coal, of all grades, must play.

Coal is our Nation's largest indigenous resource of fossil fuel, constituting almost 95 percent of the Nation's proven fossil energy resources. On an energy equivalent basis, demonstrated U.S. coal reserves are 43 percent greater than the world's combined known oil and natural gas reserves.

Approximately 57 percent of the electricity produced in the United States is generated from coal, accounting for 85 percent of domestic coal consumption. This equates to an annual offset of 556.2 million barrels of oil or 3.1 trillion standard cubic feet of natural gas. At a time when foreign energy sources have once again proven themselves unreliable, thus presenting us with an uncertain energy future, America's biggest asset is its vast coal reserves.

Scrubber technology, together with advances in clean coal technology, represents one of the best alternatives for meeting increased energy needs at reasonable costs, while maintaining and improving environmental quality. Additional benefits will be realized in the form of new jobs, industrial growth, and improved trade balance, and enhanced energy security.

The first step toward assuring coal's place in our Nation's future energy policy is to maintain the economic viability of our high-sulfur coal producing regions. Our legislation will go a long way toward doing just that, and I urge my colleagues to join in support of this measure.

I ask unanimous consent that Senators BYRD, ROCKEFELLER, SIMON, SPECTER, FORD, BOND, and COATS be listed as original cosponsors, that a copy of the bill and a section-by-section summary be printed in the RECORD at the conclusion of my statement, and I yield the floor.

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

S. 1234

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

SECTION 1. TAX CREDIT FOR EQUIPMENT TO MEET ACID RAIN REDUCTION STANDARDS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end thereof the following new section:

"SEC. 30. ACID RAIN CONTROL PROPERTY.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—If qualified acid rain control property is placed in service during any taxable year, there shall be allowed as a credit for each taxable year in the credit period an amount equal to 6⅔ percent of the taxpayer's qualified investment in such property.

"(2) CREDIT PERIOD.—For purposes of paragraph (1), the term 'credit period' means, with respect to any qualified acid rain control property, the 3-taxable year period beginning with the taxable year such property is placed in service.

"(3) ACID RAIN CONTROL QUALIFIED PROGRESS EXPENDITURES.—In the case of any taxpayer who so elects under subsection (h) the amount of the credit allowed under paragraph (1) shall be increased in the taxable year of construction and in the two succeeding taxable years by an amount equal to 6⅔ percent of the qualified progress expenditures, (as defined in section 46(d) (3) and (4) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) made in the taxable year of construction to construct property which it is reasonable to believe—

"(A) has a normal construction period of two years or more, and

"(B) will be qualified acid rain control property when it is placed in service.

"(4) CREDIT ADJUSTED FOR QUALIFIED PROGRESS EXPENDITURES.—Any credit allowable under paragraph (1) in the taxable year the qualified acid rain control property is placed in service and in each of the 2 succeeding taxable years shall be reduced by one-third of the aggregate amount of credits allowed under paragraph (3) during the construction of such property.

"(5) FAILURE TO QUALIFY AS ACID RAIN CONTROL PROPERTY.—If the property fails to qualify as qualified acid rain control property when placed in service, the taxpayer's tax for the taxable year in which such failure occurs shall be increased by—

"(A) the credits allowed under paragraph (3) with respect to the property, and

"(B) interest for the period from the due date for the filing of the return of tax imposed by chapter 1 for the taxable year for which such credit was allowed to the due date for the taxable year in which the property is placed in service.

"(b) QUALIFIED ACID RAIN CONTROL PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified acid rain control property' means—

"(A) tangible property for use of coal which—

"(1) is installed in order to comply with the sulfur dioxide emission limitations under title IV of the Clean Air Act (as added by Public Law 101-549; 42 U.S.C. 7651 et seq.), and

"(ii) is a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion, or is a coal repowering technology as defined in Section 402(12) of the Clean Air Act (as added by Public Law 101-549; 42 U.S.C. 7651 et seq.), or

"(B) property which is installed on or in connection with property described in subparagraph (A).

"(2) ONLY DEPRECIABLE PROPERTY ELIGIBLE.—The term 'qualified acid rain control property' includes only—

"(A) property to which section 168 applies (without regard to any useful life), or

"(B) any other property—

"(i) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

"(ii) which has a useful life (determined at the time the property is placed in service) of 3 years or more.

"(3) PROPERTY MUST BE NEW.—

"(A) IN GENERAL.—The term 'qualified acid rain control property' includes only property the original use of which commences with the taxpayer.

"(B) RECONSTRUCTION.—For purposes of subparagraph (A), qualified acid rain control property includes property the reconstruction of which is completed by the taxpayer, but only with respect to that portion of the basis which is properly attributable to such reconstruction.

"(4) CERTAIN OTHER REQUIREMENTS.—In determining whether property is qualified acid rain control property, rules similar to the rules of the following provisions shall apply:

"(A) Section 50(b)(1) (relating to the requirement that property must be used predominantly in the United States).

"(B) Section 50(b) (3) and (4) (relating to exclusion of property of certain tax-exempt organizations, governmental units, and foreign persons and entities).

"(C) Section 168(g)(6) (relating to imported property).

"(c) QUALIFIED INVESTMENT.—For purpose of this section—

"(1) IN GENERAL.—The term 'qualified investment' means, with respect to any qualified acid rain control property, the basis of such property as of the time such property is placed in service.

"(2) LIMITATIONS WITH RESPECT TO CERTAIN PERSONS.—In determining qualified investment, rules similar to the rule of section 46(e) (as in effect on the day before enactment of the Revenue Reconciliation Act of 1990) shall apply.

"(d) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) LIABILITY FOR TAX.—The credit allowable under section (a) for any taxable year shall not exceed the excess (if any) of—

"(A) the taxpayer's regular tax for such taxable year reduced by the sum of the credits allowable against the taxpayer's regular tax liability under subpart A and sections 27, 28, and 29, over

"(B) the tentative minimum tax for the taxable year.

"(2) CARRYBACK AND CARRYFORWARD OF UNUSED CREDIT.—

"(A) IN GENERAL.—If the amount of the credit allowed under subsection (a) for any taxable year exceeds the limitation under paragraph (1) for such taxable year (hereafter in this paragraph referred to as the 'unused credit year'), such excess shall be—

"(i) an acid rain control credit carryback to each of the 3 taxable years preceding the unused credit year, and

"(ii) an acid rain control credit carryforward to each of the 15 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit under subsection (a) for such years. If any portion of such excess is a carryback to a taxable year beginning on or before the date of the enactment of this section, this section shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under this section. The entire amount of the unused credit shall be carried to the earliest of the 18 taxable years to which (by means of clauses (i) and (ii)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

"(B) LIMITATIONS.—The amount of the unused credit which may be taken into account under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by paragraph (1) for such taxable year exceeds the sum of—

"(i) the credit allowable under subsection (a) for such taxable year, and

"(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

"(e) RECAPTURE UPON DISPOSITION.—

"(1) IN GENERAL.—If a taxpayer disposes of qualified acid rain control property during any taxable year (or the property otherwise ceases to be qualified acid rain control property with respect to the taxpayer) before the close of the 5-year period beginning on the date such property was placed in service, the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under this section for all taxable years which would have resulted solely from reducing to zero the qualified investment taken into account with respect to such property.

"(2) RECAPTURE PERCENTAGE.—For purposes of paragraph (1), the term 'recapture percentage' has the meaning given such term by section 50(a)(1)(B).

"(3) OTHER RULES.—Rules similar to the rules of section 50(a) (2) and (3) shall apply for purposes of this subsection.

"(f) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowable under subsection (a) with respect to qualified acid rain control property, the basis of such property shall be reduced by the amount of such credit (determined as if the entire credit with respect to such property was allowable in the taxable year such property was placed in service). For purposes of this subsection, rules similar to the rules of section 50(c) shall apply.

"(g) LIMITATION IN CASE OF CERTAIN REGULATED COMPANIES.—No credit shall be allowed under this section with respect to any property which is public utility property (as defined in section 46(f)(5), as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) with respect to which a credit would not be allowed under section 38 if section 46(f)(2), as so in effect (relating to cost of service and rate base reductions) applied to such property, except that subparagraph (B) of such section 46(f)(2) shall not apply if the reduction in the rate base is restored not less rapidly than ratably.

"(h) ELECTION.—An election under subsection (a)(3) may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to qualified acid rain control property constructed in the taxable year for which the election is made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary."

(b) CONFORMING AMENDMENTS.—

(1) Section 196 of the Internal Revenue Code of 1986 (relating to deduction for certain unused business credits) is amended by adding at the end thereof the following new subsection:

"(e) ACID RAIN CONTROL CREDIT.—The provisions of subsections (a) and (b) shall apply in the same manner to the credit allowable under section 30(a)."

(2) Subsection (c) of section 381 (relating to items of the distributor or transferor corporation) is amended by adding at the end thereof the following new paragraph:

"(26) CREDIT UNDER SECTION 30.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 30, and under such regulations as the Secretary may prescribe) the items required to be taken into account for purposes of section 30 in respect of the distributor or transferor corporation."

(3) Section 383(a)(2) of such Code (defining excess credit) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) any unused acid rain control credit of the corporation under section 30(d),".

(4)(A) Section 6411(a) of such Code (relating to tentative carryback and refund adjustments) is amended by inserting "by an acid rain control credit carryback provided in section 30(d)," after "section 172(b)," in the first sentence.

(B) Section 6411(a) of such Code is amended by striking so much of the second sentence

as follows "the return for the taxable year" and inserting the following: "of the net operating loss, net capital loss, unused acid rain control credit, or unused business credit from which the carryback results and within a period of 12 months after such taxable year or, with respect to any portion of an acid rain control credit carryback or business credit carryback attributable to a net operating loss carryback or a net capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year, in the manner and form required by regulations prescribed by the Secretary."

(C) Subsections (a)(1), (b) and (c) of section 6411 are each amended by inserting "unused acid rain control credit," after "net capital loss," each place it appears.

(5) Subparagraph (C) of section 6511(d)(4) of such Code is amended by inserting "or any acid rain control credit carryback under section 30(d)" after "section 39".

(6) The table of sections for subpart B of part IV of subchapter A of chapter 1 of such Code is amended by inserting at the end thereof the following new item:

"Sec. 30. Acid rain control property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after October 1, 1992, in taxable years ending after such date.

SEC. 2. TAX-EXEMPT FINANCING OF ACID RAIN CONTROL PROPERTY.

(a) IN GENERAL.—Subsection (a) of section 142 of the Internal Revenue Code of 1986 (relating to exempt facility bonds) is amended by striking "or" at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting ", or", and by adding at the end thereof the following new paragraph:

"(12) qualified acid rain control property."

(b) QUALIFIED ACID RAIN CONTROL PROPERTY DEFINED.—Section 142 of such Code is amended by adding at the end thereof the following new subsection:

"(j) QUALIFIED ACID RAIN CONTROL PROPERTY.—For purposes of this section, the term 'qualified acid rain control property' has the meaning given such term by section 30(b)."

(c) EXEMPTION FROM VOLUME CAP.—Subsection (g) of section 146 of such Code is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(5) any exempt facility bond issued as part of an issue described in paragraph (12) of section 142(a) (relating to qualified acid rain control property)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after January 1, 1992.

SEC. 3. TAX CREDIT FOR MINERALS USED TO REDUCE THE SULFUR IN COAL.

(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 after section 44 the following new section:

"SEC. 45. COAL CLEANING MINERALS CREDIT.

"(a) GENERAL RULE.—For purposes of section 38, the credit for qualified coal cleaning minerals for the taxable year shall be an amount equal to 20 percent of the expenses paid or incurred during the taxable year for qualified coal cleaning minerals.

"(b) QUALIFIED COAL CLEANING MINERALS.—For purposes of this section, the term 'qualified coal cleaning minerals' means minerals and ores used in connection with qualified acid rain control property to remove or reduce the sulfur content of coal.

"(c) QUALIFIED ACID RAIN CONTROL PROPERTY.—For purposes of this section, the term 'qualified acid rain control property' has the meaning given such term by section 30(b)."

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of such Code (relating to business credits) is amended by striking "plus" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", plus", and by adding at the end thereof the following new paragraph:

"(8) the coal cleaning minerals credit determined under section 45(a)."

(2) Section 162 of such Code (relating to deduction of trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) COAL CLEANING MINERALS.—

"(1) IN GENERAL.—The deduction allowed by subsection (a) shall not exceed 80 percent of the expenses paid or incurred during the taxable year for qualified coal cleaning minerals.

"(2) DEFINITION.—For purposes of this subsection, the term 'qualified coal cleaning minerals' means minerals and ores for which a credit shall be allowable in the taxable year under section 45."

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 45. Coal cleaning minerals credit."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1993.

SEC. 4. EXCLUSION FROM GROSS INCOME OF RECEIPT OF QUALIFIED CLEAN AIR ALLOWANCE AND PROCEEDS OF DISPOSITION THEREOF.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 136 as section 137 and inserting after section 135 the following new section:

"SEC. 136. QUALIFIED CLEAN AIR ALLOWANCES.

"(a) RECEIPT OF ALLOWANCES.—Gross income does not include the value of qualified clean air allowances allocated to the taxpayer.

"(b) DISPOSITION OF ALLOWANCES.—

"(1) IN GENERAL.—At the election of the taxpayer, gross income does not include amounts received or accrued from the sale or exchange of qualified clean air allowances.

"(2) LIMITATION.—The amount to which an election under paragraph (1) applies shall not exceed the aggregate adjusted basis of the qualified acid rain control property held by the taxpayer at the beginning of the taxable year following the taxable year in which the sale or exchange occurs.

"(3) SPECIAL RULES.—

"(A) ELECTION.—Any election under paragraph (1) shall be made in the manner prescribed by the Secretary by regulations and shall be made not later than the due date prescribed by law (including extensions) for filing the return of tax under this chapter for the taxable year in which the amounts were received or accrued.

"(B) BASIS REDUCTION.—The amount excluded from gross income under this subsection shall reduce the basis of the qualified acid rain control property of the taxpayer under subsection (a)(26) of section 1016.

"(C) TAXABLE YEAR OF BASIS REDUCTION.—The basis reduction described in subparagraph (B) shall be made at the beginning of the taxable year following the taxable year in which the sale or exchange occurs.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED CLEAN AIR ALLOWANCES.—The term 'qualified clean air allowances' means allowances allocated to the taxpayer by the Administrator of the Environmental Protection Agency under section 403 of the Clean Air Act.

"(2) QUALIFIED ACID RAIN CONTROL PROPERTY.—The term 'qualified acid rain control property' has the meaning given such term by section 30(b)."

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) of such Code (relating to adjustments to basis) is amended by striking "and" at the end of paragraph (24), by striking the period at the end of paragraph (25) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(26) for amounts excluded from gross income pursuant to an election under section 136(b)(1)."

(2) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

"Sec. 136. Qualified clean air allowances.

"Sec. 137. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1992.

SEC. 5. 60-MONTH AMORTIZATION OF ACID RAIN CONTROL PROPERTY.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 169 the following new section:

"SEC. 169A. AMORTIZATION OF QUALIFIED ACID RAIN CONTROL PROPERTY.

"(a) ALLOWANCE OF DEDUCTION.—Every person, at his election, shall be entitled to a deduction with respect to the amortizable basis of any qualified acid rain control property (as defined in section 30(b)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the qualified acid rain control property at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of such month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such qualified acid rain control property for such month provided by section 167. The 60-month period shall begin, as to any qualified acid rain control property, at the election of the taxpayer, with the month following the month in which such property was completed or acquired, or with the succeeding taxable year.

"(b) ELECTION OF AMORTIZATION.—The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the property is completed or acquired, or with the taxable year succeeding the taxable year in which such property is completed or acquired, shall be made by filing a statement of such election with the Sec-

retary in such manner and form, and within such time as the Secretary may by regulations prescribe.

"(c) TERMINATION OF AMORTIZATION DEDUCTION.—A taxpayer, who has made an election, under subsection (b) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period. Such discontinuance shall begin as of the beginning of any month specified by the taxpayer in a written notice filed with the Secretary before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such property.

"(d) AMORTIZABLE BASIS.—

"(1) DEFINED.—For purposes of this section, the term 'amortizable basis' means that portion of the adjusted basis (for determining gain) of qualified acid rain control property which may be amortized under this section.

"(2) SPECIAL RULES.—

"(A) In the case of qualified acid rain control property which has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such property shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such property, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the applicable recovery period of such property determined under section 168.

"(B) The amortizable basis of a qualified acid rain control property with respect to which an election under this section is in effect shall, at the election of the taxpayer, be increased for purposes of this section, for additions or improvements after the amortization period has begun, effective with the month following the month of completion which month shall be deemed the first month of the 60-month period applicable to such addition or improvement.

"(e) DEPRECIATION DEDUCTION.—The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

"(f) CROSS REFERENCE.—

"For the special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245."

(b) CONFORMING AMENDMENTS.—

(1) Section 1245(a)(3) of such Code is amended by striking "(or subject to the allowance of amortization provided in section 185 or 1253(d)(2) or (3))" after "section 167" and inserting "(or subject to the allowance of amortization provided in section 169A, 185, or 1253(d) (2) or (3))".

(2) The table of sections for part VI of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 169 the following new item:

"Sec. 169A. Amortization of qualified acid rain control property."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1992.

SECTION-BY-SECTION ANALYSIS—ENVIRONMENTAL TAX CREDIT ACT OF 1991

SECTION 1—INVESTMENT TAX CREDITS

Utilities that build pollution control devices designed to achieve at least a 90 percent reduction in SO2 emissions are eligible to receive a 20 percent investment tax credit (ITC), one third of the 20% credit (6⅔%) will be allowed the first year of construction, and one third in each of the two succeeding years.

The ITC would be available for Phase I and Phase II. The credit would have carry over provisions.

The credit will be allowed only if normalized for rate making purposes and with respect to qualified property placed in service subsequent to October 1, 1992.

The ITC will be available at the start of construction to assist utilities with the high capital expenditures necessary at the time, and to avoid "rate shock"—a quick and severe increase in utility rates.

SECTION 2—TAX-EXEMPT FINANCING

The bill adds "qualified acid rain control property" to the Section 142(a) list of exempt facilities which may be financed by the tax exempt "qualified bonds" under Section 141(e).

In addition, Section 146(g) is amended to add such qualified acid rain control property bonds for the purpose of the volume cap otherwise applicable to the amount of private activity bonds issuable by the relevant public authority.

SECTION 3—CREDIT FOR MINERALS USED IN POLLUTION CONTROL DEVICES

Section 162 is amended to reduce by 20% the cost of the minerals and ores which may be deducted as an operating expense. This 20% credit for qualified coal cleaning minerals, such as lime, would be available when used in certain pollution control devices.

(There are essentially two kinds of scrubbers: a limestone scrubber, which is more expensive to build, but less expensive to maintain; and a "lime" scrubber, which is less expensive to build, but has a higher maintenance cost. This credit allows the two scrubbers to receive fair treatment under the tax options, so that one type won't be favored over another.)

SECTION 4—EXCLUDING FROM INCOME THE REVENUE RECEIVED FROM SELLING CREDIT ALLOWANCES

This section excludes from gross income the value of the pollution credit allowances held by the initial owner and excludes any revenue received by the owner when an allowance is sold.

The 1990 Clean Air Act Amendments establishes a system of marketable allowances, whereby utilities are provided an initial allotment of allowances permitting the targeted utilities to emit pollutants. At the same time, the utilities are required to reduce their pollutant emissions.

In theory, after achieving the required reduction, a utility will sell some of its allowances and thus recoup part of its costs of achieving the reduction.

The allowances are designed to provide an "after the event" reduction in the cost of compliance. To accomplish such a reduction, the receipt and disposition of the allowances by the initial recipients should result in no tax consequences. If such an exclusion is not provided, the intended cost reduction from the sale of the clean air allowances will not be fully achieved.

SECTION 5—5-YEAR AMORTIZATION FOR POLLUTION CONTROL DEVICES

This section extends the 60 month amortization principles of Section 169 to qualified acid rain control property built to comply with the 1990 Clean Air Act Amendments. Currently, the property would not qualify under Section 169 either because it (1) is an addition to property placed in service after 1975, or (2) is an improvement to an existing emission reduction facility being amortized under section 169. Since section 169 also denies 60 month amortization to property which significantly alters the nature of a production process or facility, this section provides 60 month amortization for replacements of process equipment or facilities if such property is certified as contributing to emission reduction even though it alters an energy generating facility.

Mr. BYRD. Mr. President, I am pleased to be an original cosponsor of the legislation being introduced today by the Senator from Illinois [Mr. DIXON]. I believe this bill, S. 1234, a bill to provide tax relief to utilities that elect to comply with the requirements of the Clean Air Act Amendments of 1990 through the installation of a technological system of continuous emissions control, serves two important purposes. First, it will help reduce the potentially devastating economic consequences that last year's clean air amendments could have on communities across a wide section of our Nation. Second, I believe it will advance the environmental and energy policies of this Nation by encouraging the eventual deployment of advanced clean coal technologies currently under development.

Last year, with some regret, I voted against the Clean Air Act Amendments of 1990. Having not enacted any new clean air legislation in 13 years, I believed that the time had come, last year, for the Congress to do so. I was compelled, however, to vote against the Clean Air Act Amendments of 1990 because of the tremendous price that legislation is certain to exact, in terms of lost wages and lost employment, from the men and women who work in our Nation's high-sulfur coal mines, as well as their families and their communities and because of the high cost it is certain to impose on electric ratepayers in the industrial heartland of America.

It is true that the Clean Air Act Amendments of 1990, as signed into law by the President last November, does include important incentives for the use of technological systems of emission control, incentives that will help mitigate the impact of last year's amendments on the high-sulfur coal industry and on electric ratepayers. However, despite the inclusion of these incentives, I believe that the Clean Air Act Amendments of 1990 will still impose a heavy and unfair burden on the citizens of West Virginia and other coal-producing and coal-consuming States in the Midwest.

S. 1234, by providing additional incentives to utilities to use technological emission controls to comply with the acid rain control provisions of last year's clean air amendments, will help further mitigate the impact that legislation is likely to have on West Virginia and other coal States. This legislation will help save jobs in our high-sulfur coal mines, as well as jobs in the communities supported by those mines. And in communities and regions already suffering from high unemployment and severe economic dislocation, nothing is more important than preserving the jobs that still remain.

There is also a longer term benefit that will be provided by this legislation. By encouraging the continued development and eventual deployment of new clean coal technologies, this bill will advance the long-term environmental and energy policies of our Nation. Mr. President, the realities of American energy use are clear. Coal is our most abundant domestic energy resource. Coal currently accounts for more than 50 percent of our domestic electricity production, and, even with significant increases in conservation and energy efficiency, as well as increased development of other domestic energy resources, it will continue to be responsible for more than half of our electric power generation well into the future.

Today, as in the past, we find ourselves confronted by issues related to environmental quality and energy security. Finding ways to burn coal more efficiently and cleanly will enable us to address these environmental and energy issues together, and clean coal technologies offer the best hope for doing so. The legislation crafted by my colleague from Illinois will encourage the development and deployment of clean coal technologies, and for that reason I believe it merits the support not only of Senators from the coal-producing States of Appalachia and the Midwest, but of every Member of this body.

I commend the Senator from Illinois for the work he has done in putting together this legislation, and I urge my colleagues to support it. Again, I am pleased to be an original cosponsor of this bill.

Mr. SPECTER. Mr. President, I join my distinguished colleague from Illinois as an original cosponsor of legislation to help offset the capital costs of technological controls installed by public utilities under phase I of the Clean Air Act. The goal of this legislation is to provide a financial incentive to help lower the cost of capital of installing scrubbers, so that utilities can achieve higher emissions reductions at an earlier date. In doing so, the bill would achieve an important result to ensure a more equitable allocation of acid rain control costs.

I want to make it plain, Mr. President, that I fully support the goals of the Clean Air Act with its objective of removing 10 million tons annually of sulfur dioxide from the air to help solve the acid rain problem. However, I am concerned with the matter of fairness, and I see this legislation as a method to correct an inequity that was present in the final version of the Clean Air Act.

As I said at the time of this debate last year, clearly, it is not equitable for a small number of Midwestern States who together comprise 51 percent of the national sulfur dioxide emissions total, to be responsible for 90 percent of the emissions reduction in implementation of phase I of the Clean Air Act.

Mr. President, we are not asking for relief from our environmental protection responsibilities. This bill would simply allow those utilities which install pollution control devices, scrubbers, the same kind of a tax break enjoyed by others who undertook those controls at an earlier time when there was an investment tax credit.

In order to comply with the stringent regulations established by the Clean Air Act, expensive, state-of-the-art technology will necessarily be installed by our region's utilities. Electrical rates for consumers in some States could increase by 13 to 20 percent. By allowing this tax credit, this bill would provide needed relief in reducing the costs to our region's electrical consumers in meeting our national clean air goals. In addition, this tax credit may avoid the cost of paying for compensation of unemployed workers should we fail to provide assistance for the installation of new technology in these plants.

I am hopeful that you will see this bill not as a regional issue, but as a show of national support for a national priority that must be shared by the whole country, and I ask that you join in support of this legislation as a long-term step in the solution to the Nation's acid rain problem.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 1235. A bill to amend the Internal Revenue Code of 1986 to provide that storage tanks constructed in connection with the regional petroleum reserve are eligible for the investment tax credit; to the Committee on Finance.

S. 1236. A bill to amend the Internal Revenue Code of 1986 to provide for tax-exempt bond financing for storage tanks used in connection with a regional petroleum reserve; to the Committee on Finance.

PETROLEUM RESERVE INVESTMENT TAX CREDITS

Mr. AKAKA. Mr. President, over the past 2 months the senior Senator from Hawaii [Mr. INOUYE] and I have introduced legislation, S. 836, to establish an emergency petroleum reserve in Hawaii and subsequent legislation, S. 1078, the Emergency Petroleum Supply Act, to ensure that insular areas of the United States have guaranteed access to the strategic petroleum reserve and SPR loading docks.

Today, I am joined by Senator INOUYE in introducing a third component, the Emergency Petroleum Supply Tax Incentive Act, which would provide tax incentives for the construction and maintenance of the storage tanks necessary to hold the crude oil and refined petroleum products which become part of the strategic regional petroleum reserve.

On numerous occasions, I have detailed the urgent need for an emergency petroleum reserve in Hawaii. Distance and access remain the two major impediments to improving energy security in Hawaii and other insular areas in the Pacific. My State relies on oil for 90 percent of our energy needs. All of it arrives by ocean tanker. This total reliance on tanker deliveries for crude oil and refined petroleum products makes Hawaii exceptionally vulnerable should any crisis disrupt imports.

Studies have shown that under current procedures, Hawaii could face a 53-day wait during the purchase, drawdown, and delivery of oil from the nearest strategic petroleum reserve loading docks 7,000 miles away on the gulf coast. Yet, extant storage capacity affords our State only an average commercial working capacity of 20 days. This precarious situation offers little in the way of security if we were to experience a severe oil supply disruption. I do not exaggerate when I say that Hawaii's economy would grind to a halt and the daily activities of our citizens and visitors would be dramatically altered. The hardship would be even more acute for the Pacific territories.

S. 836 and S. 1078 would rectify potential problems created by Hawaii's distance from and access to our Nation's strategic petroleum reserve, and would afford Hawaii the same energy security enjoyed by the rest of our country. We ask for nothing more than the same protection already provided to the continental United States. It's a matter of simple equity.

At present, Hawaii does not possess excess storage capacity necessary to hold the crude oil and refined petroleum products for a 20,000,000-barrel emergency petroleum reserve. This legislation we propose today offers a two-option approach to encourage the construction of storage facilities to be employed by the Department of Energy as part of the regional petroleum reserve. Due to the exclusivity of each approach, we have decided to introduce the legislation as two separate bills.

The first bill provides that obligations issued for the construction of petroleum storage tanks used as part of

the strategic petroleum reserve qualify for tax-exempt bond financing. Eligibility would apply to both the land acquisition and construction of qualified storage facilities used to store oil or petroleum products in connection with a regional petroleum reserve as defined under section 157 of the Energy Policy and Conservation Act.

Our companion measure provides that the storage tanks constructed in connection with the regional petroleum reserve are eligible for the investment tax credit.

Enactment of these two bills, along with the Emergency Petroleum Supply Act I introduced on May 15, is critical if Hawaii is to successfully establish and maintain a strategic petroleum reserve.

By Mr. GRAHAM:

S. 1238. A bill to require the Secretary of Health and Human Services to report to Congress on the validity of utilizing certain criteria in the alcohol, drug abuse, and mental health block grant allotment formula, and for other purposes; to the Committee on Labor and Human Resources.

ADAMH BLOCK GRANT FORMULA REVIEW

• Mr. GRAHAM. Mr. President, since the 1988 Anti-Drug Abuse Act, there have been attempts to change the formula that distributes the alcohol, drug abuse, and mental health block grant funds—the primary source of Federal treatment dollars to the States.

We have wrestled with terms like urban weighting, age cohorts, indicators of need, and other variables in the formula that combine to supposedly give us an accurate picture of where Federal funds for mental illness and substance abuse treatment need to be targeted.

This year we will again attempt to change the formula when the Senate reauthorizes the programs under the ADAMH administration.

But I want to challenge the assumption that tinkering with the current formula can produce the most equitable distribution of funds.

What may be required is a new method of assessing need and distributing funds.

The bill I will introduce today will ask for an evaluation of the current formula. I want to know if the block grant funds are really going to where the need is.

To do this, I ask the Secretary of Health and Human Services to look at the most up to date scientific evidence on mental illness and substance abuse. Using the newest and most relevant science, the Secretary will then identify new factors that reliably predict mental illness and substance abuse.

We also ask the Secretary to ensure that the variables in the current formula are still valid.

Then we ask the General Accounting Office to take the information provided by the Secretary and come back to Congress with recommendations on how to change the formula to reflect HHS's findings.

I came to the conclusion that this reevaluation of the formula needed to happen for three reasons.

One, the changes that I expect to come out of this year's reauthorization will likely reduce Florida's share of the block grant by millions of dollars.

My State has clear, documented needs; according to the Judiciary Committee, only one out of four citizens of Florida who need substance abuse treatment receives it. If we're only meeting a fourth of our treatment needs, how can it be considered fair to reduce access to treatment in Florida even further?

Second, the current formula relies on three age categories for its base population for estimating the incidence of mental illness, alcoholism, and drug abuse. These age cohorts exclude, I believe, significant populations that have substance abuse and mental health needs.

For instance, Senator PRYOR, chairman of the Special Committee on Aging, and I are concerned that because the current formula looks only at the population of persons between the ages of 18 and 65, we are not taking into account the needs of those older than 65.

Because of his concern, the Senator from Arkansas has indicated that he will cosponsor this bill as soon as he is well enough to resume his full duties here in the Senate.

Third, the entire formula is based on scientific evidence that may be out of date. We know more today about who suffers from mental illness, the type of person seeking substance abuse treatment. We know about crack and cocaine babies—two relatively new phenomena that weren't factors when the original formula was written.

Senator KENNEDY and his staff have been very supportive of my efforts to craft this bill. As chairman of the committee that has jurisdiction over the reauthorization of ADAMHA, he is trying to balance the needs of very different States. I look forward to working with him during reauthorization.

Mr. President, I realize that very rarely are all parties satisfied with a funding formula. For that reason, formulas must be based on current science, impartial recommendations, and the most accurate indicators of need. I hope that my colleagues will support the bill I'm introducing as the best way to achieve those goals for the alcohol, drug abuse, and mental health block grant.

Mr. President, I ask that the full text of the bill be printed immediately following the conclusion of my remarks.

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

S. 1238

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

SECTION 1. REPORT CONCERNING ALCOHOL, DRUG ABUSE AND MENTAL HEALTH BLOCK GRANT ALLOTMENT FORMULA.

(a) REPORT.—Not more than six months after the date of enactment of this Act, the Secretary of Health and Human Services shall transmit to the Senate Committee on Labor and Human Resources and the House Committee on Energy and Commerce a report on the statutory formula by which funds made available under section 1911 are allocated among the States and territories.

(b) COMPONENTS OF THE REPORT.—The report mandated by section (a) shall include:

(1) an assessment of the degree to which the formula allocates funds according to the respective needs of the States and territories;

(2) a review of relevant and current epidemiological research regarding the incidence of substance abuse and mental illness among various groups and geographic regions of the country;

(3) the identification of factors not included in the formula that are reliable predictors of the incidence of substance abuse and mental illness;

(4) an assessment of the validity and relevance of factors currently included in the formula, such as age, urban population, and cost;

(5) any other information the Secretary believes would contribute to a thorough assessment of the appropriateness of the current formula.

(c) CONSULTATION.—In preparing the report mandated by section (a), the Secretary shall consult with the Comptroller General. The Comptroller General shall review the study after its transmittal to Congress and make appropriate recommendations to Congress in response thereto no later than three months after the date of transmittal.•

By Mrs. KASSEBAUM:

S. 1239. A bill to preserve jobs in the aircraft industry by amending the Internal Revenue Code of 1986 to repeal the luxury excise tax on aircraft; to the Committee on Finance.

REPEAL OF THE LUXURY TAX ON AIRPLANE PURCHASES

• Mrs. KASSEBAUM. Mr. President, I rise today to introduce legislation to repeal the luxury tax on the purchase of airplanes.

While this new tax took effect only on January 1, it is already clear that it does not raise but actually reduces Federal revenues, while also causing a significant loss of jobs. While this luxury tax was supposed to be aimed at the very rich, it in fact penalizes assembly line workers and others who build one of the best U.S.-made products in the world.

To illustrate the real effect of this tax, I want to provide other Senators with figures compiled by the Beech Aircraft Corp., which is by far the largest producer of privately owned aircraft in the Nation. Prior to the imposition of the luxury tax, Beech had planned to hire 500 new employees this year. Instead, from January 1 to March

31—the first fiscal quarter under the luxury tax—Beech lost 39 new airplane sales. These lost sales include 13 Bonanzas, 4 Barons, 20 King Airs, and 2 Beechjets. The total value of the lost sales is $77.6 million.

Building these 39 airplanes would have employed 255 workers for 1 year. Beech would have paid $7.5 million to those workers, and the Federal Government would have collected about $1.1 million in Federal income taxes and about $1.1 million in FICA payroll taxes.

In short, the luxury tax directly reduced employment and economic activity in my State and directly cost the Federal Government $2.2 million in lost revenues. The only offset against this loss was the $16,000 the Government collected in luxury taxes in two airplanes that actually sold in the first 3 months of this year.

This tradeoff makes no sense, either in fiscal terms or in economic reality. For every $1 the new luxury tax raises, it takes $475 out of the pockets of American workers. For every $1 it raises in new Federal revenues, it costs the Government $138 in lost income and payroll taxes.

Mr. President, I believe we should end this nonsense before even more workers lose their jobs. I know Senator CHAFEE and Senator BREAUX can cite similar statistics in the boat industry, and I am sure other industries affected by the so-called luxury tax are in the same predicament. Today, I am introducing legislation to repeal the luxury tax on airplanes, and I intend to support legislation to repeal the tax on other industries as well. Such taxes may be aimed at the rich, but it is American workers who end up paying through reduced paychecks and an increased number of pink slips. Mr. President, this tax is a luxury that America's economy and workers cannot afford.●

By Mr. CHAFEE (for himself, Mr. RIEGLE, Mr. DANFORTH, Mr. PRYOR, Mr. MOYNIHAN, Mr. BREAUX, and Mr. BOREN):

S. 1240. A bill to amend title XIX of the Social Security Act to provide criteria for making determinations of denial of payment to States under such Act; to the Committee on Finance.

MEDICAID AUDITS AND DISALLOWANCE REFORM ACT OF 1991

● Mr. CHAFEE. Mr. President, today I introduce the Medicaid Audits and Disallowance Reform Act of 1991. During these times of severe budget constraints, we must constantly strive to ensure that our limited Medicaid dollars are spent appropriately, on quality and medically necessary services. The legislation that I am introducing today will make needed improvements in the Medicaid audit and disallowance system while ensuring that our Medicaid dollars are not misspent. I am joined by my colleagues Senators RIEGLE, DANFORTH, PRYOR, MOYNIHAN, BREAUX, and BOREN.

Currently, the amount of Federal Medicaid dollars paid to States is based on claims filed each quarter for expenditures made by the States for services provided to Medicaid eligible individuals. These funds are matched by the Federal Government based on the States' per capita income. These matching percentages range from 50 percent in States such as New York and Massachusetts to almost 80 percent in Mississippi. The Health Care Financing Administration [HCFA] and the Office of the Inspector General [OIG] within the Department of Health and Human Services conduct audits of State Medicaid programs after payments are made to States to determine the appropriateness of a State's claim for Medicaid matching funds. The Secretary of HHS may disallow a State's claim based on these audits, and recoup the Federal matching payment.

State Medicaid agencies are experiencing a period of substantial change. Federal mandates have increased the cost and complexity of the Medicaid Program. Over the last few years, my colleagues and I have heard from our State Medicaid directors about the States' great frustration with the increasing Federal practice of imposing enormous disallowances on the basis of procedural or highly technical violations of State Medicaid plan provisions, even when there is no question that the services provided were appropriate. In light of many States' dire fiscal condition, and the congressionally mandated Medicaid expansions enacted in the past few years, I believe that it is critical to resolve the problems inherent in the current audit and disallowance system so that the States are better able to focus on meeting the health care needs of the poor.

This bill is not designed to relieve States of their statutory and regulatory obligations under the Medicaid Program. Nor does the bill provide avenues for the States to misspend Federal funds without accountability. This bill does not question the right of the Federal Government to audit programs that are in whole or in part, financed by the Federal Government. The bill simply acknowledges that there should be some flexibility in the assessment of Federal penalties upon the States under the Medicaid audit and disallowance process.

The legislation that we introduce today would reform the audits and disallowance process in several ways. First, there are situations in which States may not be fully in compliance with Medicaid procedural requirements, but denying Federal matching funds for the service is too severe a penalty. If the Secretary agrees that the violation was technical or procedural in nature, the bill would give States the opportunity to come into compliance on a prospective basis without financial penalty. The bill defines such procedural violations as those which do not affect quality of care, medical necessity or appropriateness of services. In addition, there must be no question that the individual was eligible for services, that the health care provider was a qualified Medicaid provider, or that the services were within the definition of the States Medicaid plan.

Second, should the Secretary determine that the violation does warrant Federal recoupment of Federal matching funds; for example, disallowance, this bill allows some flexibility in determining the amount of the disallowance. Under current law, if the Secretary issues a disallowance, States have the right to a fair hearing before the Departmental Appeals Board. The Board makes a determination as to whether or not the State was at fault and can either dismiss the disallowance or recoup all matching funds for the services provided. The Board has no statutory or regulatory authority to adjust the disallowance amount so that the fiscal penalty imposed on the State is commensurate with the nature of the violation.

Under this system, the Board has been forced to affirm disallowances that are disproportionately high given the nature of the violation, and conversely, the Board may reverse a partially meritorious disallowance in its entirety because of the enormity of the dollar amount. This legislation would allow the Appeals Board, if it upholds the disallowance, to reduce the amount of the disallowance. The Board would, in appropriate cases, consider such factors as whether the amount of the disallowance is proportionate to the error of deficiency on which the disallowance is based.

The legislation prohibits the Secretary from imposing a disallowance if the State was in compliance with a plan approved by HHS. Further, under present law, if a State elects to retain the amount of the disallowance pending administrative review, and the disallowance is ultimately sustained, the State must repay the amount in question and interest to the Federal Government for the period of the appeal. Under our legislation, should a State elect to repay the amount in question, but is later successful on appeal in overturning the disallowance, the Federal Government would be required to pay interest to the State. A similar provision was recently enacted in connection with the Aid to Families With Dependent Children and food stamp quality control reforms.

I believe that these reforms will not only ease the adversarial relationship between State Medicaid officials and Federal auditors, but will make the Medicaid Program easier for the States

to administer. In addition, this proposal will allow Federal auditors to focus their limited resources on State violations which adversely affect quality of care and misuse of Federal Medicaid dollars.

I urge my colleagues to join with us in sponsoring this legislation.

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

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

S. 1240

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

SECTION 1. TO PROVIDE CRITERIA FOR MAKING DETERMINATIONS OF DENIAL OF PAYMENT TO STATES.

(a) CRITERIA PROVIDED FOR MAKING DETERMINATIONS OF DENIAL OF FEDERAL FINANCIAL PARTICIPATION TO STATES.—Section 1903 (43 U.S.C. 1396b) is amended by adding at the end the following new subsection:

"(w)(1) In any case in which the Secretary proposes to disallow under section 1116(d) a claim by a State under this section, the Secretary shall, if the proposed disallowance is described in paragraph (2)(A), follow the procedure described in paragraph (2)(B). The Secretary may disallow such claim only if the State fails to take the action specified in paragraph (2)(B).

"(2)(A) The procedure described in subparagraph (B) applies to any proposed disallowance where there is no contention by the Secretary that the services rendered were not medically necessary and appropriate, or that the quality of care provided to eligible individuals was deficient and the proposed disallowance is not based upon (i) an erroneous determination of eligibility of individuals; (ii) services of a type that are not covered by this title; (iii) services provided by an ineligible provider; (iv) erroneous computation of a State's indirect cost allocation rate or an ineligible provider's rate; (v) claims based on an inapplicable medical assistance percentage; or (vi) failure to comply with utilization control procedures pursuant to subsection (g).

"(B) In the case of any proposed disallowance described in subparagraph (A) the Secretary shall notify the State of the Secretary's intent to disallow a claim. Within 60 days of receipt of such notice, the State may inform the Secretary of its intention to alter its program or practices on a prospective basis to satisfy the matters on which the proposed disallowance is based, in which event the Secretary shall review the State's program or practices, as appropriate, to assure that the necessary changes have been made or will be made within a reasonable time.

"(3) Whenever the Secretary disallows any claim by a State under this section, whether or not described in paragraph (2)(A) of this subsection, and the State exercises its right of reconsideration under section 1116(d), the Department Appeals Board established in the Department of Health and Human Services shall, if such Board upholds the basis for the disallowance, determine whether the amount of the disallowance should be reduced. In making this determination, the Board shall take into account (to the extent the State makes a showing) factors which shall include, but not be limited to—

"(A) whether the basis of the disallowance was procedural in nature;

"(B) whether the amount of the disallowance is proportionate to the error or deficiency on which the disallowance is based;

"(C) whether the basis of the disallowance constitutes noncompliance that prevented or materially affected the provision of appropriate services of recipients eligible under this title; or

"(D) whether Federal guidance with respect to the action that is the basis for the proposed disallowance was insufficient and the State made good faith efforts to conform its action to the intent of the applicable Federal statute or regulation.

"(4) No disallowance shall be taken or upheld if action of the State on which the disallowance would be based is consistent with its approved State plan.

"(5) In any case of a disallowance as to which the State does not elect to retain the amount of the Federal payment in dispute pending a final determination with respect to such payment amount, and such final determination (either by administrative or judicial decision) is to the effect that such payment amount, or any portion thereof, shall not be disallowed, the State shall be entitled to interest on the amount determined not to be disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at the rate specified in subsection (d)(5).

"(6) No disallowance of a claim under this section may be taken with respect to any amounts paid to a State unless an audit or financial review with respect to such amounts has been initiated, and the State has been informed that the audit has been initiated, within 3 years of the date of filing of the State's claim for such amounts.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to disallowances made after the date of the enactment of this Act and shall take effect without regard to the promulgation of implementing regulations.●

● Mr. RIEGLE. Mr. President, I am pleased to cosponsor this bill with Senator CHAFEE, the ranking minority member of the Finance Subcommittee on Health for Families and the Uninsured which I chair. We also have a number of other cosponsors from the Finance Committee including Senators DANFORTH, PRYOR, MOYNIHAN, BREAUX, and BOREN. This bill is intended to help States in administrating their Medicaid Programs by giving them more flexibility to achieve compliance for very specific procedural and technical issues.

Medicaid Programs across the country are an increasingly large portion of State budgets. We have enacted a number of important expansions in the past few years, particularly for pregnant women and children. This bill recognizes the difficulties in administering Medicaid due to these changes. Ultimately, these diffficulties may limit access to services and lower the quality of care provided. S. 1240 amends existing Medicaid law concerning Federal program audits and resulting disallowances to permit both States and the Federal Government to better focus their administrative resource on implementation of the recent changes.

Mr. President, I am pleased that my home State of Michigan has expressed support for the intent of the legislation, as well as the American Public Welfare Association. I look forward to continuing to work with States, particularly Michigan as well as the Health Care Financing Administration, to improve administration of the Medicaid Program.

As we work to strengthen Medicaid in terms of more coverage and improved benefits for people, and better reimbursement levels, it is important that we also recognize the need for improving administration of this important program. I believe this bill is a first step toward helping States administer the program without compromising quality of care.

I hope that my colleagues in the Senate will join us in cosponsoring this legislation.

By Mr. BIDEN:

S. 1241. A bill to control and reduce violent crime; placed on the calendar.

VIOLENT CRIME CONTROL ACT

Mr. MITCHELL. Mr. President, I will introduce today legislation concerning handgun purchases. It will become part of Senator BIDEN's comprehensive anticrime legislation. It is designed to accomplish what the opposing sides identify as their common goal, a goal which each side has tried to reach by different means.

Both the supporters of a handgun purchase waiting period and the opponents of a handgun purchase waiting period agree that their goal is to keep handguns out of the hands of convicted felons. Both sides agree that do do so, a background check of handgun purchases is needed.

This proposal is designed to achieve that common goal more effectively than either side's competing proposal will do on its own.

In this effort, I want to acknowledge especially the contributions of Senators KOHL and GORE. They have been deeply interested and involved in this issue. Senator KOHL and Senator GORE have helped fashion a practical and, I believe, effective proposal.

The Brady bill provides for a waiting period with no background check necessary in those States which do not now have a waiting period or a background check.

That is some 29 States in all. The Brady proposal is predicated on the idea that a check will be done, but the bill contains nothing to ensure it. The Brady bill does nothing to ensure that the criminal records which would be consulted in a check will be either current or complete. As such, the proposal imposes a wait in many cases on States which have already affirmatively considered and rejected the idea, and then implicitly hopes that something will come of it. The Senate turned down a

similar 14-day wait by a 2-to-1 margin several years ago.

We have added some practical components. A brief summary of the compromise provisions follows my remarks.

The proposal as we currently introduce it does not meet all of the objections of both sides because we believe that when two sides agree on a goal, it ought to be possible to agree on the means of reaching that goal. We are continuing to work actively with parties on both sides of the issue in the hopes of achieving both the mutual goal and a mutually acceptable way to reach it.

I emphasize, Mr. President, that most of the analysis on this issue has concentrated on the differences between the two sides. We prefer in this approach to concentrate on what they share in common. Rather than try to build on the differences, we try to build on what they share in common in the hopes of reaching a mutually agreeable method of achieving the goal that has already been mutually agreed upon.

The measure being introduced today represents our best judgment of the elements needed to accomplish the goal of keeping handguns out of the hands of felons. The Brady proposal provides that when a national background check system is in place, the waiting period will end. The purpose of the waiting period, in other words, is to allow time for a check to be done, but the Brady bill does not require a check to be done.

The approach supported by the National Rifle Association sought to impose the solution of an instant phone check, but it did not take into account the practicalities of time or resources to reach that solution. Standing alone, neither approach will be fully effective.

Current law requires the Attorney General to establish a means of making effective background checks on handgun buyers, but current law leaves the process, its pace and its standards to the Attorney General's discretion. The Justice Department has announced that a national telephone background check will be the system used to respond to that law, but the Department has not said when such a system will be in place, what it considers to be adequate national coverage, or what will be the role of the States.

Our proposal seeks to answer some of those questions. It provides resources to the States to upgrade and computerize their central criminal records and to conduct background checks beginning now, while criminal records are not yet fully upgraded.

The funds to the States are conditioned on the conducting of a background check. In other words, any State covered by the Brady bill—that means any State, the laws of which do not meet the background check and wait requirements in the Brady bill—will have to conduct a background check as well as comply with the waiting period in order to receive funds under our proposal.

Two other conditions govern the funding of criminal record improvements and background check costs. One is that a State agree to share its criminal record data with the FBI's interstate identification index by the end of 1993. Most Members should be aware that many States do not now share their criminal history data with the FBI's national identification index, and since the overwhelming majority, more than 90 percent of crimes committed in our society are committed under State jurisdiction, any effort to identify persons with criminal records must include State criminal history records if it is to be effective.

The second condition is that by the end of 1995, States' criminal history records must have achieved an 80-percent level of currency of case dispositions for the last 5 years of criminal activity.

These two conditions are included for straightforward reasons. There are only 21 States which today share criminal data with the FBI system. For a national check to be possible, all State records must be accessible through a central system.

The second condition is designed to ensure that when a criminal background check is conducted, the records to be consulted will be reasonably complete and current. Today, in many States, reasonably complete and current records are not readily available.

A great deal of emotion and rhetoric fueled the debate over this issue. Supporters of the Brady bill approach argue that the use of firearms in crimes and accidental killings is too high a price to pay for unrestricted access to handguns and that at least those persons who are, by law, already prohibited from owning a handgun ought to be prevented from easily buying one.

Supporters of the National Rifle Association argue that the vast majority of all guns including handguns are purchased and owned by law-abiding citizens whose rights ought not to be infringed because of a very small minority of criminals. Emotional arguments and controversy do not arise when one side is completely in the right and the other is completely in the wrong. Controversy arises precisely when there is some truth on both sides of an issue. That is the case here. Supporters of a waiting period are right to say that the easy accessibility of handguns may contribute to crime and accidents. They make a fair argument that a brief waiting period is a reasonable accommodation to a serious social problem.

The National Rifle Association and its supporters are right to remind us that the overwhelming majority of American gun owners are not criminals. They are law-abiding citizens whose ownership of firearms poses no threat.

Controversy also arises when exaggerated claims and misleading rhetoric is used. That has also happened on this issue. Some supporters of a waiting period approach have implied that it is a panacea for firearms violence. That is just not true. No waiting period is going to keep handguns from the hands of the mentally incompetent, or unstable, or drug addicts because our society does not maintain readily available lists of persons with mental instabilities or addictions.

Meanwhile, some opponents of a waiting period have suggested that even the most minor inconvenience to a handgun purchaser is a constitutional violation and the first step toward firearms confiscation. That is not true either.

Our Nation has had laws governing firearms sales for over a half-century, and there is no indication that the right of law-abiding citizens to purchase firearms is any more at risk today than it was 50 or 100 years ago. I hope the debate over this issue can be characterized by less emotional rhetoric.

This proposal is designed to help reach the goal both sides say they want, and we take both sides at their word. They say they want to keep guns away from criminals. We agree. We say join us in fashioning effective legislation that will do that more efficiently with less inconvenience than either of the alternative proposals standing alone. We believe our proposal goes further toward the goal than either of the competing proposals, and I hope my colleagues will consider and support this proposal.

Mr. President, I, again, as I did at the outset, thank my colleagues, Senator KOHL and Senator GORE, for their contribution, and involvement and hard work on this issue.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, I rise today in strong support of Senator MITCHELL and our Brady bill compromise, which will become part of Chairman BIDEN's new crime package.

Mr. President, we have a terrible problem in America today: namely, the frightening growth of violence in our cities and on our streets. From last August to this March, during the entire time of our buildup and war with Iraq, nearly 300 Americans died in the Persian Gulf. But during that same period, more than 1,200 Americans were murdered in New York, more than 1,000 murdered in Los Angeles, and more than 300 murdered right here in our Nation's Capital. No city is immune: last year my own city of Milwaukee, WI, set a record with more than 150 brutal killings. Most of these people were

killed with guns, and many of the dead were children.

Of course, there is no easy solution to this deadly problem. We need to move on several fronts: Ensure more certainty of punishment; provide more resources to State and local law enforcement; and when necessary lock people up and throw away the key. But we also need to do everything we can to keep firearms out of the hands of criminals and drug traffickers: in short, we ought to enact a uniform national waiting period for handgun purchases—with mandatory checks and money for States to improve their criminal records so that these checks can be made.

Our proposal implements this concept in a simple, effective, and straightforward manner. It would keep the 7-day waiting period in place, but make the background checks mandatory in virtually every State covered by Brady. And it would give $40 million to States to defray the costs of these checks and to update their computerized criminal history records—an improvement that is essential to performing effective and accurate screening. States that accept these funds will be required to conduct background checks. And States currently exempt from Brady are already conducting these checks.

Mr. President, I am a supporter of the Brady bill, but I believe it should be stronger. The Brady bill does not require background checks. And though I believe it is well intentioned, I am not satisfied with Staggers, either. Its immediate point-of-sale background check is not realistic.

I believe that our approach combines the best elements of these two proposals. Simply put, the Mitchell-Kohl-Gore amendment to Brady would do a better job of keeping guns out of the hands of criminals and drug traffickers. And, most importantly, it would save lives.

We have talked to colleagues on both sides of the aisle about our proposal, and we believe a bipartisan majority will support it when it comes up for a vote as part of the crime bill. I am also pleased that we have received the endorsements of Sarah and Jim Brady, and virtually every major police group.

Mr. President, in crafting this compromise, credit must go to a number of my distinguished colleagues: Senator METZENBAUM, for authoring the original legislation; Senator GORE, for his very valuable assistance in this effort; and Chairman BIDEN and his staff, for their continued work and encouragement. Most importantly, I would like to acknowledge the vision and courage of the majority leader. Without his guidance and the help of his staff, this rare compromise—one which is stronger than the original bill—would never have been possible.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I stand today with the majority leader, with my colleague, and the Senator from Wisconsin [Mr. KOHL], and in support of legislation we are introducing today and in support of its goals to make our streets safer, our neighborhoods once more places where children can play without fear or danger, and where the rights of every American are respected, and to take these steps without compromising the legitimate rights of gun-owners.

In my home State of Tennessee, there is a 15-day waiting period for the purchase of handguns, and a background check is required. When you talk to local and State law enforcement officials, they will tell you what a big difference that waiting period has made in keeping guns out of the hands of dangerous criminals and others who should not have them, without infringing on the rights of hunters or sportsmen, or other Americans who legitimately own firearms.

Mr. President, this legislation will make our Tennessee law even more effective by providing State officials with the resources they need to create the most up-to-date, and effective system for conducting background checks on handgun purchasers. In other States where there is not a waiting period now, this legislation will ensure that a waiting period absolutely will offer real protection and real security.

The compromise I am cosponsoring with the majority leader and with my colleague from Wisconsin, Senator KOHL, strengthens the Brady bill. This compromise makes a good idea better.

Tennessee's experience has convinced me that a waiting period and background checks make sense. That is the law in my home State and it works. It is not enough I say with all due respect to just propose a waiting period, and assume that during that time, background checks would be made—despite the fact that there are States without computerized criminal records and States who do not share criminal records with the FBI's national registry. In fact, as the majority leader has pointed out, on average, State criminal records are less than 60 percent complete.

This legislation will provide the protection we need and the safety our families are after. This legislation does not assume background checks will be made. It requires the waiting period and, provides the mandate and the resources every State needs to conduct effective criminal background checks, and I emphasize effective.

Mr. President, I urge my colleagues to support this compromise.

I, too, wanted to commend the leadership of Senator MITCHELL, the majority leader, and the leadership of my colleague, from Wisconsin, Senator KOHL. I have enjoyed working with them on this matter

I might just say it is not every day when you can look at a couple of positions that are as heated and that are as intensively argued as the positions that have framed by this debate over the Brady bill and then come up with a compromise approach that meets the essential requirements that both sides of that heated debate say need to be met.

I think it is a rare opportunity for this body to make a genuine step forward in adopting this measure as part of the overall crime bill that Senator BIDEN will bring to the Senate.

Again, I commend the majority leader and the Senator from Wisconsin. I am proud to stand with them today and to cosponsor this legislation.

Mr. BIDEN. Mr. President, I rise today to introduce a revised version of my Crime Control Act of 1991.

This new bill is essentially the same as my original bill, S. 618. The only major difference is that this bill includes a compromise version of the Brady bill, drafted by Senators MITCHELL, KOHL, and others.

Let me make it clear that it was my hope that the Brady bill would be considered as a separate bill in the Senate, and it remains my firm belief that there should be a separate vote on its provisions.

But I also understand the rules of the Senate. They dictate that when the Brady bill is considered, other crime issues too will be considered. The Brady bill cannot be divorced from other anticrime proposals under our Senate rules.

That is why today, with the enthusiastic backing of Brady bill supporters, I am introducing this comprehensive crime bill which includes the Mitchell-Kohl-Gore version of the Brady bill.

Other than this handgun provision, this bill is substantially the same as the bill I introduced last January. Minor and technical changes have been made, responding in some places to suggestions made by the Justice Department.

In closing, let me say that the Nation needs a comprehensive anticrime bill. This is the only bill in the Senate—The only bill—which deals with all of the major anticrime proposals under consideration:

Increasing police, prosecutors, and prisons;

Imposing the death penalty;

Limiting habeas corpus appeals;

Reforming the exclusionary rule;

Banning killer assault weapons; and

With today's addition, making it harder for criminals to purchase handguns.

This is the toughest, most comprehensive crime bill in the Senate—and it is my hope that the Senate will act on it favorably in the days ahead.

By Mr. EXON:

S. 1242. A bill to amend the Congressional Budget Act of 1974 to provide that any concurrent resolution on the budget that contains reconciliation directives shall include a directive with respect to the statutory limit on the public debt, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs.

DEBT CEILING REFORM ACT OF 1991

Mr. EXON. Mr. President, I rise to introduce the Debt Ceiling Reform Act of 1991. It is a proposal which calls for fiscal honesty, integrity, and truth. Last year, this measure received favorable approval from the Senate Budget Committee. Unfortunately, it was upstaged by the work of the President's budget summit. It will not be long before the weaknesses of the budget reforms approved last year are revealed and the need for a new course will be evident.

The legislation which I introduce today would put debt ceiling legislation into the budget cycle; require that the borrowing aspect of the budget be subject to reconciliation instructions and require that annual legislation to increase the debt ceiling be included in the annual reconciliation package. The debt ceiling would then be subject to the limited debate rules of reconciliation and prevent the debt ceiling from becoming a magnet for all types of amendments.

In addition, under my proposal a three-fifths vote would be necessary to increase the debt ceiling to beyond the level contemplated by the congressional budget resolution.

Such a procedure would institute continuous enforcement of the deficit targets contained in each year's budget. If Congress sticks to its annual budget and corrects it for changing economic conditions, debt ceiling legislation would be handled in a routine manner under the limited debate procedures of reconciliation.

If the Federal Government borrows funds at a rate faster than contemplated by the annual budget, the congress would need a three-fifths vote to increase the debt ceiling. Other measures to deal with a budget shortfall, such as reducing spending and/or raising revenue would only require a simple majority. No longer would increasing the national debt be the easiest way for Congress to satisfy its spending appetite.

This procedure would also make it much more difficult for the Congress or the President to employ smoke and mirrors instead of serious deficit reduction. Under this proposal, commitment to deficit reduction would be measured by the national debt. Accounting gimmicks, spending shifts, and off-budget accounts would be discouraged because the accumulated national debt would grow when spending is shifted rather than reduced. In addition, hiding the deficit behind growing trust fund surpluses would be ended.

The budget compromise legislation approved in the last Congress was, to put it bluntly, a disaster for fiscal accountability. In effect, the Congress and the President extended the debt ceiling for 5 years in the budget agreement thereby removing an important, critical pressure point for deficit reduction.

Mark my words, Mr. President, when the books are closed on this fiscal year, the deficit will register a new record.

If the Debt Ceiling Reform Act were in place, the American people would have been told from the onset that the budget package approved in the last Congress actually increased Federal borrowing. When the general public learns of the turth, there will be a shock wave of discontent and further disillusionment.

What I propose here is a very tough but workable solution to the still faulty budget enforcement mechanism. The American people would know the total borrowing of the Federal Government on a year-to-year basis.

Under this plan, when the Congress adopts its budget reconciliation legislation, it would essentially issue the Federal Government a letter of credit for the coming year. If the Congress and the President could not come to an agreement, the Government would be on a short tether in that Federal spending authority would begin to wind down. If borrowing authority is not extended, we could spend only incoming revenues. This procedure would require continuous congressional attention to the actual levels of spending rather than annual projected levels.

The reform I propose today would force Congress and the President to be careful and, most importantly, honest.

Mr. President, the Congress must face the fiscal facts and work to reduce deficit spending rather than hide it. When it comes to the budget, Mr. President, honesty is the best policy.

I invite my colleagues to support this important budget reform initiative.

I ask unanimous consent that the bill be printed in the RECORD following my remarks.

Thank you Mr. President.

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

S. 1242

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

SECTION 1. RECONCILIATION DIRECTIVES TO INCLUDE DIRECTIVE WITH RESPECT TO INCREASE IN STATUTORY LIMIT ON THE PUBLIC DEBT.

(a) IN GENERAL.—Section 310 of the Congressional Budget Act of 1974 (2 U.S.C. 641) is amended by adding at the end thereof the following new subsection:

"(h) RECONCILIATION DIRECTIVES WITH RESPECT TO PUBLIC DEBT LIMIT.—

"(1) Any concurrent resolution on the budget for a fiscal year that contains directives of the type described in paragraph (1) or (2) of subsection (a) for such fiscal year shall also include a directive of the type described in paragraph (3) of such subsection for such fiscal year.

"(2) Any change in the statutory limit on the public debt that is recommended pursuant to a directive of the type described in paragraph (3) of subsection (a) shall be included in the reconciliation legislation reported pursuant to subsection (b) for such fiscal year.".

(b) CONFORMING CHANGE.—Section 310(d)(2) of such Act is amended by inserting "(other than a provision reported pursuant to a directive of the type described in subsection (a)(3))" after "motion to strike a provision".

SEC. 2. POINT OF ORDER.

(a) IN GENERAL.—Notwithstanding the Standing Rules of the Senate, except as provided in subsection (b), it shall not be in order in the Senate to consider any bill or joint resolution (or any amendment thereto or conference report thereon) that increases the statutory limit on the public debt during a fiscal year above the level set forth as appropriate for such fiscal year in the concurrent resolution on the budget for such fiscal year agreed to under section 301 of the Congressional Budget Act of 1974.

(b) EXCEPTION.—Subsection (a) shall not apply to any reconciliation bill or reconciliation resolution reported pursuant to section 310(b) of the Congressional Budget Act of 1974 during any fiscal year (or any conference report thereon) that contains a provision that—

(1) increases the statutory limit on the public debt pursuant to a directive of the type described in section 310(a)(3) of such Act, and

(2) becomes effective on or after the first day of the following fiscal year.

(c) WAIVERS.—Subsection (a) may be waived or suspended in the Senate by a vote of three-fifths of the Members, duly chosen and sworn.

(d) APPEALS.—If the ruling of the presiding officer sustains a point of order raised pursuant to paragraph (1), a vote of three-fifths of the Members duly chosen and sworn shall be required to sustain an appeal of such ruling. Debate on any such appeal shall be limited to two hours, to be equally divided between and controlled by, the majority leader and the minority leader or their designees. An appeal of any such point of order is not subject to a motion of table.

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of the enactment of this Act.

SEC. 4. EXERCISE OF RULEMAKING POWERS.

This Act and the amendments made by this Act are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

By Mr. HARKIN (for himself, Mr. ADAMS, Mr. FORD, Mr. WELLSTONE, Mr. CRANSTON, Mr. KERREY, and Ms. MIKULSKI):

S. 1243. A bill to restrict assistance for Guatemala, and for other purposes; to the Committee on Foreign Relations.

PROMOTION OF DEMOCRACY AND RESPECT FOR HUMAN RIGHTS IN GUATEMALA ACT OF 1991

• Mr. HARKIN. Mr. President, the human rights situation in Guatemala continues to deteriorate despite the positive role of our Ambassador in promoting human rights, the administration's suspension of military assistance on December 21, 1990 and the first peaceful transfer of the Presidency from one civilian to another in 40 years. Since the inauguration of President Jorge Serrano Elias in January 1991 several human rights monitors have been assassinated. For the period of January 1 to April 23, 1991, the Guatemalan Human Rights Ombudsman, appointed by the Guatemalan Congress, reports there have been 46 disappearances, another 48 people classified as missing and 200 extrajudicial executions. Mr. President, the figures I have just cited point to a dramatic rise in human rights abuses and represent the worst 4 months since a civilian has been elected to the Presidency of Guatemala.

Last year, according to the State Department's 1990 human rights report on Guatemala, Guatemalan military and civil patrols committed human rights violations with almost total impunity, including extrajudicial executions, torture and disappearances. The report further states:

> With few exceptions, the Government failed to investigate, detain, and prosecute those perpetrators of extrajudicial and politically motivated killings who were connected with the security forces, in particular certain rural military zone officers, from engaging in extrajudicial killings.

I believe Mr. President, that democracy will not take root in Guatemala, and President Serrano, like his predecessor President Cerezo, will remain powerless to enforce the laws of his country as long as the military continues to act as if law has no power over it. The appalling and intolerable human rights situation during the first 4 months of the Serrano government clearly indicates the Guatemalan military's continued contempt for the rule of law and civilian authority.

For this reason, Mr. President, Senator ADAMS and I, along with our colleagues here, are introducing the Promotion of Democracy and Respect for Human Rights in Guatemala Act of 1991. The bill sends a clear signal that until certifiable actions have been taken which strongly demonstrate civilian control over the military it will not be business as usual with the U.S. Congress. I believe that the burden of proof rests with the Guatemalan Government. Over the past few years I have had members of the Guatemalan Government in my office and I have said that I am willing to give them the benefit of the doubt. And I have given them the benefit of the doubt over the last few years. Yet it seems like nothing changes. And here we go, its deja vu all over again. Therefore, prior to the provision of military and economic assistance the U.S. Congress must insist that the fundamental guarantees of democratic rule have been firmly established in Guatemala.

This bill would withhold all U.S. military assistance, including assistance in the pipeline, and condition economic assistance. Military assistance is conditioned upon, among other things, the extension of internationally recognized workers' rights to Guatemalan workers. Mr. President, allow me to point out some recent attacks against labor organizations in Guatemala. On May 6 the National Federation of Guatemalan Government Workers reported that its entire leadership had received death threats. On May 16, six leaders of the Union of Social Security Workers [STIGSS] fled Guatemala for exile in Canada. On May 17, the Trade Union of Guatemalan Workers [UNSITRAGUA] reported that at least 18 workers had received death threats. Mr. President, I have mentioned only the most recent cases in which death threats have been issued, those cases in which such threats have been executed are simply too numerous to mention. This wave of repression against trade union movements is one of the reasons that I believe that economic freedom and political freedom are linked.

This bill also conditions economic assistance on the progress in three human rights cases. Our bill provides an incentive to the Guatemalan Government to conduct a thorough and professional investigation into and prosecution of those responsible for the abduction and brutal mistreatment of Sister Diana Ortiz, as well as the murders of Michael Devine and anthropologist Myrna Mack. The bill also limits the uses of economic assistance until the Guatemalan Government has made substantial progress toward a fiscally responsible tax policy. Mr. President, it is estimated the Guatemalan citizens hold over $1 billion in United States banks and according to recent studies, Guatemala has the lowest tax levels in the world. Tax evasion has become a way of life for the wealthy in Guatemala. Mr. President, why should the U.S. taxpayer, in a time of shrinking budgets, be asked to finance a government which fails to collect taxes from its own citizens?

Mr. President, by no means do I mean to insinuate that President Serrano has taken some very positive steps in the area of human rights and the promotion of a political settlement. I encourage President Serrano to continue on the path toward peace and assure him of my moral support. In this regard, the conditions established in the bill should not be viewed solely as conditions on Guatemala but as the minimum standards our Nation establishes before we are willing to continue financing the Guatemalan Government. The American people have the right to ask how their tax dollars are being spent and under the current circumstances it would be extremely difficult to justify financing a government whose citizens hold over $1 billion in United States banks, which fails to collect taxes from the wealthy of its own nation and whose military remains outside civilian control committing barbarous acts against United States citizens and the people of Guatemala. Mr. President, the people of Iowa as well as the rest of our country simply would not permit such an outrage.

Finally, Mr. President, let me emphasize that this bill establishes the minimum criteria before the United States would consider the provision of military and economic assistance. This Senator, however, would be extremely reluctant to support any aid to the Guatemalan Government if the ongoing human rights abuses are not halted.

Mr. President, I am proud to join with Senators ADAMS, FORD, WELLSTONE, CRANSTON, KERRY, and MIKULSKI in introducing the Promotion of Democracy and Respect for Human Rights in Guatemala Act of 1991. I ask for 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. 1243

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Promotion of Democracy and Respect for Human Rights in Guatemala Act of 1991".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) According to the State Department's 1990 human rights report on Guatemala, Guatemalan military and civil patrols have committed human rights violations with almost total immunity, including extrajudicial executions, torture, and disappearances.

(2) Despite clear involvement of Guatemala's armed forces and civil patrols in human rights violations, no member of the Guatemalan armed forces has ever been convicted of a serious human rights abuse.

(3) The Government of Guatemala has demonstrated a lack of will to protect human rights. According to the State Department's human rights report on Guatemala, "With few exceptions, the Government failed to investigate, detain, and prosecute those perpetrators of extrajudicial and politically motivated killings who were connected with the security forces. . . . The Government also did not act to prevent members of the security forces, in particular certain rural military zone officers, from engaging in extrajudicial killings.".

(4) The Government of Guatemala has failed to conduct a thorough and professional investigation into, and prosecution of those

responsible for, the murder of Michael Devine (June 1990), the abduction and brutal mistreatment of Sister Diana Ortiz (November 1989), and the murder of anthropologist Myrna Mack (September 1990).

(5) The human rights ombudsman appointed by the Guatemalan Congress reported 304 politically motivated murders and 223 politically motivated disappearances in 1990, with most of the victims killed by the armed forces or by persons associated with or protected by the armed forces.

(6) Since 1988, more than 20 human rights workers have either died or disappeared, including several since the inauguration of President Jorge Serrano Elias in January 1991.

(7) Members of the Guatemalan police force have been involved in the murder and disappearance of street children and those who aid them.

(8) The United States suspended military assistance on December 21, 1990, in response to a deterioration in the human rights situation.

(9) The United States voted in favor of the appointment of a United Nations human rights rapporteur for Guatemala during the 47th Assembly of the United Nations Human Rights Commission in Geneva, Switzerland.

(10) Despite the suspension of military assistance, the recall of the United States Ambassador to Guatemala in March 1990 due to United States dissatisfaction in the lack of progress in the investigation of human rights abuses, and the positive role of the United States Ambassador in advocating human rights, the human rights situation in Guatemala continued to deteriorate.

SEC. 3. STATEMENT OF POLICY.

It shall be the policy of the United States—

(1) to foster a greater respect for basic human rights, the rule of law, and democratic practices;

(2) to support the efforts of the National Reconciliation Commission and to promote a permanent settlement to the conflict in Guatemala; and

(3) to promote economic development which provides for environmentally sustainable economic growth as well as to seek to improve income distribution in Guatemala.

SEC. 4. PROHIBITION OF MILITARY ASSISTANCE TO GUATEMALA.

(a) PROHIBITION.—Notwithstanding any other provision of law, no United States military assistance allocated for Guatemala for fiscal year 1991 or for any prior fiscal year, which has not been obligated or otherwise made available to the Government of Guatemala as of the date of enactment of this Act, and all United States military assistance allocated for Guatemala for fiscal years 1992 and 1993, may be furnished to Guatemala unless the President determines and reports in writing to the Congress that the conditions described in subsection (b) have been met.

(b) CONDITIONS.—The conditions referred to in subsection (a) are that—

(1) the Government of Guatemala has conducted a thorough and professional investigation into, and prosecution of, those responsible for—

(A) the murder of Michael Devine (June 1990);

(B) the murder of Myrna Mack (September 1990);

(C) the abduction and brutal mistreatment of Sister Diana Ortiz (November 1989);

(D) the massacre of 13 civilians at the military base in Santiago Atitlan (December 1990); and

(E) the murders of the following human rights workers: Aurselio Lorenzo Xicay (GAM member murdered July 24, 1989); Maria Mejia (CERJ member murdered March 17, 1990); Jose Vicente Garcia (CERJ member murdered April 10, 1990); Jose Maria Ixcaya (CERJ member murdered May 1, 1990); Juan Perebal Morales and Juan Perebal Xirum (CERJ members murdered on February 17, 1991);

(2) military harassment and assassinations have ceased against human rights activists and independent human rights groups such as the Mutual Support Group (GAM) and the Council of Ethnic Communities (CERJ) may freely carry out their legal activities;

(3) respect for the rights of freedom of the press, speech, assembly and association as well as other attributes of political pluralism has substantially increased in Guatemala;

(4) internationally recognized workers' rights have been extended to Guatemalan workers;

(5) the Government of Guatemala is prosecuting all members of the police force who are responsible for the murders and disappearances of street children or those who aid them; and

(6) the Government of Guatemala has put an end, by law or in fact, to the practice of forced civil patrol duty.

SEC. 5. RESTRICTIONS ON ECONOMIC AND FOOD ASSISTANCE.

(a) RESTRICTIONS.—Economic support fund assistance allocated for Guatemala for fiscal year 1991 and prior fiscal years which has not been obligated, expended, or otherwise made available to the Government of Guatemala as of the date of enactment of this Act, and all United States economic support fund assistance allocated for Guatemala for fiscal years 1992 and 1993, all development assistance, and all assistance under the Agricultural Trade and Development and Asssistance Act of 1954 that are provided for Guatemala—

(1) may be used only by civilian agenices and nongovernmental organizations;

(2) shall be limited to assistance;

(A) the support the efforts of the Guatemalan human rights ombudsman;

(B) for programs that directly address poverty and basic human needs;

(C) for fiscal administration;

(D) for the National Reconciliation Commission; and

(E) to improve the performance of democratic institutions or otherwise promote pluralism; and

(3) may not be used for partisan political purposes or as an instrument of counterinsurgency.

(b) WAIVER.—The restrictions of paragraphs (1) and (2) of subsection (a) on the provision of United States economic support fund assistance shall not apply if the President determines and reports in writing to the Congress that the conditions described in subsection (c) have been met.

(c) CONDITIONS.—The conditions referred to in subsection (b) are that—

(1) the Government of Guatemala has conducted a thorough and professional investigation into, and prosecution of those responsible for, the murder of Michael Devine (June 1990);

(2) the Government of Guatemala has conducted a thorough and professional investigation into, and prosecution of, those responsible for the abduction and brutal mistreatment of Sister Diana Ortiz (November 1989);

(3) the Government of Guatemala has conducted a thorough and professional investigation into, and prosecution of, those responsible for the murder of Myrna Mack (September 1990); and

(4) the Government of Guatemala has made substantial progress toward a fiscally responsible tax policy and improved fiscal administration.

SEC. 6. MULTILATERAL CONTROLS ON THE SUPPLY OF ARMS TO GUATEMALA.

(a) POLICY.—It is the sense of the Congress that the President should make every effort to encourage other nations, in whatever forum or context, to cease the provision of military assistance to Guatemala until the conditions described in sections 4(b) and 5(c) have been met.

(b) REPORTING REQUIREMENT.—Sixty days after the date of enactment of this Act, and every 180 days thereafter, the President shall submit to the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives a report, in either classified, or unclassified form, describing—

(1) an identification of specified countries, as well as companies and individuals, both foreign and domestic, engaged in the sale or export of military equipment both lethal and nonlethal to the Government of Guatemala; and

(2) a description of the nature and type of military equipment provided to the Government of Guatemala, including both lethal and nonlethal equipment.

SEC. 7. DEFINITIONS.

For purposes of this Act—

(1) the term "assistance under the Agricultural Trade Development and Assistance Act of 1954" includes all donations, sales, and proceeds generated from sales of agricultural commodities under the Agricultural Trade Development and Assistance Act of 1954 (also known as "P.L. 480");

(2) the term "development assistance" means assistance provided under chapter 1 of part I of the Foreign Assistance Act of 1961;

(3) the term "economic support fund assistance" means assistance provided under chapter 4 of part II of the Foreign Assistance Act of 1961; and

(4) the term "United States military assistance" means assistance provided under chapter 2 or 5 of part II of the Foreign Assistance Act of 1961 and foreign military sales, sales financing, or grants under the Arms Export Control Act.•

• Mr. FORD. Mr. President, I rise in support of the legislation just introduced by Senator HARKIN to restrict United States assistance to Guatemala. The title of this bill, the Promotion of Democracy and Respect for Human Rights in Guatemala Act of 1991, is a telling one. It is the goal of we who are cosponsors: We want the killing to stop and those who have committed atrocities against their own people and against the religious community to be brought to swift and decisive justice. We want the country's democratic institutions to function as they were originally intended. We want peace.

I am particularly interested in this legislation because it conditions U.S. military and economic assistance upon a satisfactory conclusion of the case of Sister Diana Ortiz. A member of the Ursuline Religious Community of Maple Mount, KY, Sister Diana was

kidnaped, raped and brutally mistreated in Guatemala in early November 1989. This was a year and a half ago, Mr. President, and no progress whatsoever has been made in the case.

Former President Cerezo established a special commission to investigate the case. Even though designated, the commission never met or otherwise began its work.

I suppose it is understandable that the new President of Guatemala, President Serrano, would choose to form a special commission of his own and not honor that of his predecessor. What troubles me, however, is that even though he promised as much in writing, he removed the Human Rights Ombudsman from the membership of the commission and then indicated that he could not afford the cost of such a committee. Once again, Sister Diana's case appears to be going nowhere. To aggravate matters, my staff was told in a recent meeting with Guatemalan officials that the case would be handled only by the judicial system. Thus far there has been absolutely no satisfactory resolution of cases treated in this manner.

President Serrano has sworn he is interested in improving the human rights situation in Guatemala. I want to believe him. I also want to deliver notice that, if conditions do not change radically and quickly, we in the Congress will take the severe measures called for by Senator HARKIN's legislation.●

● Mr. WELLSTONE. Mr. President, I rise as an original cosponsor of the Promotion of Democracy and Respect for Human Rights in Guatemala Act of 1991. I am grateful to my colleague from Iowa, Senator HARKIN, for taking the lead in developing this legislation, and for his consistent support for democracy and human rights in the region. The bill not only conditions United States military aid to Guatemala on respect for human rights, but would set an important additional precedent for those of us interested in reestablishing respect for basic human rights—civil, political, economic, and social—as a cornerstone of United States foreign policy. It would impose conditions on U.S. economic assistance as well as on military assistance.

Despite the administration's suspension of military assistance in December of last year, and the first peaceful transfer of Presidential power from one civilian to another in 40 years, the human rights situation in Guatemala continues to deteriorate. For the period January 1 to April 23, 1991, the Guatemalan Human Rights Ombudsman, appointed by the Guatemalan Congress, reports there have been 46 disappearances and more than 200 extrajudicial executions, a marked increase over the last quarter of 1990.

Last year, even the United States Department of State's own Country Report on Human Rights in Guatemala observed that reliable evidence indicates that Guatemalan military and civilian patrols committed, with almost total impunity, a majority of the major human rights abuses, including extrajudicial executions, torture and disappearances. The report further states, "With few exceptions, the government failed to investigate, detain, and prosecute those perpetrators of extrajudicial and politically motivated killings who were connected with the security forces * * * the government also did not act to prevent members of the security forces, in particular certain rural military zone officers, from engaging in extrajudicial killings." Other independent human rights monitors continue to report a similar pattern of widespread human rights abuse.

Mr. President, in a recent meeting, representatives of the Government of Guatemala argued for giving President Jorge Serrano Elias, inaugurated last January, a chance to stop the relentless violence that has plagued Guatemala for years before imposing additional human rights conditions on United States aid. I share the hopes and aspirations of President Serrano with respect to improvement in human rights, but I am less sanguine about the real prospects for change within the ranks of the security forces responsible for most of these abuses. We are talking about the gradual transformation of a political culture of violence and intimidation, Mr. President, and I believe we will not be successful if we continue with business as usual regarding U.S. aid.

In my view, President Serrano, like his predecessor President Cerezo, will remain powerless to enforce the laws of his country as long as the security forces continue to commit egregious human rights violations with impunity, as though the law did not apply to them. If what's past is prologue, as we saw during the mid-1980's transfer of power in Guatemala, those security forces will not be brought under control without such incentives.

Our rule should be that former President Reagan applied to Soviet arms control treaties, "Doveryaj no proveryaj." Trust but verify. Without the conditions provided under this bill, our ability to verify concrete progress on human rights is severely limited.

I believe we should focus on the structural underpinnings of military impunity for human rights violations, including military control of the police, the impotence of the Federal judiciary, and the systematic violence that continues to be directed at human rights monitors.

This bill would not only withhold United States military assistance for Guatemala, including assistance already in the pipeline, but would also condition United States economic assistance on measurable human rights progress, including the vigorous prosecution of the murderers of Sister Diana Ortiz, Michael Devine, Myrna Mack, as well as others. It is a package of carefully structured incentives designed to ensure that U.S. policy in the region is informed by the important principles of respect for internationally recognized human rights, democratization, and peaceful social and political reform in that war-ravaged society. The people of Guatemala deserve a fresh start, Mr. President. This measure places the United States squarely on the side of those who seek a more just and peaceful Guatemala, where respect for the dignity and basic human rights of all persons can be guaranteed. I urge my colleagues to support this legislation, and I hope the Foreign Relations and Appropriations Committees will incorporate the policy prescriptions it contains into major legislation on foreign aid currently being developed.●

By Mr. BRADLEY:

S. 1244. A bill to amend the Internal Revenue Code of 1986 to expand the working condition fringe benefit with respect to employee parking; to the Committee on Finance.

COMMUTER PARKING FRINGE BENEFIT

● Mr. BRADLEY. Mr. President, I rise today to introduce legislation that will reduce traffic on our highways, conserve energy, benefit the environment and provide revenue to States and local mass transit agencies.

This legislation is simple—it extends the parking fringe benefit which employers can provide to include parking lots that serve commuter points like train stations and subway lines. Free parking is a benefit that many employers provide to their employees tax-free. Since companies can deduct the cost of parking as a cost of doing business, the Tax Code effectively subsidizes free employee parking. Companies therefore have an incentive to offer free parking, and that in turn, creates an incentive for people to drive to work. Driving to work has higher social costs than public transit; a rational Tax Code would reward taking public transit.

We can do more in the Tax Code to reward the millions of people who make the decision to drive to a local train station and take the train into work, rather than driving all the way in. We can do this by making sure that employers can deduct parking in those lots as well as in lots near their offices. And since parking is generally much cheaper outside of big cities, I hope that companies will encourage employees to use parking lots near commuter lines, rather than near their offices.

By itself, this legislation will not change the world. However, it perfectly complements legislation which I have joined with Senator MOYNIHAN in introducing to increase the cap on the deductibility of transit passes. The $15

limit, as well as the $21 proposed cost-of-living increase, is far too low and deserves to be increased to $60 as Senator MOYNIHAN's bill, S. 26, provides. I hope that measures such as these mark the beginnings of a change in how we view the impact of our energy and tax policy on our everyday consumption decisions.

Millions of New Jerseyans commute every day. They face a choice: Should I drive all the way in, or should I drive over to the train station at Metropark or Princeton Junction or one of the SEPTA stations and catch public transit in from there? As a matter of Federal policy, commuters should be encouraged to choose public transit because it is good for our environment, reduces America's dependence on imported gas, and reduces congestion on our highways.

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

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

S. 1244

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

SECTION 1. TREATMENT OF EMPLOYEE PARKING FRINGE BENEFIT.

(a) IN GENERAL.—Paragraph (4) of section 132(h) of the Internal Revenue Code of 1986 (relating to treatment of certain parking) is amended by inserting before the period at the end thereof the following: "or on or near a location from which the employee commutes to work by mass transportation, by van pools or by carpool".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to benefits provided after December 31, 1990.•

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

S. 1245. A bill to amend the Internal Revenue Code of 1986 to clarify that customer base, market share, and other similar intangible items are amortizable; to the Committee on Finance.

AMORTIZATION OF INTANGIBLES CLARIFICATION ACT

• Mr. DASCHLE. Mr. President, I rise today to introduce legislation that is vital to a host of service businesses, particularly small service businesses. I am joined by my colleague from Idaho, Senator STEVE SYMMS.

The legislation would clarify the current law income tax treatment of customer-based, market share and similar intangible assets, including such items as customer or subscriber lists, advertiser lists, insurance expirations and client lists, and patient lists. These assets frequently are present in the context of acquiring a business that provides services to customers, such as the acquisition of an insurance company, newspaper, magazine, consulting practice, or any other similar business.

The bill specifically would clarify that these intangible assets may be amortized, or written off, over their determinable useful lives, provided the taxpayer can demonstrate that: First, the asset has an ascertainable value separate and distinct from other assets including goodwill or going concern value; and second, the asset has a limited useful life, the length of which can be reasonably estimated.

Last year, the Internal Revenue Service issued a so-called coordinated issue paper that has given rise to the need for a legislative clarification in this area. The coordinated issue paper expresses the IRS's position that customer-based intangible assets cannot be amortized in any situation in which the acquirer of those assets also acquires the goodwill of a business, as part of the same transaction.

The position expressed by the IRS in the coordinated issue paper is inconsistent with the court cases on this issue and the IRS's own position expressed on previous occasions. Simply put, it misstates current law. What's more, it has led to extensive problems for taxpayers through IRS audits and tax litigation designed to impose this new position on them.

The legislation being introduced expresses the view of Congress that the coordinated issue paper misstates current law.

The current law treatment of customer-based intangible assets is reflected in years of judicial decision-making. The leading case in the area is the Houston Chronicle case, in which the Fifth Circuit Court of Appeals specifically recognized the fact that the tax law does not contain a blanket prohibition on amortization of customer-based intangibles where goodwill is present. On the contrary, the court noted that these assets may be amortized "* * * if the taxpayer properly carries his dual burden of proving that the intangible asset involved (1) has an ascertainable value separate and distinct from goodwill, and (2) has a limited useful life, the duration of which can be ascertained with reasonable accuracy." This conclusion has been reaffirmed in numerous other cases since the Houston Chronicle case. Our legislation is simply intended to clarify this longstanding rule of law.

The position expressed in the coordinated issue paper is also unfair. It effectively prevents taxpayers from even attempting to demonstrate that the useful life and value of any given customer-based intangible asset can actually be determined. The discrimination against service businesses is evident, given that taxpayers are permitted to depreciate the cost of tangible business assets.

Finally, since the proposal is merely a restatement of current law, I anticipate that it would have no negative impact on Federal tax revenues. Moreover, it is my hope that the measure, if enacted, would reduce litigation and facilitate early resolution of disputes between taxpayers and the IRS in this area.

Most importantly, by refuting the position expressed in the coordinated issue paper, the legislation would eliminate the unfairness to service business owners contemplating a possible sale of their business, the value of which is currently being depressed by the position being taken by the IRS.

I urge my colleagues to join in supporting this legislation and eliminating the IRS's unfair treatment of small businesses in this area.•

• Mr. SYMMS. Mr. President, I am today joining with my colleague, Senator DASCHLE, in introducing the Amortization of Intangibles Clarification Act of 1991. The importance of this legislation to service businesses, particularly to small service businesses like insurers, publishers, advertisers, and private medical or dental practices cannot be overstated.

The introduction of this legislation is made necessary because of an Internal Revenue Service coordinated issue paper released on July 23, 1990. This paper takes the position, as a matter of law, that customer-based intangible assets cannot be amortized in any situation in which the acquirer of those assets acquires goodwill of a business as part of the same transaction.

While the name is unwieldy, customer-based intangible assets are basic to a small service business. They include various lists like customer or subscriber lists showing the current patrons of the business. They also include lists of patients in a medical or dental practice which include the patients' medical records. These lists are a large part of the economic value of an ongoing business or practice to anyone considering acquiring the practice.

Customer-based intangibles also include what are called insurance expirations, which are records containing information on insurance policies which have been sold through the business. Such information as the type of policy sold, the amount of coverage, and the expiration dates provides much of the value of an ongoing insurance business, both to the current owner and to a prospective purchaser of the business.

With the publication of its coordinated issue paper, the IRS has taken a position that is inconsistent with judicial precedent and the Service's own prior pronouncements. And now, despite the fact that the IRS position misstates current law, IRS auditors have attempted to impose the position of the paper on taxpayers, resulting in tremendous confusion, not to mention a lot of unncessary IRS audit and litigation activity.

The mere existence of the paper is already having a significant depressing effect on the value of small service businesses. Imagine you were about to buy a service business that included an

expiration list as a key asset of the business. If you knew there was a good chance the IRS was going to deny amortization for the businesses expiration list, you would reduce the price you offer for the business.

The legislation I am introducing would make clear that the IRS position in the paper is not what the Congress intends. It would clarify and reaffirm that the IRS position prior to the issuance of the paper was correct—that customer-based intangible assets may be amortized even if the purchaser of an ongoing business acquires goodwill as an asset of the business. This legislation would also put an end to the confusion and the litigation resulting from the paper, litigation that taxpayers correctly see as unwarranted IRS harassment.

Specifically, the legislation would clarify that customer bases, market share, and any similar intangible assets are amortizable over their determinable useful life provided that the taxpayer can demonstrate that: First, such items have an ascertainable value separate and distinct from other assets including goodwill or going concern value; and second, such assets have a limited useful life.

The legislation is fully consistent with a long line of court decisions in this area. By way of example, let me refer my colleagues to one of the preeminent cases in this area, the Houston Chronicle case. In that case, the Fifth Circuit Court of Appeals specifically recognized that the tax law has no rule that customer-based intangibles are amortizable in those cases where goodwill is present. In referring to the general rule, and the exception to that rule which has been used to explain the amortizability of consumer-based intangibles, the court noted as follows:

> [W]e are satisfied that the [general] rule does not establish a *per se* rule of nonamortizability in every case involving both goodwill and other intangible assets. In light of section 167(a) of the Code and Regulation section 1.167(a)-(3), we are convinced that the "mass asset" rule does not prevent taking an amortization deduction if the taxpaper properly carries his dual burden of proving that the intangible asset involved (1) has an ascertainable value separate and distinct from goodwill, and (2) has a limited useful life, the duration of which can be ascertained with reasonable accuracy.

The court of claims reached a similar conclusion in the Richard S. Miller case when it stated as follows:

> There is no *per se* rule of nondepreciability or nonamortizability in every case that involves both goodwill and other intangible assets. The depreciability of assets such as customer and subscription lists, location contracts, insurance expirations, etc., is a factual question only.

This court, like many others specified the two-pronged test that taxpayers must satisfy while stressing that reasonable approaches to satisfying these tests are appropriate:

> The evidence must establish that the expirations (1) have an ascertainable value separate and distinct from goodwill, and (2) have a limited useful life, the duration of which can be ascertained with reasonable accuracy. In application of this test, precise exactitude is not required. As the court in Houston Chronicle states:
>
> Our view that amortizability for tax purposes must turn on factual bases—is more in accord with realities of modern business technology in a day when lists are bartered and sold as discrete vendible assets. Extreme exactitude in ascertaining the duration of an asset is a paradigm that the law does not demand. All that the law and regulations require is reasonable accuracy in forecasting the asset's useful life.

Likewise, valuations based on arm's-length allocations generally should be treated as reasonable. Useful life estimates based on the experience of the taxpayer or of the seller of the assets, or based on industry experience or reasonable appraisals also should be treated as reasonable.

My proposed legislation is only intended to restate current law. Nevertheless, because of the problems the IRS has created for taxpayers through the conclusions of its coordinated issue paper, I believe it is critical that this legislation be enacted promptly.

I should also like to point out to my colleagues that, because it only restates current law, my legislation should be revenue neutral.

The obvious unfairness of the current IRS position as reflected in its coordinated issue paper is a matter of serious concern for both buyers and sellers of service businesses, but particularly so for the sellers of small businesses because the existence of the paper is depressing the value of these businesses. I find this situation especially disturbing because many service business owners view the ability to sell their businesses—and to get a fair price unencumbered by IRS confusion—as a vital component of their retirement income.

I encourage my colleagues to cosponsor and to work for enactment of this important legislation.●

By Mr. PELL (for himself, Mrs. KASSEBAUM, Mr. KENNEDY, and Mr. HATCH):

S. 1246. A bill to amend the Higher Education Act of 1965 to target Federal grant assistance on the lowest-income students, to reward excellence and success in education, to enhance choice and flexibility, to promote greater accountability, to reduce waste and abuse in the use of public funds, to extend the Act, and for other purposes; to the Committee on Labor and Human Resources.

HIGHER EDUCATION ACT AMENDMENTS

● Mr. PELL. Mr. President, I am introducing on request the administration's proposal to reauthorize the Higher Education Act. I ask unanimous consent that the full text of the bill be printed in the RECORD along with the section-by-section analysis.

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

S. 1246

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Higher Education Act Amendments of 1991".

TITLE I—ACCESS AND RETENTION

SEC. 101. Title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; hereinafter referred to as "the Act") is amended to read as follows:

"TITLE I—ACCESS AND RETENTION

"STATEMENT OF FINDINGS

"SEC. 101. The Congress finds that—

"(1) access and retention of students from low-income and educationally disadvantaged backgrounds continues as a national concern, specifically for those who need support services while pursuing postsecondary education;

"(2) individuals from low-income and educationally disadvantaged backgrounds are becoming an ever-increasing component of the American workforce;

"(3) the job market is demanding ever-increasing levels of educational preparedness; and

"(4) while more students are entering postsecondary education, access, choice, retention and completion rates for students from low-income and educationaly disadvantaged backgrounds are appallingly low, and have in fact been declining for some groups.

"STATEMENT OF PURPOSE

"SEC. 102. It is the purpose of this title to enable eligible individuals to have access to the benefits of postsecondary education by providing for special programs and projects designed to—

"(1) identify and encourage students from low-income or educationally disadvantaged backgrounds who have potential for postsecondary and graduate education; and

"(2) prepare students from low-income or educationally disadvantaged backgrounds for postsecondary and graduate education.

"PART A—PRECOLLEGE OUTREACH PROGRAM

"PURPOSE

"SEC. 111. It is the purpose of this part to expand and provide support for outreach services for individuals from low-income and educationally disadvantaged backgrounds in order to provide guidance, information, support services, and, where necessary, the academic enrichment for them to successfully complete their secondary education and to begin and succeed in their postsecondary education.

"DEFINITIONS

"SEC. 112. For the purpose of this part, the term—

"(1) 'eligible entity' means a two- or four-year nonprofit institution of higher education, public or private nonprofit organization or agency, business, or a public or private secondary school (if there are no other applicants capable of providing the services for which funding is requested in the targeted service area); and

"(2) 'first generation college student' means an individual neither of whose parents have received a baccalaureate degree or, in the case of an individual who has regularly resided with and received support from only

one parent, whose custodial parent has not received a baccalaureate degree.

"GRANTS TO STATES

"SEC. 113. (a) AUTHORITY.—From the funds appropriated under section 116, the Secretary shall make grants to States to carry out the purpose of this part.

"(b) ALLOTMENTS.—(1) From the amounts appropriated to carry out this part, the Secretary shall reserve not more than one percent for awards to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Palau (only to the extent authorized by section 104(c) of Public Law 99-658 and until the effective date of the Compact of Free Association with the Government of Palau), the Virgin Islands, and the Secretary of the Interior.

"(2) From the amounts remaining after funds are reserved under paragraph (1), the Secretary shall allot funds to the States on the same basis as funds are awarded for the same fiscal year under sections 1005 and 1006 of the Elementary and Secondary Education Act of 1965.

"(c) APPLICATIONS.—(1) Any State desiring to receive an allotment under this part shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require.

"(2) A State's application shall—

"(A) contain a plan for conducting competitions for the award of subgrants to eligible entities under this program, including procedures and criteria for—

"(i) evaluating grant applications;

"(ii) setting award amounts;

"(iii) monitoring the administration of funded projects; and

"(iv) evaluating project effectiveness, including the development of performance standards in such areas as secondary school completion rates, standardized test scores, and postsecondary admission rates; and

"(B) contain assurances that—

"(i) for those projects that serve age groups under 19 years of age, the State will award grants only to an eligible entity which, based on the entity's application, demonstrates that the entity has established linkage with a local educational agency with the greatest need for the service; and

"(ii) for those projects that serve age groups of 19 years of age and above, the State will award grants only to an eligible entity which, based on the entity's application, demonstrates that the entity serves such population within a local educational agency with the greatest need for the service; and

"(C) contain such other assurances as the Secretary may require.

"AWARDS TO ELIGIBLE ENTITIES

"SEC. 114. (a) AUTHORITY.—(1) A State is authorized to make subgrants to eligible entities to carry out one or more of the services authorized under this part.

"(2) An award made under this section shall be for a term of three years and may be renewed.

"(3) The Federal share of any project assisted under this part shall not exceed 90 percent for the fist year, 85 percent for the second year, 80 percent for the third year, 75 percent for the fourth year, and 70 percent for each year thereafter.

"(b) APPLICATIONS.—An eligible entity desiring to receive an award from a State under this part shall submit an application to the State containing such information as the Secretary and the State may require, including—

"(1)(A) a description of the plan of operation for the services for which the grant is sought;

"(B) a statement of the performance standards the eligible entity will use to evaluate the project and to help the State meet its goals;

"(C) information on the needs of the area to be served and how the project will meet them; and

"(D) a list of any institutions of higher education, local educational agencies, and nonprofit organizations that would be participating in the proposed project under a partnership agreement; and

"(2) assurances that—

"(A) at least two-thirds of the persons participating in the proposed project will be individuals from low-income families who are first-generation college students;

"(B) the remaining individuals participating in any proposed project will be individuals from low-income families or first-generation college students;

"(C)(i) for those applicants that serve age groups under 19 years of age, the applicant will demonstrate that it has established linkage with a local educational agency receiving chapter 1 funds; and

"(ii) for those applicants that serve age groups of 19 years of age and above, the applicant will demonstrate that it serves such population within a local educational agency receiving chapter 1 funds;

"(D) a local educational agency or other nonprofit organization receiving funds or services resulting from a grant awarded under this part shall ensure that neither an institution of higher education nor a local educational agency will reduce its efforts in the face of funds or services received under a Precollege outreach project grant; and

"(E) a local educational agency receiving funds under this part shall use the funds provided so as to supplement and, to the extent practical, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of students participating in the project, and in no case to supplant such non-Federal funds.

"(c) SELECTION CRITERIA.—The criteria used by a State agency in selecting projects shall include—

"(1) the degree to which an applicant's service area includes large numbers of low-income or first generation college students;

"(2) the degree to which the proposed project is likely to increase the postsecondary admission rate of the individuals to be served;

"(3) the degree to which projects that serve the same age group as those served under chapter 1 would be selected and coordinated with those funded under chapter 1; and

"(4) the adequacy of the performance standards proposed by the applicant when compared to the standards established by the State against which the project's success will be measured.

"AUTHORIZED SERVICES

"SEC. 115. (a) USES OF FUNDS.—Funds awarded under this part may be used by eligible entities for projects or activities to assist in the motivation and preparation of students for a postsecondary education, including—

"(1) program to identify qualified individuals with potential for postsecondary education and to encourage such individuals to complete secondary school, or obtain a recognized equivalent of a high school diploma, and to undertake a postsecondary education;

"(2) programs designed to encourage persons who have not completed programs of education at the secondary or postsecondary level, but who have the ability to complete such programs, to reenter such programs;

"(3) instruction in reading, writing, study skills, mathematics, and other subjects;

"(4) personal counseling;

"(5) academic advice and assistance in course selection;

"(6) tutorial services;

"(7) exposure to cultural events, academic programs, and other activities not usually available to disadvantaged individuals;

"(8) activities designed to acquaint project participants with the range of career options available to them;

"(9) summer residential and nonresidential academic programs for 9th through 12th grade students, including stipends of $40 per month during the academic year and $60 per month in the summer;

"(10) programs and activities that are specially designed for students with limited English proficiency;

"(11) motivational speakers to build student aspirations; and

"(12) activities and resources designed to provide information with respect to financial and academic assistance, and to provide assistance in applying for college admission and financial assistance.

"(b) LIMITATION.—Funds awarded under this part may not be used by an institution of higher education for the recruitment of students to enroll at that institution.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 116. There are authorized to be appropriated to carry out this part $253,000,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.

"PART B—STUDENT SUPPORT SERVICES PROGRAM

"PURPOSE

"SEC. 121. The Secretary shall assist eligible institutions of higher education to provide support for individuals pursuing programs of postsecondary education who are first generation college students or who are from low-income or educationally disadvantaged backgrounds.

"DEFINITION

"SEC. For the purpose of this part, the term 'first generation college student' means an individual neither of whose parents have received a baccalaurate degree or, in the case of an individual who has regularly resided with and received support from only one parent, whose custodial parent has not received a baccalaureate degree.

"PROGRAM AUTHORIZED

"SEC. 123. (a) PROGRAM AUTHORIZED.—(1) For the purpose described in section 121, and for carrying out one or more of the services authorized under this part, the Secretary is authorized to make grants to eligible institutions of higher education.

"(2) An award made under this section shall be for a term of five years and may be renewable. To remain eligible for continued funding under this part, institutions of higher education must demonstrate reasonable progress toward achievement of the performance standards as set out in the initial application and the ability to provide an increasing match of funds.

"(b) APPLICATIONS.—(1) Any eligible institution of higher education desiring to receive an award under this part shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require.

"(2) Each application shall include assurances that—

"(A) not less than two-thirds of the persons participating in the proposed project will be physically disabled or will be low-income individuals who are first generation college students:

"(B) the remaining students participating in the proposed project will be low-income individuals, first generation college students, or physically disabled individuals;

"(C) the applicant institution will determine that each project participant has a need for academic support in order to pursue successfully a program of postsecondary education;

"(D) project participants will be enrolled or accepted for enrollment at the applicant institution; and

"(E) the applicant institution will ensure that each participant will receive sufficient financial assistance to meet the participants' financial need.

"(c) SPECIAL CONSIDERATION.—In making awards under this part, the Secretary shall give the highest priority to projects at institutions with the lowest educational and general expenditures per full-time equivalent student.

"AUTHORIZED SERVICES

"SEC. 124. A project assisted under this part may provide support services such as—

"(1) instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in a postsecondary institution;

"(2) personal counseling;

"(3) academic advice and assistance in course selection;

"(4) tutorial services and counseling, including peer counseling;

"(5) exposure to cultural events and academic programs not usually available to disadvantage students;

"(6) activities designed to acquaint students participating in the project with the range of available career options;

"(7) activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs;

"(8) activities designed to assist students currently enrolled in two-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education; and

"(9) programs and activities described in paragraphs (1) through (8) that are specially designed for students of limited English proficiency.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 125. For the purpose of carrying out this part, there are authorized to be appropriated $129,799,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years.

"PART C—RONALD E. MCNAIR GRADUATE OUTREACH PROGRAM

"PURPOSE

"SEC. 131. It is the purpose of this part to provide assistance to institutions of higher education for services to eligible individuals from low-income and educationally disadvantaged backgrounds in order to prepare them for graduate, professional, and doctoral study.

"PROGRAM AUTHORITY

"SEC. 132. (a) AUTHORITY.—The Secretary is authorized to make grants to institutions of higher education in order to fulfill the purpose of this part.

"(b) AWARDS.—An award made under this part shall be for a term of three years and may be renewed. To remain eligible for continued funding under this part, institutions of higher education must demonstrate reasonable progress toward achievement of the performance standards as set out in the initial application and the ability to provide an increasing match of funds.

"(c) SELECTION CRITERIA.—In making awards under this part, the Secretary shall, in addition to other criteria prescribed by regulations—

"(1) consider the quality of the research and study program presented in competing applications;

"(2) consider the applicant's plan for identifying and recruiting participants; and

"(3) ensure, to the extent practicable, an equitable geographic distribution of assisted projects.

"APPLICATIONS

"SEC. 133. (a) APPLICATIONS.—An institution of higher education desiring to receive an award under this part shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require, including—

"(1) information regarding the program of study, including a description of such activities as summer research internships, seminars, and other educational experiences;

"(2) a plan for identifying and recruiting talented undergraduates from low-income or educationally disadvantaged backgrounds;

"(3) the participation of faculty in the program and a detailed description of the research in which students would be involved;

"(4) performance standards; and

"(5) a plan for the evaluation of the effectiveness of the program.

"(b) REQUIRED ASSURANCES.—The Secretary shall not make an award under this part without assurances in the application that—

"(1) at least two-thirds of the individuals participating in the proposed project will be first-generation college students from low-income families;

"(2) the remaining persons participating in the project will be from a group that is underrepresented in graduate education;

"(3) participants will be enrolled in a degree program at an institution of higher education; and

"(4) participants in summer research internships will have completed their sophomore year in postsecondary education.

"USES OF FUNDS

"SEC. 134. Funds awarded under this part may be used by institutions of higher education for the following projects or activities:

"(1) Opportunities for research or other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study.

"(2) Summer internships.

"(3) Seminars and other educational activities designed to prepare students for doctoral study.

"(4) Tutoring.

"(5) Academic counseling.

"(6) Activities designed to assist students participating in the project in securing admission to and financial assistance for enrollment in graduate programs.

"(7) Fellowships and stipends, provided that a student participating in research funded under a postbaccalaureate achievement project may not receive a stipend in excess of $2,400 per year.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 135. There are authorized to be appropriated to carry out this part $10,826,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.".

TITLE II—NATIONAL GRADUATE FELLOWSHIPS PROGRAM

REPEALS

SEC. 201. (a) Title II of the Act is repealed.

(b) Title IX of the Act is repealed.

NATIONAL GRADUATE FELLOWSHIPS PROGRAM

SEC. 202. The Act is amended by inserting after title I a new title II to read as follows:

"TITLE II—NATIONAL GRADUATE FELLOWSHIPS PROGRAM

"FINDINGS AND PURPOSE

"SEC. 201. (a) FINDINGS.—The Congress finds that—

"(1) since the economic well-being and national security of the United States depend on an adequate supply, in areas of national need, of highly trained individuals capable of conducting advanced research, teaching at the postsecondary level, and applying their expertise in the world marketplace, it is in the best interest of the United States to support highly qualified individuals in their graduate studies; and

"(2) since certain groups continue to be underrepresented in graduate studies in areas of national need, even though these groups are increasing as a percentage of the Nation's population, it is also in the best interest of the United States to support highly qualified individuals from groups traditionally underrepresented in graduate studies in areas of national need, and to encourage institutions of higher education to assist these individuals in their graduate studies.

"(b) PURPOSE.—It is the purpose of this title to provide competitive grants to institutions of higher education to enable such institutions to provide financial support to highly qualified individuals in graduate studies in areas of national need, including individuals from groups traditionally underrepresented in graduate studies in areas of national need, to ensure that the highly skilled workforce needs of the United States are met.

"PROGRAM AUTHORIZATION

"SEC. 202. (a) The Secretary shall make grants to institutions of higher education that provide programs of study leading to a graduate degree, as defined by the Secretary, to enable these institutions to provide fellowship assistance to graduate students in accordance with the provisions of this title. Grants awarded under this title shall consist of fellowship stipends awarded to students and payments to institutions in which the students are enrolled.

"(b) Each recipient of a fellowship stipend awarded under this title shall be known as a 'National Graduate Fellow'.

"APPLICATION REQUIREMENTS

"SEC. 203. (a)(1) Any institution of higher education that offers a program of post-baccalaureate study leading to a graduate degree in an area of national need may apply for a grant under this title. The institution is eligible only if the program of graduate study in which a National Graduate Fellowship grant is sought has been in existence for at least four years prior to application for assistance under this title.

"(2) After consultation with public or private agencies and organziations, including other Federal agencies, the Secretary shall designate, as frequently as the Secretary de-

termines to be appropriate, areas of national need. Areas of national need shall include such areas as biology, chemistry, computer science, engineering, foreign language or area studies, geosciences, mathematics, physics, or any other area that the Secretary determines is appropriate in achieving the purposes of this title.

"(b) Any institution of higher education that wishes to receive a grant under this title shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall—

"(1) describe the applicant's program of graduate study for which the grant is sought;

"(2) set forth policies and procedures to ensure that, in awarding fellowship stipends under this title, the applicant will seek highly qualified individuals, including individuals from groups traditionally underrepresented in the area of graduate study for which the grant is sought;

"(3) set forth policies and procedures to ensure that, in awarding fellowship stipends under this title, the applicant will award stipends to individuals who are eligible under the requirements of this title;

"(4) provide an assurance that Federal funds made available under this title for any fiscal year will be used to supplement the funds that would otherwise be made available for the purpose of this title, and in no case to supplant those funds;

"(5) provide an assurance that, if funds made available to the applicant under this title are insufficient to provide the assistance due to a student under the commitment entered into between the applicant and the student under section 205, the applicant will endeavor, from any funds available to it, to fulfill the commitment to the student; and

"(6) contain such other information as the Secretary may prescribe.

"ALLOCATION OF FUNDS

"SEC. 204. (a)(1) The Secretary shall make grants under this title based principally on the quality of the programs of graduate study presented in competing applications. Consistent with making awards based on the quality of these programs, the Secretary shall also seek to achieve an equitable geographic distribution of assisted programs and an equitable distribution of assisted programs among eligible public and private institutions of higher education.

"(2) The Secretary shall ensure that, in making grants under this title, fellowship stipends are awarded to highly qualified individuals, including, to the maximum extent feasible, highly qualified individuals from groups traditionally underrepresented in graduate studies in areas of national need.

"(b)(1) Whenever the Secretary determines that an institution of higher education is unable to use all of the funds available to it under this title, the Secretary shall, on such dates during each fiscal year as the Secretary may fix, reallot the amounts not used by the institution to other institutions assisted under this title that can effectively use the awards authorized by this title.

"(2) Whenever an institution of higher education determines that a National Graduate Fellow at the institution no longer satisfies program eligibility requirements under this title, the Fellow shall remit to the institution a portion of the fellowship stipend in accordance with the pro rata refund provisions in title IV of this Act. The institution may use the remitted portion of the fellowship stipend to assist, under the conditions of the fellowship stipend for which remaining funds have been remitted, another highly qualified student who satisfies program eligibility requirements under this title.

"AWARDS TO GRADUATE STUDENTS

"SEC. 205. (a) A fellowship stipend awarded under this title shall be for no longer than five years.

"(b)(1) Any institution of higher education that receives a grant under this title shall make a commitment to each graduate student, at any point in his or her graduate study, enrolled in the institution and designated as a National Graduate Fellow. The commitment shall provide that the institution will award a stipend to the student for five years, or for the length of time necessary for the student to complete his or her course of graduate study, including the time to complete a doctoral dissertation, whichever is the shorter time period.

"(2) The institution may not make such commitment to a student under this title unless the institution has determined that adequate funds are available to fulfill the commitment either from funds received or anticipated under this title, or from institutional funds.

"(c)(1) The size of the fellowship stipend awarded to a student for an academic year shall not exceed the lesser of the maximum stipend, as determined by the Secretary under this title, or the demonstrated level of financial need, according to the criteria under part F of title IV of this Act.

"(2) The maximum stipend for academic year 1992–1993 shall be $10,000.

"(3) The Secretary shall determine the maximum stipend for each academic year succeeding academic year 1992–1993.

"ELIGIBILITY OF GRADUATE STUDENTS

"SEC. 206. (a) A student shall be eligible to receive a National Graduate Fellowship only during periods in which the student—

"(1) is maintaining satisfactory progress in, and devoting essentially full time to, study or research (including acting as a teaching, research, or other assistant as may be required as a condition for receiving a post-baccalaureate degree) in the field in which the fellowship stipend was awarded; and

"(2) is not engaging in gainful employment, other than part-time employment by the institution involved in teaching, research, or other similar activities, as approved by the Secretary.

"(b) In addition to the requirements of subsection (a), a student is eligible to receive a fellowship stipend under this title only if the student—

"(1) is a citizen, national, or permanent resident of the United States;

"(2) provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident of the United States; or

"(3) is a permanent resident of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Palau (but only until the Compact of Free Association with Palau becomes effective), Puerto Rico, or the Virgin Islands.

"INSTITUTIONAL PAYMENTS

"SEC. 207. The Secretary shall, in addition to the National Graduate Fellowship stipends awarded to students, pay to an institution of higher education, for each student awarded a National Graduate Fellowship under this title at the institution, an amount up to $6,000 for academic year 1992–1993, and such amounts as the Secretary determines to be appropriate in subsequent academic years. The institution shall use such payment only to cover the cost of tuiton and fees for the student receiving the fellowship stipend and other costs of education of the student recipient to the extent that payment for these costs is not otherwise remitted to the institution or forgiven by the institution in conjunction with the student's receipt of a teaching, research, or other assistantship.

"CONTINUATION AWARDS

"SEC. 208. The Secretary may award continuation grants to institutions of higher education that demonstrate satisfactory progress in achieving the purpose of this title. An institution of higher education that receives a continuation grant under this title shall give preference in awarding fellowship stipends to students who have received National Graduate Fellowships under this title and who demonstrate satisfactory progress in their studies.

"REPORTS

"SEC. 209. (a) An institution of higher education that receives a grant under this title shall submit to the Secretary an annual report, which the Secretary may use in determining the award of continuation grants. The annual report shall include, as the Secretary detemines appropriate—

"(1) an assurance that each student that has been awarded a National Graduate Fellowship stipend under this title at the institution is making satisfactory progress in, and is devoting essentially full time to, his or her study or research;

"(2) a description of the effectiveness of the program, including, where feasible, the degree to which National Graduate Fellows have entered into the field for which they received a fellowship stipend;

"(3) a description of the extent to which the institutional payment covers the cost of tuition and fees, and other costs of education, of National Graduate Fellows at the institution, and the extent to which these costs have been forgiven by the institution; and

"(4) such other information as the Secretary may reasonably require.

"(b) The Secretary may also require an institution of higher education that receives a grant under this title to submit such other reports, containing such information in such manner and at such times as the Secretary determines necessary.

"(c) Prior to the reauthorization of the programs authorized under this title, and at such interim points as the Secretary deems appropriate, the Secretary shall submit a report to the Congress that summarizes and analyzes the reports required under subsections (a) and (b).

"TRANSITION AWARDS

"SEC. 210. (a) The Secretary shall make new grants under this title only to the extent that funds remain after the Secretary provides continued funding, in accordance with the terms of this Act as in effect prior to enactment of the Higher Education Act Amendments of 1991, to recipients of graduate fellowship assistance for—

"(1) the Foreign Language and Area Studies Fellowship Program;

"(2) the Patricia Roberts Harris Fellowship Program;

"(3) the Jacob K. Javits Fellows Program; or

"(4) the Graduate Assistance in Areas of National Need Program.

"(b)(1) An institution of higher education that receives a grant under this title shall give preference in awarding fellowship sti-

pends to students who previously received fellowship assistance under a program listed in subsection (a), except that this preference shall be limited to the number of years of eligibility remaining under the terms of the previous fellowship assistance.

"(2) The conditions of the continuation awards for students who previously received fellowship assistance under a program listed in subsection (a) shall be those of the fellowship assistance received under that program.

"(d) A student who received fellowship assistance under a program listed in subsection (a) may subsequently receive a National Graduate Fellowship, except that the combined period of fellowship assistance under a program listed under subsection (a) and the National Graduate Fellowship program shall not exceed five years.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 211. There are authorized to be appropriated to carry out this title $65,449,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years.".

TECHNICAL AMENDMENT

SEC. 203. Part D of title XIII of the Higher Education Amendments of 1986 (20 U.S.C. 1029 note) is repealed.

TITLE III—INSTITUTIONAL AID

FINDINGS

SEC. 301. Section 301(a) of the Act is amended—

(1) by amending paragraph (1) to read as follows:

"(1) there are a significant number of institutions of higher education serving high percentages of minority students and students from low-income backgrounds, that face problems that threaten their ability to survive;";

(2) in paragraph (2), by striking out "recruitment activities,";

(3) by striking out paragraph (3);

(4) by amending paragraph (5) to read as follows:

"(5) providing assistance to eligible institutions will enhance their role in providing access and quality education to low-income and minority students;"; and

(5) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

STRENGTHENING INSTITUTIONS

SEC. 302. (a) PROGRAM PURPOSES.—Section 311(b) of the Act is amended—

(1) in the subsection heading, by striking out "SPECIAL CONSIDERATION" and inserting in lieu thereof "ALLOWABLE ACTIVITIES";

(2) in paragraph (1), by striking out the period at the end thereof and inserting in lieu thereof a comma and "including—";

(3) by striking out the paragraph designation "(1)";

(4) by striking out paragraph (2); and

(5) in paragraph (3)—

(A) by striking out the paragraph designation "(3)" and all that follows through "engage in—"; and

(B) by redesignating subparagraphs (A) through (F) as paragraphs (1) through (6), respectively.

(b) DEFINITIONS AND ELIGIBILITY.—Section 312 of the Act is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by amending subparagraph (B) to read as follows:

"(B) except as provided in section 352(b), the average educational and general expenditures of which are lower, by a percentage determined each year by the Secretary, than the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;";

(ii) in subparagraph (D), by inserting "and" after the semicolon at the end thereof;

(iii) by striking out subparagraph (E);

(iv) by redesignating subparagraph (F) as subparagraph (E);

(B) in paragraph (2), by adding "and" at the end thereof; and

(C) by striking out paragraphs (3), (4), and (5); and

(2) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking out the dash after "includes";

(B) by striking out paragraph (1); and

(C) in paragraph (2)—

(i) by striking out the paragraph designation "(2)"; and

(ii) by striking out "second preceding fiscal year" and inserting in lieu thereof "second fiscal year preceding the fiscal year for which the determination is made".

(c) GRANT DURATION.—Section 313 of the Act is amended to read as follows:

"GRANT DURATION

"SEC. 313. (a) GENERAL RULE.—Except as provided in subsection (b), the Secretary shall award only one grant under this part to any eligible institution. No grant awarded under this part to any eligible institution may exceed five years.

"(b) PLANNING GRANTS.—Notwithstanding subsection (a), the Secretary may award a grant to an eligible institution for a period of one year for the purpose of preparing plans and applications for a grant under this part.".

(d) APPLICATION REVIEW PROCESS.—Section 314 of the Act is amended to read as follows:

"GOALS FOR FINANCIAL MANAGEMENT AND ACADEMIC PROGRAMS

"SEC. 314. (a) GOALS.—Any application for a grant under this part shall describe measurable goals for the institution's financial management and academic programs, and include a plan of how the applicant intends to achieve those goals.

"(b) CONTINUATION REQUIREMENTS.—Any continuation application shall demonstrate the progress made toward achievement of those goals".

STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

SEC. 303. (a) DEFINITIONS.—Section 322(2) of the Act is amended by striking out the comma following "was" and "and is".

(b) UNDERGRADUATE INSTITUTIONS.—Section 323 of the Act is amended—

(1) at the end of subsection (a), by adding a new paragraph (9) to read as follows:

"(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.";

(2) by redesignating subsection (b) as subsection (c); and

(3) by adding a new subsection (b) to read as follows:

"(b) GENERAL RULE.—The Secretary shall not award more than two grants under this part, for a period not to exceed ten years from September 30, 1987, to any one undergraduate part B institution. No grant awarded under this part to any one undergraduate part B institution may exceed five years.".

(c) APPLICATIONS.—Section 325 of the Act is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting a comma and "in accordance with the procedures established in section 351 of this title," after "application"; and

(2) by adding a new subsection (c) to read as follows:

"(c) GOALS FOR FINANCIAL MANAGEMENT AND ACADEMIC PROGRAMS.—(1) Any application for a grant under this part shall describe measurable goals for the institution's financial management and academic programs, and include a plan of how the applicant intends to achieve those goals.

"(2) Any continuation application shall demonstrate the progress made toward achievement of those goals.".

(d) GRANTS TO PROFESSIONAL AND GRADUATE INSTITUTIONS.—Section 326(b) of the Act is amended—

(1) by inserting "from September 30, 1987" after "10 years"; and

(2) by striking out "undergraduate or".

ENDOWMENT CHALLENGE GRANTS

SEC. 304. (a) ENDOWMENT CHALLENGE GRANT PROGRAM.—Part C of the Act is amended in the part heading by inserting "ENDOWMENT" before "CHALLENGE".

(b) CHALLENGE GRANTS.—Section 331 of the Act is repealed.

(c) ENDOWMENT CHALLENGE GRANTS.—Section 332 of the Act is amended—

(1) in subsection (a)(2), by adding a new subparagraph (D) to read as follows:

"(D) The term 'eligible institution' means an institution that is an (i) eligible institution under part A or would be considered to be such an institution if section 312(b)(1)(C) referred to a postgraduate degree rather than a bachelors degree; (ii) institution under part B or would be considered to be such an institution if section 324 referred to a postgraduate degree rather than a baccalaureate degree; or (iii) institution that makes a substantial contribution to postgraduate medical educational opportunities for minorities and the economically disadvantaged. The Secretary may waive the requirements of clauses (i) and (ii) of this subparagraph with respect to a postgraduate degree in the case of any institution otherwise eligible under this subparagraph for an endowment challenge grant upon determining that the institution makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged.";

(2) in subsection (b)—

(A) in paragraph (1), by inserting "endowment" immediately before "challenge grants";

(B) in paragraph (2)(B), in the text preceding clause (i), by striking out "$10,000,000" and inserting in lieu thereof "$20,000,000";

(C) in paragraph (4)(A), by striking out "section 331(a)(1) of this title" and inserting in lieu thereof "subsection (a)(2)(D) of this section";

(D) in paragraph (4)(B), by striking out "a challenge grant" and inserting in lieu thereof "an endowment challenge grant"; and

(E) in paragraph (5)—

(i) in the matter preceding subparagraph (A), by striking out "a challenge grant under this section to an eligible institution year" and inserting in lieu thereof "an endowment challenge grant under this section to an eligible institution"; and

(ii) by amending subparagraph (B) to read as follows:

"(B) not to be more than $500,000 for fiscal year 1992 or any succeeding fiscal year.";

(3) in subsection (f)(1), by inserting before the semicolon at the end thereof a comma and "or to an applicant that has received a grant under part A or part B of this title within the five fiscal years prior to the fiscal

year in which the applicant is applying for a grant under this section"; and

(4) in subsection (g), before the period at the end of the first sentence, by inserting a comma and "including a description of the long- and short-term plans for raising and using the funds under this part".

GENERAL PROVISIONS

SEC. 305. (a) APPLICATION CONTENTS.—Section 351(b)(7) of the Act is amended—

(1) by striking out subsection (D); and

(2) by redesignating subsections (E) and (F) as subsections (D) and (E), respectively.

(b) WAIVER AUTHORITY.—Section 352(a) of the act is amended—

(1) in paragraph (1), by adding "and" after the semicolon at the end thereof;

(2) by striking out paragraphs (3), (4), (5), and (6); and

(3) in paragraph (2), by striking out the semicolon at the end thereof and inserting in lieu thereof a period.

(c) APPLICATION REVIEW.—Section 353 of the Act is repealed.

(d) SPECIAL PAYMENT RULES.—Section 355 of the Act is repealed.

(e) WAIVER OF PAYMENT OF NON-FEDERAL FUNDS.—Section 356 of the Act is repealed.

(f) CHALLENGE GRANT APPLICATIONS.—Section 359 of the Act is repealed.

(g) AUTHORIZATION OF APPROPRIATIONS.—Section 360 of the Act is amended—

(1) by amending subsection (a) to read as follows:

"(h) AUTHORIZATIONS.—(1) There are authorized to be appropriated $87,831,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out part A.

"(2)(A) There are authorized to be appropriated $87,831,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out part B (other than section 326).

"(B) There are authorized to be appropriated $11,711,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out section 326.

"(3)(A) There are authorized to be appropriated $7,462,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out part C.

"(B)(i) There are authorized to be appropriated $10,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, and $10,000,000 for fiscal year 1995 for awards under section 332 of the Act to historically Black colleges and universities that qualify as part B institutions.

"(ii) Any part B institution that receives an award from funds appropriated for any fiscal year under clause (i) shall not be eligible to receive an award from funds appropriated for that fiscal year under subparagraph (A).

"(4) Funds appropriated for part C shall remain available until expended.";

(2) by striking out subsection (c); and

(3) by redesignating subsection (d) as subsection (c).

TITLE IV—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS

STATEMENT OF PURPOSE; PROGRAM AUTHORIZATION

SEC. 401. Section 401 of the Act is amended—

(1) in subsection (a), by striking out paragraphs (3), (4), and (5), and inserting in lieu thereof the following new paragraphs:

"(3) providing scholarships to students, including disadvantaged students and students pursuing postsecondary education in mathematics, engineering, or the sciences, who demonstrate high levels of academic achievement; and

"(4) providing capacity-building grants for special programs designed to provide educational, support and other services to enable students whose families are engaged in migrant or seasonal farmwork to complete successfully high school equivalency programs or the first year of postsecondary education."; and

(2) in subsection (b), by striking out "1 through 8," and inserting in lieu thereof "1 through 6,".

Subpart 1—Pell Grants

PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION

SEC. 411. Section 411(a)(1) of the Act is amended—

(1) by striking out "September 30, 1992," and inserting in lieu thereof "September 30, 1997,"; and

(2) by striking out the last sentence therein.

AMOUNT OF GRANTS

SEC. 412. Section 411(b) of the Act is amended to read as follows:

"(b) AMOUNT OF GRANTS.—(1)(A) The amount of a basic grant for a student eligible under this subpart shall be the lesser of—

"(i) the maximum award specified in paragraph (2), less an amount equal to the amount determined in accordance with Part F of this title to be the expected family contribution with respect to that student for that year; or

"(ii) the percentage, specified in paragraph (3), of the amount of the student's need for financial assistance (as defined in section 471).

"(B) In any case in which a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any award year, the amount of the basic grant for which that student is eligible shall be reduced in proportion to the extent to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for this purpose and published in the Federal Register.

"(2) The maximum amount of an award under this subpart shall be $3,700 for award year 1992–1993 and the four succeeding award years.

"(3) The percentage of the amount of a student's need for financial assistance to be used in paragraph (1)(A)(ii) shall be—

"(A) 79 percent, if the family of the student has a total income (excluding the income of the dependent student) of $10,000 or less;

"(B) 65 percent, if the family of the student has a total income (excluding the income of the dependent student) of between $10,001 and $15,000, inclusive;

"(C) 48 percent, if the family of the student has a total income (excluding the income of the dependent student) of between $15,001 and $20,000, inclusive;

"(D) 35 percent, if the family of the student has a total income (excluding the income of the dependent student) of between $20,001 and $30,000, inclusive; and

"(E) 30 percent, if the family of the student has a total income (excluding the income of the dependent student) of $30,001 or more.

"(4) Except as provided in subsection (g)(2), no basic grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this subsection for any award year would be less than $400.".

PERIOD OF ELIGIBILITY FOR PELL GRANTS

SEC. 413. Section 411(c) of the Act is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking out "period required" through "attendance" and inserting in lieu thereof the following: "period normally required for the completion of the first undergraduate baccalaureate course of study,"; and

(B) by amending subparagraph (A) to read as follows:

"(A) such period may not exceed the full-time equivalent of—

"(i) three academic years in the aggregate in the case of all undergraduate degree or certificate programs normally requiring two years or less;

"(ii) five academic years in the aggregate in the case of all undergraduate degree or certificate programs normally requiring more than two years but not more than four years, including any period for which the student received a Pell Grant in accordance with clause (i); or

"(iii) six academic years in the aggregate in the case of all undergraduate degree or certificate programs normally requiring more than four years, including any period for which the student received a Pell Grant in accordance with clause (i) or (ii);"; and

(2) in paragraph (3), by striking out "is entitled to" and inserting in lieu thereof "shall".

CALCULATION OF ELIGIBILITY

SEC. 414. Section 411 of the Act is further amended by striking out subsection (f).

ADJUSTMENTS FOR INSUFFICIENT APPROPRIATIONS

SEC. 415. Section 411(g) of the Act is amended—

(1) by amending pargraph (1) to read as follows:

"(1) If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient to satisfy fully all basic grant amounts for which students are eligible, as calculated under subsection (b)(1)(A)(i), the amount paid with respect to each such calculation of the basic grant amount shall be a percentage of such calculation, as determined in accordance with a schedule of reductions established by the Secretary for this purpose."; and

(2) in paragraph (2), by striking out "paragraph (1)(B)", "entitlement", and "$100," and inserting in lieu thereof "paragraph (1)", "basic grant amount for which the student is eligible, as calculated under subsection (b)(1)(A)(i),", and "$200,", respectively.

USE OF EXCESS FUNDS

SEC. 416. Section 411 of the Act is further amendment—

(1) by striking out subsection (h); and

(2) by redesignating subsections (g) and (i) as subsections (f) and (g), respectively.

REPEALS

SEC. 417. Sections 411A, 411B, 411C, 411D, 411E, and 411F of the Act are repealed.

Subpart 2—Supplemental Educational Opportunity Grants

AUTHORIZATION OF APPROPRIATIONS

SEC. 418. Section 413A(b) of the Act is amended by striking out "$490,000,000 for fiscal year 1987," and inserting in lieu thereof "$346,945,000 for fiscal year 1992,".

FEDERAL SHARE

SEC. 419. Section 413C(a)(2) of the Act is amended to read as follows:

"(2) agrees that the Federal share of awards under this subpart will not exceed 50 percent of such awards in fiscal year 1992 and succeeding fiscal years; and".

Subpart 3—Repeals

SEC. 420. Subparts 3, 4, 7, and 8 of part A of title IV of the Act are repealed.

Subpart 4—Presidential Achievement Scholarship Program

PRESIDENTIAL ACHIEVEMENT SCHOLARSHIP PROGRAM

SEC. 421. Part A of Title IV of the Act is further amended by adding immediately after subpart 2 the following new subpart:

"Subpart 3—Presidential Achievement Scholarship Program

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 415A. (a) PURPOSE.—It is the purpose of this part to award scholarships to Pell Grant recipients who demonstrate high academic achievement, and thereby encourage financially needy students to excel in their elementary and secondary studies, enter postsecondary education, and continue to demonstrate high levels of academic achievement at the postsecondary level.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $170,000,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years to carry out the purposes of this subpart. Funds shall remain available for expenditure until the end of the fiscal year immediately succeeding the fiscal year for which such funds were appropriated.

"SCHOLARSHIPS AUTHORIZED

"SEC. 415B. (a) PROGRAM AUTHORITY.—The Secretary is authorized, in accordance with this subpart, to carry out a program or awarding scholarships to students who are Pell Grant recipients and demonstrate high level of academic achievement.

"(b) PERIOD OF AWARDS.—(1) A student who satisfies the requirements of section 415C may receive a scholarship, for a period of one academic year, for full-time undergraduate study at an institution of higher education.

"(2) A student who satisfies the requirements of section 415C may receive up to four scholarships, each awarded for a period of one academic year, except that, in the case of a student who is enrolled in a full-time undergraduate course of study that requires attendance for five academic years, the student may receive up to five scholarships under this subpart.

"(c) PRESIDENTIAL ACHIEVEMENT SCHOLARS.—Students awarded scholarships under this subpart shall be known as 'Presidential Achievement Scholars.'

"ELIGIBILITY OF SCHOLARS

"SEC. 415C. (a) REQUIREMENTS FOR STUDENTS IN FIRST YEAR OF POSTSECONDARY EDUCATION.—In order for a student who will be attending his or her first year of postsecondary education to be eligible to receive a scholarship under this subpart for that academic year, the student must—

"(1)(A) rank, or have ranked, in the top ten percent, by grade point average, of his or her high school graduating class; or

"(B) achieve at least the minimum score, announced by the Secretary for this purpose by notice in the Federal Register, on one of the nationally administered, standardized tests identified by the Secretary; and

"(2) receive a Pell Grant under subpart 1 of this part for that academic year.

"(b) REQUIREMENTS FOR OTHER STUDENTS.—In order for a student who will be attending a year of postsecondary education, other than his or her first year, to be eligible to receive a scholarship under this subpart for that academic year, the student must—

"(1) be enrolled in a program of study of not less than two academic years in length that leads to a degree or certificate;

"(2) rank in the top 20 percent, by cumulative grade point average (or its equivalent, if the institution does not use a system of ranking its students by grade point averages), of his or her postsecondary education class as of the last academic year of study completed; and

"(3) receive a Pell Grant under subpart 1 of this part for that academic year.

"(c) PRIOR SCHOLARSHIPS.—Except in relation to the aggregate limits on the receipt of scholarships in section 415B(b)(2), a student's eligibility for a Presidential Achievement Scholarship for a given academic year is not dependent on whether the student received a Presidential Achievement Scholarship or a Pell Grant in the previous academic year.

"(d) FULL-TIME ATTENDANCE REQUIRED.—A student who is attending an institution of higher education on a less than full-time basis is not eligible to receive a Presidential Achievement Scholarship.

"AWARD PROCEDURES

"SEC. 415D. (a) AWARD PROCEDURES.—(1) The Secretary shall establish the procedures through regulations by which Presidential Achievement Scholarships shall be awarded.

"(2) A participating institution of higher education shall provide such information as as required by the Secretary regarding a potential scholarship recipient's class rank or test score.

"(b) DEADLINES.—The Secretary shall specify, by notice in the Federal Register, the date after which no additional students may be considered for scholarships under this subpart for a given academic year. The Secretary shall then determine the total number of eligible applicants for that academic year, and, if necessary, apply the reduction procedures specified in section 415E(c).

"(c) DISBURSAL OF SCHOLARSHIP PROCEEDS.—Scholarship proceeds shall be disbursed on behalf of students who receive scholarships under this subpart to the institutions of higher education at which the students are enrolled. No scholarship proceeds shall be disbursed on behalf of a student until the student is enrolled at an institution of higher education.".

"SCHOLARSHIP AMOUNT

"SEC. 415E. (a) AMOUNT OF AWARD.—Except as provided in subsections (b) and (c), the amount of a scholarship awarded under this subpart for any academic year shall be $500.

"(b) RELATION TO COST OF ATTENDANCE AND OTHER ASSISTANCE.—Notwithstanding subsection (a), the amount of a scholarship awarded under this subpart shall be reduced, by the institution of higher education that the student is or will be attending, by the amount that the scholarship—

"(1) exceeds the student's cost of attendance, as defined in section 472; or

"(2) when combined with other Federal or non-Federal grant or scholarship assistance the student receives in any academic year, exceeds the student's cost of attendance, as defined in section 472.

"(c) ADJUSTMENTS FOR INSUFFICIENT APPROPRIATIONS.—If, after the Secretary determines the total number of eligible applicants for an academic year in accordance with section 415D(b), funds available in a fiscal year are insufficient to fully fund all awards for that academic year under this subpart, the amount paid to each student shall be reduced proportionately.".

Subpart 5—National Science Scholars Program

NATIONAL SCIENCE SCHOLARS PROGRAM

SEC. 422. Part A of Title IV of the Act is further amended by adding immediately after Subpart 3 (as added by Subpart 4 of Part A of Title IV of the bill) the following new subpart:

"Subpart 4—National Science Scholars Program

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 417A. (a) PURPOSE.—It is the purpose of this part—

"(1) to establish a National Science Scholars Program to recognize student excellence and achievement in the physical, life, and computer sciences, mathematics, and engineering;

"(2) to provide financial assistance to students under paragraph (1) to continue their postsecondary education in such fields of study at sustained high levels of performance;

"(3) to contribute to strengthening the leadership of the United States in such fields;

"(4) to strengthen the United States mathematics, science, and engineering base by offering opportunities to pursue postsecondary education in life, physical, and computer sciences, mathematics, and engineering;

"(5) to encourage role models in scientific, mathematics, and engineering fields for young people; and

"(6) to attract talented students to teaching careers in mathematics and science in elementary and secondary schools.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1992, $15,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, and such sums as may be necessary for the two succeeding fiscal years for awards to National Science Scholars. Appropriations shall be available until expended.

"SCHOLARSHIPS AUTHORIZED

"SEC. 417B. (a) PROGRAM AUTHORITY.—The Secretary is authorized, in accordance with this subpart, to carry out a program of awarding scholarships to students for the study of the physical, life, or computer sciences, mathematics, or engineering, who—

"(1) are selected by the President;

"(2) have demonstrated outstanding academic achievement in the physical, life, or computer sciences, mathematics, or engineering; and

"(3) show promise of continued outstanding academic performance in such fields of study.

"(b) PERIOD OF AWARDS.—

"(1) PERIOD OF INITIAL AWARD.—A student who satisfies the requirements of section 417D(a) may receive a scholarship, for a period of one academic year, for the first year of undergraduate study at an institution of higher education.

"(2) CONTINUATION AWARDS.—A student who satisfies the requirements of section 417D(b) may receive additional scholarships, each awarded for a period of one academic year, to complete his or her undergraduate course of study. A student may receive additional scholarships for not more than three academic years of undergraduate study, except that, in the case of a student who is en-

rolled in an undergraduate course of study that requires attendance for five academic years, the student may receive additional scholarships for not more than four academic years of undergraduate study.

"(c) USE AT ANY INSTITUTION PERMITTED.—A student awarded a scholarship under this part may attend any institution of higher education, as defined in section 1001(a).

"(d) NATIONAL SCIENCE SCHOLARS.—Students awarded scholarships under this subpart shall be known as 'National Science Scholars.'

"SELECTION OF SCHOLARS

"SEC. 417C. (a) SELECTION CRITERIA FOR INITIAL AWARDS.—The Director of the National Science Foundation and the Secretary shall jointly establish criteria to be used in the selection of National Science Scholars for initial year awards under section 417B(b)(1). Such criteria shall provide for the selection of scholars on the basis of potential to complete successfully a postsecondary program in the physical, life, or computer sciences, mathematics, or engineering, and on the basis of motivation to pursue a career in such fields. In addition, consideration may be given to the financial need of the individual, and to the nondiscriminatory promotion of participation by minorities and individuals with disabilities.

"(b) SELECTION PROCESS FOR INITIAL AWARDS.—(1) NOMINATING COMMITTEE.—Each State desiring to qualify students residing in that State for selection as National Science Scholars shall establish a nominating committee. Such committee shall be appointed by the chief State school officer or by an agency or panel designated by such officer, and shall be approved by the Secretary. The nominating committee shall be a broad-based committee composed of educators, scientists, mathematicians, and engineers, who shall serve as volunteers without compensation.

"(2) NOMINATIONS.—The nominating committee in each State shall submit to the President the nominations of at least four, but not more than 10, individuals from each congressional district in the State. Such selections shall be ranked in order of priority. The nominating committee shall keep, and the State shall maintain, records relating to the nominating process for five years after the nominations are made.

"(3) SELECTION.—The President, after consultation with the Secretary and the Director of the National Science Foundation, shall select two National Science Scholars for each academic year from each congressional district.

"(4) ANNOUNCEMENT AND AWARD OF SCHOLARSHIPS.—The President shall announce the selection of National Science Scholars. The Secretary shall notify each Member of Congress of selections made from such Member's district and State before the public announcement by the President.

"(5) CONGRESSIONAL DISTRICT.—For purposes of this subsection, the term 'congressional district' includes the part or all of a State (within the meaning of section 1001(b)) represented by a Member or Delegate of the House of Representatives, and includes the Commonwealth of the Northern Mariana Islands.

"(c) CONTINUATION AWARDS.—The Secretary shall award additional scholarships under section 417B(b)(2) to recipients of initial awards under section 417B(b)(1) who the Secretary determines meet the requirements of section 417D(b).

"(d) DISBURSAL OF SCHOLARSHIP PROCEEDS.—Scholarship proceeds shall be disbursed by the Secretary on behalf of students who receive scholarships under this subpart to the institutions of higher education at which the students are enrolled. No scholarship proceeds shall be disbursed on behalf of a student until the student is enrolled at an institution of higher eduction.

"(e) SPECIAL RULE.—The Director and the Secretary shall encourage the support and assistance of civic groups, the business community, professional associations, institutions of higher education, and others in providing scholarship assistance to National Science Scholarship finalists.

"ELIGIBILITY OF SCHOLARS

"SEC. 417D. (a) REQUIREMENTS FOR INITIAL AWARD.—To be eligible to receive a scholarship under section 417B(b)(1), a student shall—

"(1) be scheduled to graduate from a public or private secondary school, or to obtain the equivalent of a certificate of graduation (as recognized by the State in which the student resides), during the school year in which the award is made;

"(2) have demonstrated outstanding academic achievement in secondary school in physical, life, or computer sciences, mathematics, or engineering;

"(3) have been accepted for enrollment at an institution of higher education as a full-time undergraduate student (as determined by the institution); and

"(4) have declared a major in one of the physical, life, or computer sciences, mathematics, or engineering, or provided a written statement to the State of his or her intent to major in one of these fields of study, if it is the policy of the institution at which the student has been accepted for enrollment that students not declare a major until a later point in their course of study.

"(b) REQUIREMENTS FOR CONTINUATION AWARDS.—A student who has received a scholarship under section 417B(b)(1) may receive a scholarship for a subsequent academic year of undergraduate study under section 417B(b)(2) if the student—

"(1) maintains a high level of academic achievement, as determined by the institution, subject to the approval of the Secretary;

"(2) continues to major in, or provides a statement to the institution at which he or she is enrolled, similar to the statement described in subsection (a)(4), of his or her continuing intent to major in one of the physical, life, or computer sciences, mathematics, or engineering; and

"(3) continues to be enrolled at an institution of higher education as a full-time undergraduate student (as determined by the institution).

"(c) WAIVER OF FULL-TIME ATTENDANCE REQUIREMENT.—The Secretary may waive the full-time attendance requirements in this section in unusual circumstances.

"(d) FAILURE TO MEET ELIGIBILITY REQUIREMENTS.—In the event that the student fails to meet the requirements of this section, the student's eligibility to receive further scholarships (or scholarship proceeds) under this subpart shall be suspended by the Secretary. Any scholarship proceeds that have not been disbursed by the institution to the student shall be returned to the Secretary and used to make other awards under this subpart.

"(e) REINSTATEMENT OF ELIGIBILITY.—The Secretary shall determine circumstances under which eligibility of a scholarship recipient under this subpart may be reinstated if the recipient seeks to re-enter school after an interruption of schooling for personal reasons, including, but not limited to, pregnancy, child-rearing, and other family responsibilities.

"(g) NOTIFICATION OF SECONDARY SCHOOLS.—The Secretary shall notify all public and private secondary schools and all institutions of higher education in each State annually of the availability of scholarships under this subpart.

"SCHOLARSHIP AMOUNT

SEC. 417E. (a) AMOUNT OF AWARD.—Except as provided in subsections (b) and (c), the amount of a scholarship awarded under this part for any academic year shall be $6,000.

"(b) RELATION TO COST OF ATTENDANCE AND OTHER ASSISTANCE.—Notwithstanding subsection (a), the amount of a scholarship awarded under this subpart shall be reduced by the amount that the scholarship—

"(1) exceeds the student's cost of attendance, as defined in section 472; or

"(2) when combined with other Federal or non-Federal grant or scholarship assistance the student receives in any academic year, exceeds the student's cost of attendance, as defined in section 472.

"(c) ADJUSTMENTS FOR INSUFFICIENT APPROPRIATIONS.—In the event that funds available in a fiscal year are insufficient to fully fund all awards under this subpart, the amount paid to each student shall be reduced proportionately.

"SUMMER EMPLOYMENT OPPORTUNITIES FOR SCHOLARS

"SEC. 417F. (a) PRIORITY FOR SUMMER EMPLOYMENT.—To the extent that they are otherwise qualified, students receiving scholarships under this subpart shall be given priority consideration for federally financed summer employment in federally funded research and development centers, that, to the maximum extent practicable, complements and reinforces the educational program of these students.

"(b) FEDERAL AGENCY COOPERATION.—(1) Federal agencies shall cooperate fully with the Secretary and participate actively in providing appropriate summer employment opportunities for such students.

"(2) The Secretary shall notify other Federal agencies of the requirements of this section.".

REPEAL

SEC. 423. Part A of Title VI of the Excellence in Mathematics, Science and Engineering Education Act of 1990 (P.L. 101-589) is repealed.

Subpart 6—Special Programs for Students Whose Families are Engaged in Migrant and Seasonal Farmwork

PROGRAM AMENDMENTS

SEC. 424. Section 418A of the Act is amended—

(1) by amending the section heading to read as follows: "GRANTS TO BUILD PROGRAM CAPACITY";

(2) by amending subsection (a) to read as follows:

"(a) STATEMENT OF PURPOSE.—The Secretary shall award grants to build the capacity of—

"(1) State or local educational agencies, institutions of higher education, or private nonprofit organizations to operate high school equivalency programs for migrant students; and

"(2) institutions of higher education, or private nonprofit organizations working with institutions of higher education, to operate college assistance migrant programs.";

(3) in subsection (b)—

(A) in paragraph (1), by striking out "17 years of age and over," and inserting in lieu

thereof "16 years of age and older, or are beyond the age of compulsory school attendance in the State in which they reside and are not currently enrolled in school,"; and

(B) in paragraph (4), by inserting a comma after "concerning" and "obtaining";

(4) in subsection (c)—

(A) in the matter immediately preceding paragraph (1), by inserting immediately preceding "include" a comma and "except as provided in paragraph (2), are limited to those services that are necessary to assist migrant students in completing their first year of college, and";

(B) in paragraph (2), by redesignating subparagraphs (A) through (E) as clauses (i) through (v), respectively;

(C) in paragraph (3), by redesignating subparagraphs (A) through (H) as clauses (i) through (viii), respectively;

(D) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F), respectively;

(E) by inserting the paragraph designation "(1)" immediately following the subsection heading; and

(F) by adding at the end thereof the following new paragraph:

"(2) A grantee that is awarded a grant under this subpart to operate a college assistance migrant program shall provide follow-up services for migrant students after they have completed their first year of college, and may use up to ten percent of such grant for such follow-up services, which include—

"(A) monitoring and reporting the academic progress of students who participated in the project in their first year of college during their subsequent years in college; and

"(B) referring such students to on- or off-campus providers of counseling services, academic assistance, or financial aid.";

(5) in subsection (d)—

(A) in paragraph (5), by striking out "and" at the end thereof;

(B) in paragraph (6), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new paragraph:

"(7) a long-range management plan describing how the applicant will, over the period of the grant, gradually assume the financial responsibility to provide services that are substantially similar to those proposed in the project application.";

(6) by striking out subsection (e) and inserting in lieu thereof the following new subsection:

"(e) CONSIDERATION OF GEOGRAPHIC DISTRIBUTION.—For purposes of making grants under this subpart, the Secretary shall consider the geographic distribution of the persons who are to be served by grantees.";

(7) by amending subsection (f) to read as follows:

"(f) GRANT PERIOD; MINIMUM ALLOCATIONS.—(1) In the case of a grantee that is receiving funds under this subpart for the first time, the Secretary shall award a one-time, nonrenewable grant for a five-year period. After the receipt of a grant under this paragraph, the grantee shall not be eligible for any further grants under this section. The Federal share of the cost of the high school equivalency or college migrant assistance program operated by such grantee shall not exceed 90 percent for the first year of the grant, 80 percent for the second year, 70 percent for third year, 60 percent for the fourth year, and 50 percent for the fifth year.

"(2) In the case of a grantee that has previously received funds under this subpart, the Secretary shall award a one-time, nonrenewable grant for a three-year period. After the receipt of a grant under this paragraph, the grantee shall not be eligible for any further grants under this section. The Federal share of the cost of the high school equivalence or college migrant assistance program operated by such grantee shall not exceed 90 percent for the first year of the grant, 70 percent for the second year, and 50 percent for the third year.

"(3) The Secretary shall not allocate an amount less than $150,000 for each project under this section.";

(8) in subsection (g)—

(A) in paragraph (1), by striking out "$7,000,000 for fiscal year 1987" and inserting in lieu thereof "$8,135,000 for fiscal year 1992,"; and

(B) in paragraph (2), by striking out "$2,000,000 for fiscal year 1987" and inserting in lieu thereof "$2,034,000 for fiscal year 1992,";

(9) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively; and

(10) by inserting immediately following subsection (a) the following new subsection:

"(b) ELIGIBILITY.—(1) A State or local educational agency, an institution of higher education, or a private nonprofit organization is eligible to receive a grant for the purpose described in subsection (a)(1).

"(2) an institution of higher education, or a private nonprofit organization working with an institution of higher education, is eligible to receive a grant for the purpose described in subsection (a)(2).".

Subpart 7—Robert C. Byrd Honors Scholarship Program

ALLOCATION AMONG STATES

SEC. 425. Section 419D of the Act is amended to read as follows:

"ALLOCATION AMONG STATES

"SEC. 419D. (a) ALLOCATION FORMULA.—From the sums appropriated pursuant to section 419J for any fiscal year, the Secretary shall allocate to each State that has an agreement under section 419E an amount equal to $1,500 multiplied by the number of scholarships determined by the Secretary.

"(b) NUMBER OF SCHOLARSHIPS AVAILABLE.—The number of scholarships to be made available in a State for any fiscal year shall bear the same ratio to the number of scholarships made available to all States as the State's population ages 5 through 17 bears to the population ages 5 through 17 in all the States, except that no less than ten scholarships shall be made available to any State.

"(c) USE OF CENSUS DATA.—For the purpose of this section, the population ages 5 through 17 in a State and in all the States shall be determined by the most recently available data, satisfactory to the Secretary, from the United States Bureau of the Census.".

SELECTION OF SCHOLARS

SEC. 426. Section 419G of the Act is amended—

(1) by amending subsection (b) to read as follows:

"(b) ADOPTION OF PROCEDURES.—The State educational agency shall adopt selection procedures designed to ensure an equitable geographic distribution of awards within the State."; and

(2) by adding at the end thereof the following new subsection:

"(d) TIMING OF SELECTION.—The selection process shall be completed, and the awards made, prior to the end of each secondary school academic year.".

AWARDS CEREMONY

SEC. 427. (a) Section 419E of the Act is amended—

(1) in paragraph (3), by adding "and" at the end thereof;

(2) in paragraph (4), by striking out "at an awards ceremony in accordance with section 419I; and" and inserting in lieu thereof a period; and

(3) by striking out paragraph (5).

(b) Section 419I of the Act is repealed.

(c) Subpart 6 of part A of title IV of the Act is further amended by redesignating sections 419J and 419K as sections 419I and 419J, respectively.

AUTHORIZATION OF APPROPRIATIONS

SEC. 428. Section 419J of the Act (as redesignated by section 427) is amended by striking out "$8,000,000 for fiscal year 1987," and inserting in lieu thereof "$9,271,000 for fiscal year 1992,".

PART B—GUARANTEED STUDENT LOANS

LIMITATIONS ON AMOUNTS OF LOANS COVERED BY FEDERAL INSURANCE

SEC. 43. Section 424(a) of the Act is amended by striking out "$2,000,000,000", "1992.", and "1997." and inserting in lieu thereof "$10,000,000,000", "1997.", and "2002.", respectively.

LOAN LIMITS

SEC. 432. (a) Section 425(a) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) in clause (i), by striking out "$2,625," and inserting in lieu thereof "$3,500,";

(ii) in clause (ii), by striking out "$4,000," and inserting in lieu thereof "$5,000,"; and

(iii) in clause (iii), by striking out "(as defined in regulations of the Secretary)";

(B) in subparagraph (B), by striking out the first sentence therein; and

(2) in paragraph (2)(A)—

(A) in clause (i), by striking out "$17,250," and inserting in lieu thereof "$22,000,"; and

(B) in clause (ii)—

(I) by striking out "$54,750," and inserting in lieu thereof "$59,500,"; and

(II) by striking out "as defined by regulations of the Secretary and".

(b) Section 428(b)(1) of the Act is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking out "$2,625," and inserting in lieu thereof "$3,500,";

(B) in clause (ii), by striking out "$4,000," and inserting in lieu thereof "$5,000,"; and

(C) in the matter immediately following clause (iii), by striking out "in cases" through "but" and inserting in lieu thereof "that"; and

(2) in subparagraph (B)—

(A) in clause (i), by striking out "$17,250," and inserting in lieu thereof "$22,000,"; and

(B) in clause (ii), by striking out "$54,750," and inserting in lieu thereof "$59,500,".

(c) Section 428A(b) of the Act is amended by amending paragraphs (1) and (2) to read as follows:

"(1) ANNUAL LIMITS.—Subject to paragraphs (2) and (3), the amount a student may borrow in any academic year or its equivalent (as determined by the Secretary) may not exceed—

"(A) $2,500, in the case of a student who has not successfully completed the first year of a program of undergraduate education and who is enrolled in a program of less than one academic year (defined for this purpose as 24 semester or trimester hours, 36 quarter hours, or 900 clock hours);

"(B) $4,000, in the case of a student who has not successfully completed the first year of a

program of undergraduate education and who is enrolled in a program of at least one academic year in length;

"(B) $6,000, in the case of a student who has successfully completed such first year, but who has not successfully completed the remainder of a program of undergraduate education; or

"(C) $10,000, in the case of a graduate or professional student.

"(2) AGGREGATE LIMITS.—The aggregate insured principal amount for insured loans made to any student under this section, exclusive of interest capitalized under subsection (c), shall not exceed—

"(A) $28,000, in the case of a student who has not successfully completed a program of undergraduate education; and

"(B) $50,000, in the case of a graduate or professional student, including any loans made to such student under this section before he or she became a graduate or professional student.".

GRADUATED REPAYMENT; BORROWER INFORMATION; CONFESSION OF JUDGMENT

SEC. 433. (a) Section 427 of the Act is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (G), by striking out the "and" at the end thereof;

(B) by redesignating subparagraph (H) as subparagraph (J); and

(C) by inserting immediately following subparagraph (G) the following new subparagraphs:

"(H) provides that, not more than 6 months prior to the date on which the borrower's first payment on a loan is due, the lender shall offer the borrower the option of repaying the loan in accordance with a graduated repayment schedule, provided that such schedule does not result in negative amortization of the loan, provides for the repayment of only accrued interest during the first 12 months of repayment, and, after the fourth year of repayment, requires the borrower to resume repayment on an equal installment basis in an amount sufficient to satisfy the requirements of subparagraph (B);

"(I) provides the borrower's authorization for entry of judgment against the borrower in the event of default; and"; and

(2) by adding at the end therefore the following new section:

"(d) BORROWER INFORMATION.—The lender shall obtain the borrower's driver's license number, if any, at the time of application for the loan.".

(b) Section 428 of the Act is further amended—

(1) in subsection (a)(2)(A)—

(A) in clause (i)(I), by striking out "and" at the end thereof;

(B) in clause (ii), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new clause:

"(iii) have provided to the lender at the time of application for a loan made, insured, or guaranteed under this part, the student's driver's license number, if any."; and

(2) in subsection (b)(1)—

(A) by amending subparagraph (E) to read as follows:

"(E) subject to subparagraph (D) and (L), and except as provided by subparagraph (M), provides that (i) not more than 6 months prior to the date on which the borrower's first payment is due, the lender shall offer the borrower of a loan made, insured, or guaranteed under this section or section 428A the option of repaying the loan in accordance with a graduated repayment schedule, provided that such schedule does not result in negative amortization of the loan, provides for the repayment of only accrued interest during the first 12 months of repayment, and, after the fourth year of repayment, requires the borrower to resume repayment on an equal installment basis in an amount sufficient to satisfy the requirements of clause (ii), and (ii) repayment of loans shall be installments over a period of not less than 5 years (unless the student, during the 6 months immediately preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years, beginning 6 months after the month in which the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution;";

(2) in subparagraph (U), by striking out "and" at the end thereof;

(3) in subparagraph (V), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(W) provides that the lender shall obtain, as part of the note or written agreement evidencing the loan, the borrower's authorization for entry of judgment against the borrower in the event of default.".

LOAN CERTIFICATION BY ELIGIBLE INSTITUTIONS

SEC. 434. Section 428(a)(2)(F) of the Act is amended by striking out "under this part," through the end thereof and inserting in lieu thereof "under this part."

DEFERMENTS

SEC. 434. (a) Section 427(a)(2)(C) of the Act is amended—

(1) in clause (i), by striking out the subclause designations "(I)", "(II)", and "(III)";

(2) by redesignating clauses (i) through (xi) as subclauses (I) through (XI), respectively;

(3) by inserting immediately preceding subclause (I) (as redesignated in paragraph (2)) the following new clause:

(i) for a loan made to cover a period of instruction beginning before October 1, 1991—";

(4) in subclause (XI) (as redesignated by paragraph (2)), by striking out the comma at the end thereof and inserting in lieu thereof a semicolon and "or"; and

(5) by inserting immediately after clause (i) the following new clause:

"(ii) for a loan made to cover a period of instruction beginning on or after October 1, 1991—

"(I) during which the borrower is pursuing a full-time course of study leading to a degree or certificate at an eligible institution, is pursuing at least a half-time course of study (as determined by the institution) leading to a degree or certificate during an enrollment period for which the student has obtained a loan during this part, or is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary; or

"(II) not in excess of three years in the aggregate, during which the borrower demonstrates a financial inability to make the required repayments of principal and interest because of exceptional circumstances that meet criteria established by the Secretary pursuant to regulations.".

(b) Section 428(b)(1) of the Act is amended—

(1) in subparagraph (M)—

(A) in clause (i) by striking out the subclause designations "(I)", "(II)", and "(III);

(B) by redesignating clauses (i) through (xi) as subclauses (I) through (XI), respectively;

(C) by inserting immediately preceding subclause (I) (as redesignated in paragraph (2)) the following new clause:

"(i) for a loan made to cover a period of instruction beginning before October 1, 1991—";

(D) in subclause (XI) (as redesignated by paragraph (2)), by adding at the end thereof "or"; and

(E) by inserting immediately after clause (i) the following new clause:

"(ii) for a loan made to cover a period of instruction beginning on or after October 1, 1991—

"(I) during which the borrower is pursuing a full-time course of study leading to a degree or certificate at an eligible institution, is pursuing at least a half-time course of study (as determined by the institution) leading to a degree or certificate during an enrollment period for which the student has obtained a loan under this part, or is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary; or

"(II) not in excess of three years in the aggregate, during which the borrower demonstrates a financial inability to make the required repayments of principal and interest because of exceptional circumstances that meet criteria established by the Secretary pursuant to regulations."; and

(2) in subparagraph (V)—

(A) in clause (i), by striking out "and" at the end thereof;

(B) in clause (ii), by striking out "clause (i)," and clause (i)." and inserting in lieu thereof "clause (i) or (ii)," and "clause (i) or (ii).", respectively;

(C) by redesignating clause (ii) as clause (iii); and

(D) by inserting immediately following clause (i) the following new clause:

"(ii) provides that, upon written request, a lender shall grant a borrower forbearance, renewable at 12-month intervals for up to three years, under which no payments of interest or principal may be required, but the interest that accrues shall be added to the principal amount of the loan, if the borrower—

"(I) is serving under the Peace Corps Act or the Domestic Volunteer Service Act of 1973; and

"(II) does not qualify for the deferment described in subparagraph (M)(ii)(II); and".

(c) Section 428A(c)(2) of the Act is amended by striking out "sections 427(a)(2)(C)(i) and 428(b)(1)(M)(i)" and inserting in lieu thereof "sections 427(a)(2)(C) and 428(b)(1)(M)"

(d) Section 428B(c)(1) of the Act is amended—

(1) by striking out "clause (i), (viii) or (ix)" and inserting in lieu thereof "subclause (I), (VIII), or (IX) of clause (i), or clause (ii)"; and

(2) by striking out "clause (i) of either such section." and inserting in lieu thereof "clause (i)(I) of either such section.".

CHANGES IN FEDERAL REINSURANCE COVERAGE

SEC. 436. Section 428(c) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking out the period at the end thereof and inserting in lieu thereof a comma and "or 45 days after the guaranty agency discharges its insurance

obligation on the loan, whichever is later."; and

(B) by amending subparagraph (B) to read as follows:—

"(B) Notwithstanding subparagraph (A)—

"(i) if, for any fiscal year, the amount of such reimbursement payments by the Secretary under this subsection exceeds 5 percent of the amount of the loans which are insured by such guaranty agency under such program and which were in repayment at the end of the preceding fiscal year, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 90 percent of the amount of such excess;

"(ii) if, for any fiscal year, the amount of such reimbursement payments exceeds 9 percent of such loans, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 80 percent of such excess; and

"(iii) if, with respect to the end of any fiscal year, a guaranty agency is being reimbursed at the level described in clause (i) or (ii), the initial reimbursement payments by the Secretary with respect to the beginning of the next succeeding fiscal year shall be calculated at such level until the Secretary determines, based on data submitted by the guaranty agency, that it meets the requirements of this subsection for reimbursement at a different level. Upon the Secretary's determination, the reimbursement payments by the Secretary shall be adjusted accordingly, including any underpayment or overpayment of the initial reimbursement payments."; and

(2) in paragraph (7)—

(A) in subparagraph (A)(i), by inserting immediately following "1977" a comma and "but before October 1, 1991";

(B) in subparagraph (B), by inserting "or (B)" immediately following "(A)";

(C) by redesignating subparagraph (B) as subparagraph (C); and

(D) by inserting immediately following subparagraph (A) the following new subparagraph:

"(B) Notwithstanding paragraph (1)(B), the Secretary may pay a guaranty agency 100 percent of the amount expended by it in discharge of its insurance obligation for any fiscal year—

"(i) which beings on or after October 1, 1991; and

"(ii) which is either the fiscal year in which such guaranty agency begins to actively carry on a student loan insurance program which is subject to a guaranty agreement under subsection (b), or is one of the four succeeding fiscal years.".

CREDIT CHECKS; COSIGNERS

SEC. 437. (a) Section 427(a)(2)(A) of the Act is amended to read as follows:

"(A) is made without security and without endorsement, except that prior to making a loan insurable by the Secretary under this part a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report;

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history;".

(b) Section 428(b)(1) of the Act is further amended—

(1) in subparagraph (V) (as amended by section 433), by striking out "and" at the end thereof;

(2) in subparagraph (W) (as amended by section 433), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(X) provides that prior to making a loan made, insured, or guaranteed under this part (other than a loan made in accordance with section 428C), a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history.".

DELAYED LOAN DISBURSEMENT

SEC. 438. Section 428G(b) of the Act is amended—

(1) by amending the subsection heading to read as follows "TIMING OF FIRST DISBURSEMENT.—"; and

(2) by amending paragraph (1) to read as follows:

"(1) LOANS TO FIRST-YEAR STUDENTS.—In the case of a borrower who is entering the first year of a program of undergraduate education—

"(A) at an institution with a cohort default rate equal to or greater than 30 percent, the institution shall not disburse the first installment of the proceeds of any loan made, insured, or guaranteed in accordance with section 427, 428, or 428A prior to 60 days after classes have begun for the period of enrollment for which the loan is obtained; or

"(B) at an institution with a cohort default rise less than 30 percent, the institution shall not disburse the first installment of the proceeds of any loan made, insured, or guaranteed in accordance with section 427, 428, or 428A prior to 30 days after classes have begun for the period of enrollment for which the loan is obtained.".

LIMITATIONS, SUSPENSIONS, TERMINATIONS, OTHER HEARING PROCEDURES, AND FINES

SEC. 439. Section 432 of the Act is amended—

(1) in subsection (a)(3), by striking out "on the record," and inserting in lieu thereof a comma;

(2) in subsection (g)—

(A) in paragraph (1), by striking out "on the record," and inserting in lieu thereof a comma;

(B) by striking out paragraphs (2), (3), and (4); and

(C) by redesignating paragraphs (5) and (6) as paragraphs (2) and (3), respectively;

(3) in subsection (h)—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the first sentence therein, by striking out "shall, in accordance with sections 556 and 557 of title 5, United States Code," and inserting in lieu thereof "shall"; and

(II) in the second sentence therein, by striking out "The Secretary" through "disqualification— " and inserting in lieu thereof the following: "The Secretary shall impose any or all sanctions, imposed by the guaranty agency, on the participation of the lender in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of the imposition of such sanctions—";

(ii) in subparagraph (B), by striking out "disqualification" each place it appears and inserting in lieu thereof "sanctions"; and

(iii) by redesignating subparagraph (B) as subparagraph (C); and

(iv) by inserting immediately following subparagraph (A) the following new subparagraph:

"(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 428(b)(1)(U) shall be limited to—

"(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and

"(ii) a determination as to whether the guaranty agency compiled with section 428(b)(1)(U) and any notice and hearing requirements specified in regulations prescribed under this part."; and

(B) in paragraph (3)—

(i) in subparagraph (A)—

(I) in the first sentence therein, by striking out "shall, in accordance with sections 556 and 557 of title 5, United States Code," and inserting in lieu thereof "shall"; and

(II) in the second sentence therein, by striking out "The Secretary" through "disqualification—" and inserting in lieu thereof the following: "The Secretary shall impose any or all sanctions, imposed by the guaranty agency, on the participation of the institution in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of the imposition of such sanctions—";

(ii) in subparagraph (B), by striking out "disqualifications" each place it appears and inserting in lieu thereof "sanctions";

(iii) by redesignating subparagraph (B) as subparagraph (C); and

(iv) by inserting immediately following subparagraph (A) the following new subparagraph:

"(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 428(b)(1)(T) shall be limited to—

"(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and

"(ii) a determination as to whether the guaranty agency compiled with section 428(b)(1)(T) and any notice and hearing requirements specified in regulations prescribed under this part.".

(b) Section 428(b)(1)(T) of the Act is amended by striking out "as in effect on January 1, 1985".

RESTRICTION ON GUARANTY AGENCY OFFICERS AND EMPLOYEES

SEC. 440. Section 428(b) of the Act is further amended by adding at the end thereof the following new paragraph:

"(7) RESTRICTIONS ON GUARANTY AGENCY OFFICERS AND EMPLOYEES.—No guaranty agency shall permit any of its officers or employees, or any member of their immediate families, to have a direct financial interest in, or serve as an officer or employee of, any lend-

er, secondary market, contractor, or servicer with which the guaranty agency does business.".

GUARANTY AGENCY INFORMATION

SEC. 441. (a) Section 428 of the Act is further amended—

(1) in subsection (c)(2)(B) by striking out "as the Secretary may reasonably require to carry out the Secretary's functions under this subsection," and inserting in lieu thereof "including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and protect the financial interest of the United States,"; and

(2) in subsection (f)—

(A) in paragraph (1)(B)—

(i) by inserting "subject to paragraph (3);"; and

(ii) by striking out "according to the provisions of this subparagraph." and inserting in lieu thereof "according to the provisions of this subsection.", respectively; and

(B) by adding at the end thereof the following new paragraph:

"(3) PROVISION OF FINANCIAL INFORMATION.—The Secretary is authorized to reduce or withhold payments under this subsection until the guaranty agency provides the information required under subsection (c)(2)(B).".

ADMINISTRATIVE COST ALLOWANCE

SEC. 442. Section 428(f)(1)(B) of the Act is further amended, in the first sentence therein, by striking out "equal to" through the end thereof and inserting in lieu thereof "equal to the lesser of one percent of loan volume or actual administrative costs, as estimated in accordance with criteria prescribed by the Secretary.".

COLLECTION RETENTION ALLOWANCE

SEC. 443. Section 428(c)(6)(A)(ii) of the Act is amended by striking out "30 percent of such payments (subject to subparagraph (D) of this paragraph)" and inserting in lieu thereof "the lesser of 30 percent of such payments, or the cost of collection on that loan, as estimated in accordance with criteria prescribed by the Secretary in regulations,".

GUARANTY AGENCY OVERSIGHT

SEC. 444. Section 432 of the Act is amended by adding at the end thereof the following new subsections:

"(k) GUARANTY AGENCY MANAGEMENT PLANS.—(1) If the ratio of a guaranty agency's reserve funds to its outstanding guarantees is less than a level set by the Secretary, or the Secretary otherwise determines that the administrative or financial condition of the guaranty agency jeopardizes its continued ability to perform its responsibilities under its guaranty agreement, the Secretary may, in order to protect the financial interest of the United States, require the guaranty agency to submit and implement a management plan acceptable to the Secretary.

"(2) A management plan under this subsection shall include the means by which the guaranty agency will improve its financial and administrative condition. The management plan may include, but is not limited to, the limitation of administrative expenditures, the increase of the insurance premium charged to borrowers, up to the maximum prescribed in section 428(b)(1)(H), and the increase of the ratio of guaranty agency's reserve funds to outstanding guarantees.

"(3) If the guaranty agency fails to submit a management plan acceptable to the Secretary, or the Secretary determines that the guaranty agency has failed to improve substantially its administrative and financial condition in accordance with its management plan under this subsection, the Secretary may terminate the guaranty agency's agreement in accordance with subsection (l).

"(l) TERMINATION OF GUARANTY AGENCY'S AGREEMENT.—If the guaranty agency does not satisfy the requirements of subsection (k), or the Secretary otherwise determines that the guaranty agency is no longer able to perform its responsibilities under its guaranty agreement, the Secretary is authorized, in order to protect the financial interest of the United States, after notice and opportunity for a hearing, to terminate the guaranty agency's agreement under this part.

"(m) AUTHORITY OF THE SECRETARY TO ASSUME GUARANTY AGENCY FUNCTIONS.—(1) a guaranty agency terminates its agreement under this part, or its guaranty agreement is terminated by the Secretary under subsection (l), the Secretary is authorized, to the extent the Secretary determines is necessary to protect the financial interest of the United States and carry out the purposes of this part, to—

"(A) assume responsibility for the functions of the guaranty agency under its loan insurance program, including, but not limited to—

"(i) ensuring the exercise of due diligence by lenders in making, servicing, and collecting loans;

"(ii) requiring lenders to submit the information necessary to determine the amount of interest benefits and special allowance payments payable on loans guaranteed under the guaranty agency's loan insurance program;

"(iii) requiring the timely filing by lenders of default, death, disability, and bankruptcy claims;

"(iv) paying default claims made by lenders;

"(v) monitoring the participation of institutions and lenders in the loan insurance program, including requiring the submission of any necessary information;

"(vi) the limitation, suspension, or termination of the participation of an institution or lender;

"(vii) monitoring the enrollment status of student borrowers; and

"(viii) reporting to national credit bureaus in accordance with section 430A;

"(B) require the guaranty agency to assign or otherwise provide, without compensation, to the Secretary any of the guaranty agency's assets, books, records, computer software, and equipment that the Secretary determines are necessary to carry out the functions assumed by the Secretary under subparagraph (A); and

"(C) take such other action as the Secretary determines is appropriate to ensure the continued availability of loans made under this part to residents of the State or States in which the guaranty agency did business, and the proper servicing of loans guaranteed by the guaranty agency prior to the Secretary's assumption of its responsibilities, including the transfer of such guaranty agency's functions and assets to another entity.

"(2) Nothing in this subsection shall require the Secretary to guarantee new loans as part of the guaranty agency functions assumed under paragraph (1), or to serve as a lender of last resort in accordance with section 428(j).

"(3) The Secretary's liability for any outstanding liabilities of a guaranty agency, the functions of which the Secretary has assumed, shall not exceed the fair market value of the assets assigned by the guaranty agency to the Secretary in accordance with paragraph (1)(B), minus any necessary liquidation or other administrative costs.".

COST SHARING BY STATES

SEC. 445. Section 428 of the Act is amended by adding at the end thereof the following new subsections:

"(m) STATE BACKING OF GUARANTY AGENCIES.—(1) Notwithstanding any other provision of law, a State shall guarantee, with the full faith and credit of the State, or its equivalent, all loans guaranteed under this part by the guaranty agency designated for that State for borrowers who are attending eligible institutions in that State.

"(2) In addition to the designated guaranty agency specified in paragraph (1), a State may elect to guarantee, with the full faith and credit of the State, loans guaranteed under this part by any other guaranty agency for borrowers who are attending eligible institutions in that State.

"(3) In the event that a guaranty agency whose loan guarantees are guaranteed by a State under paragraph (1) or (2) is unable to discharge its insurance obligation incurred on loans under its loan insurance program, the State shall be responsible for discharging such obligations, as well as the administrative costs associated with transferring the operations of that guaranty agency to another entity.

"(4) If a State discharges the insurance obligations of a guaranty agency under paragraph (3), the Secretary shall pay the State the amount such guaranty agency would have otherwise received as reimbursement under subsection (c).

"(5) Unless a State demonstrates to the satisfaction of the Secretary that it has taken any steps necessary to satisfy the requirements of paragraph (1) by January 1, 1994, the Secretary shall assess institutions of higher education participating in the program under this part that are located in that State a fee based on the risk of financial loss to the Federal Government that the State would otherwise assume under this subsection. Such fees shall be deposited in the student loan insurance fund described in section 431.

"(n) STATE SHARE OF DEFAULT COSTS.—(1) If the cohort default rate, determined on the basis of the most recent fiscal years for which data are available, for borrowers that attended institutions of higher education located in a State exceeds 20 percent, the State shall pay to the Secretary an amount equal to the percentage of new loan volume that is equal to the percentage by which the cohort default rate exceeds 20 percent.

"(2) A State may charge a fee to an institution of higher education that participates in the program under this part and is located in that State according to a fee structure, approved by the Secretary, that is based on the institution's cohort default rate and the State's risk of loss under this subsection.".

DEFINITIONS

SEC. 446. Section 435 of the Act is amended—

(1) by amending subsection (a) to read as follows:

"(a) ELIGIBLE INSTITUTION.—The term 'eligible institution' means an institution of higher education, as defined in section 481.";

(2) by striking out subsections (b), (c), and (n);

(3) in subsection (m)—

(A) by inserting the paragraph designation "(1)" immediately following the subsection heading;

(B) in the first sentence, by striking out "The term" and inserting in lieu thereof "In general, the term"; and

(C) by adding at the end thereof the following new paragraphs:

"(2) For purposes of the definition in paragraph (1) only, a loan made in accordance with section 428A shall not be considered to enter repayment until after the borrower has ceased to be enrolled in a course of study leading to a degree or certificate at an eligible institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of deferment based on such enrollment. Each eligible lender of a loan made under section 428A shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this subsection, and the guaranty agency shall provide such information to the Secretary.

"(3) For purposes of calculating the cohort default rates for lenders, other holders of loans made under this part, or States, references to lenders, other holders, or States, as the case may be, shall be substituted for references to institutions in paragraph (1).";

and

(4) by redesignating subsections (d) through (m) as subsections (b) through (k), respectively.

SPECIAL ALLOWANCE

SEC. 447. Section 438(b)(2) of the Act is amended—

(1) in subparagraph (A), by striking out "subparagraphs (B), (C), and (D)" and inserting in lieu thereof "suparagraphs (B), (C), (D), (E) and (F)"; and

(2) by adding at the end thereof the following new subparagraphs:

"(E) In the case of a holder of loans for which the cohort default rate exceeds 20 percent, subparagraph (A)(iii) shall be applied by substituting '3 percent' for '3.25 percent'.

"(F) In the case of a lender who does not provide to the guaranty agency the information required under section 435(k)(2), subparagraph (A)(iii) shall be applied by substituting '3 percent' for '3.25 percent'.—

STUDENT LOAN MARKETING ASSOCIATION

SEC. 448. Section 439(n) of the Act is amended to read as follows:

"(n) REPORTS.—(1) LENDING.—The Association shall, within 15 days, notify the Secretary of Education when—

"(A) the Association makes a loan, or extends any other form of credit, to a guaranty agency; or

"(B)(i) the Association's cumulative loans (or other forms of credit) outstanding to any one lender exceed $50 million; or

"(ii) The Association makes any additional loans (or other forms of credit) to a lender whose cumulative outstanding loans from the Association exceed $50 million. "Any notification under subparagraph (A) or (B)(ii) shall include the amount of, and reason for, such loan.

"(2) OPERATIONS AND ACTIVITIES.—The Association shall, as soon as practicable after the end of each fiscal year, transmit to the Secretary of Education and the Congress a report of its operations and activities during each year. The report shall include specific information regarding the Association's investments and debts, the characteristics of its student loan portfolio, which may include the composition of the portfolio by guarantor and lender, by type of loan, and by borrower characteristics (such as borrower income and year in school), and such other data as the Secretary may reasonably require.".

PART C—WORK-STUDY PROGRAMS

AUTHORIZATION OF APPROPRIATIONS

SEC. 451. Section 441(b) of the Act is amended by striking out "$656,000,000 for fiscal year 1987" and inserting in lieu thereof "$396,615,000 for fiscal year 1992.".

FEDERAL SHARE

SEC. 452. Section 443(b)(5) of the Act is amended to read as follows:

"(5) provide that the Federal share of the compensation of students employed in the work study program in accordance with the agreement will not exceed 50 percent for fiscal year 1992 and succeeding fiscal years;".

COMMUNITY SERVICE-LEARNING

SEC. 453. (a) Section 443(b)(2) of the Act is amended to read as follows:

"(2) provide that funds granted to an institution of higher education under this section may be used only to make payments to students participating in work/study programs, except that an institution may—

"(A) use a portion of the funds granted to it to meet administrative expenses in accordance with section 489;

"(B) use a portion of the funds granted to it to meet the cost of a job location and development program in accordance with section 446; and

"(C) transfer funds in accordance with section 488.".

(b) Section 446 of the Act is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) The Secretary is authorized to enter into agreements with eligible institutions under which such institutions may use not more than 10 percent or $30,000 of their allocations under section 442, whichever is less, to establish or expand programs under which such institutions, separately or in combination with other eligible institutions, locate and develop jobs for currently enrolled students."; and

(B) in paragraph (2), by striking out "subparagraph (A) or (B) of";

(2) in subsection (b)—

(A) in paragraph (1), by striking out "80 percent" and inserting in lieu thereof "50 percent"; and

(B) in paragraph (2), by striking out "subsection (a)(1)(B) of this section," and inserting in lieu thereof "subsection (a)(1);"; and

(3) by striking out subsection (c).

(c) Section 447 of the Act is repealed.

(d) Section 489(a) of the Act is amended—

(1) in the second sentence, by striking out "(other than section 447),"; and

(2) by striking out the fourth sentence therein.

ELIGIBLE EMPLOYMENT

SEC. 454. Section 443 of the Act is further amended—

(1) in subsection (b)—

(A) in paragraph (1), by inserting "(except in the case of a proprietary institution of higher education)" immediately following "the institution itself";

(B) in paragraph (4), by striking out "$200," and inserting in lieu thereof "$100,";

(C) in paragraph (7), by adding "and" at the end thereof;

(D) by striking out paragraph (8); and

(E) by redesignating paragraph (9) as paragraph (8); and

(2) by striking out subsection (c).

PART D—INCOME CONTINGENT LOAN PROGRAM

AUTHORIZATION OF APPROPRIATIONS

SEC. 461. Section 452(b) of the Act is amended by striking out "$5,000,000 for fiscal year 1987" and inserting in lieu thereof "$10,000,000 for fiscal year 1992,".

ALLOTMENT

SEC. 462. Section 452(c) of the Act is amended—

(1) by amending the subsection heading to read as follows: "ALLOTMENT.—"; and

(2) by amending paragraph (2) to read as follows:

"(2) The term 'institution of higher education' as used in this part includes a consortium of institutions of higher education.".

TERMS OF LOANS

SEC. 463. Section 454(a) of the Act is amended—

(1) in paragraph (2), by striking out the period at the end thereof and inserting in lieu thereof a comma and "in the case of an undergraduate student, and $50,000, in the case of a graduate or professional student (including any loans from such funds established pursuant to agreements under this part made to such person before he or she became a graduate or professional student).";

(2) in paragraph (3)—

(A) in subparagraph (B), by striking out "and" at the end thereof;

(B) in subparagraph (C)—

(i) by striking out "fourth and fifth" and inserting in lieu thereof "fourth or fifth"; and

(ii) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new subparagraph:

"(D) $10,000 in the case of a graduate or professional student."; and

(3) by adding at the end thereof the following new paragraphs:

"(6) A student seeking a loan under this part shall provide his or her driver's license number, if any, to the institution at the time of application for the loan.

"(7) An institution participating in the loan program under this part shall—

"(A) prior to making any loan under this part, obtain a credit report, from at least one national credit bureau organization, with respect to any loan applicant who will be or was at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the institution may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(B) require an applicant of the age specified in subparagraph (A) who, in the judgment of the institution, in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this paragraph, an insufficient or nonexistent credit history may not be considered to be an adverse credit history.".

EVALUATION

SEC. 464. Section 455 of the Act is amended to read as follows:

"EVALUATION

"SEC. 455. (a) EVALUATION.—The Secretary shall evaluate the cost-effectiveness of the program authorized by this part, its impact on participating institutions and students, and the feasibility of extending it to a loan program of general applicability.

"(b) REPORT.—The Secretary shall prepare and submit to the Congress a report on the evaluation conducted pursuant to subsection (a) not later than October 1, 1993, together with such recommendations as the Secretary deems appropriate.".

PART E—PERKINS LOAN PROGRAM

AUTHORIZATION OF APPROPRIATIONS

SEC. 471. Section 461 of the Act is amended to read as follows:

"APPROPRIATIONS AUTHORIZED

"SEC. 461. (a) PROGRAM AUTHORITY.—The Secretary shall carry out a program of assisting institutions of higher education to maintain funds for making low-interest loans to students who need such loans to pursue their course of study. Loans made under this part shall be known as 'Perkins Loans'.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of reimbursing institutions for loans that are canceled pursuant to section 465, there are authorized to be appropriated $15,000,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.".

AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION

SEC. 472. Section 463(a) of the Act is amended—

(1) in the matter preceding paragraph (1), by striking out "for the payment of Federal capital contributions";

(2) in paragraph (1), by striking out "establishment and";

(3) in paragraph (2)(A), by striking out the semicolon at the end thereof and inserting in lieu thereof a comma and "as in effect prior to the enactment of the Higher Education Act Amendments of 1991;"; and

(4) in paragraph (6), by striking out "in accordance with section 462;" at the end thereof and inserting in lieu thereof a semicolon.

TERMS OF LOANS

SEC. 473. Section 646 of the Act is amended—

(1) in subsection (b)—

(A) in the heading, by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "BORROWER INFORMATION.";

(B) in paragraph (1)—

(i) by striking out the paragraph designation; and

(ii) by striking out "this title" and all that follows through the end thereof and inserting in lieu thereof "this title, who meets the requirements of section 484, and who provides the institution with the student's driver's license number, if any, at the time of application for the loan."; and

(C) by striking out paragraph (2);

(2) in subsection (c)—

(A) in paragraph (1), by amending subparagraphs (D) and (E) to read as follows:

"(D) shall provide that the loan shall bear interest, on the unpaid balance of the loan, at the rate of (i) 3 percent per year; (ii) 4 percent per year, in the case of any loan made on or after July 1, 1981; (iii) 5 percent per year, in the case of any loan made on or after October 1, 1981; or (iv) 8 percent per year in the case of any loan made to cover a period of instruction beginning on or after July 1, 1992;

"except that no interest shall accrue prior to the beginning date of repayment determined under subparagraph (A), or during any period in which repayment is suspended by reason of paragraph (2);

"(E) shall provide that the loan is made without security and without endorsement, except that—

"(i) if the borrower is a minor and such note or other written agreement executed by the borrower would not, under the applicable law, create a binding obligation, endorsement and security may be required; and

"(ii) an institution participating in the loan program under this part shall—

"(I) prior to making any loan under this part, obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be or was at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the institution may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(II) require an applicant of the age specified in subclause (I) who, in the judgment of the institution in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this paragraph, an insufficient or nonexistent credit history may not be considered to be an adverse credit history;"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting "made for a period of instruction beginning before July 1, 1992" immediately following "any loan";

(ii) by redesignating subparagraph (B) and (C) as subparagraphs (D) and (E), respectively;

(iii) in subparagraph (C) (as redesignated by clause (ii)), by striking out "subparagraph (A)" and inserting in lieu thereof "subparagraph (A) or (B)"; and

(iv) by inserting immediately after subparagraph (A) the following new subparagraphs:

"(B) For any loan made under this part to cover a period of instruction beginning on or after July 1, 1992, no repayment of principal or interest shall be required during any period—

"(i) during which the borrower is carrying at least one-half the normal full-time academic workload leading to a degree or certificate at an institution of higher education or at a comparable institution outside the United States that is approved for this purpose by the Secretary; or

"(ii) not in excess of three years in the aggregate, during which the borrower demonstrates a financial inability to make the required repayments of principal and interest because of exceptional circumstances that meet criteria established by the Secretary pursuant to regulations.

"(C) In the case of a borrower who is in service under the Peace Corps Act or the Domestic Volunteer Service Act of 1973, and does not qualify for the deferment described in subparagraph (B)(ii), the institution shall, at the borrower's request, require no payments of interest or principal be paid on any loan made from a student loan fund assisted under this part for not in excess of three years while the borrower is in such service, and shall add the interest that accrues during such period to the principal amount of the loan. No interest that is so capitalized shall be eligible for cancellation under section 465."; and

(3) in subsection (d), by striking out "for payment of Federal capital contributions".

CANCELLATION FOR CERTAIN PUBLIC SERVICE

SEC. 474. Section 465 of the Act is amended—

(1) in subsection (a)(1), by striking out "June 30, 1972," and inserting in lieu thereof "June 30, 1972 for a period of instruction beginning before July 1, 1992,"; and

(2) in subsection (b), by striking out "under section 468." through the end thereof and inserting in lieu thereof a period.

DISTRIBUTION OF ASSETS FROM STUDENT LOAN FUNDS

SEC. 475. Section 466 of the Act is amended by striking out "1996" and "1997" each place each appears and inserting in lieu thereof "2001" and "2002", respectively.

REPEALS

SEC. 476. Sections 462 of the Act is repealed.

PART F—NEED ANALYSIS

AMOUNT OF NEED

SEC. 481. Section 471 of the Act is amended by striking out the parenthetical therein.

COST OF ATTENDANCE

SEC. 482. Section 472 of the Act is amended—

(1) by amending the matter immediately preceding paragraph (1) to read as follows: "Except as provided in subsections (b) and (c) and subject to section 478, for purposes of this title, the term 'cost of attendance' means—";

(2) by amending paragraph (1) to read as follows:

"(1) tuition and uniform compulsory fees normally assessed a student carrying the same academic workload, as determined by the institution at which the student is in attendance for any award year, without regard to whether the student receives grant, loan, or work assistance under this title;"

(3) in paragraph (3)—

(A) in the matter immediately preceding subparagraph (A), by inserting immediately following "institution" the following: "without regard to whether the student receives grant, loan, or work assistance under this title";

(B) in subparagraph (A), by striking out "$1,500" and inserting in lieu thereof "$1,700"; and

(C) in subparagraph (C), by striking out "$2,500" and inserting in lieu thereof "$2,300";

(4) by inserting the subsection designation "(a)" immediately following "SEC. 472."; and

(5) by adding at the end thereof the following new subsections:

"(b) For the purpose of subpart 1 of part A of this title—

"(1) tuition and fees to be used in determining the student's cost of attendance in accordance with subsection (a)(1) shall be first calculated on the basis of a full-time academic workload, and then adjusted in accordance with section 411(b)(1)(B);

"(2) the allowance for room and board costs, books, equipment, supplies, transportation, and miscellaneous personal expenses incurred by the student to be used in determining the student's cost of attendance in accordance with subsection (a) shall not exceed—

"(A) $1,700 for a student without dependents residing at home with his or her parents; and

"(B) $2,300 for all other students;

"except that if, for an award year after award year 1992–1993, the standard maintenance allowances specified in sections 475(c)(4) and 477(b)(4) are increased or decreased by the Secretary in accordance with section 478, then the dollar amounts specified in paragraphs (1) and (2) shall be increased or decreased by a percentage equal to such percentage increase or decrease in such standard maintenance allowances; and

"(3) the allowance for dependent care to be used in determining the student's cost of attendance in accordance with subsection (a)(7) shall not exceed $1,000.

"(c) In the case of a student enrolled in a program of training that is one academic

year or less and designed to prepare students for gainful employment in a recognized occupation, the maximum allowable cost of attendance for purposes of this title shall be an amount determined by the Secretary to equal the average State academic program expenditures per academic year for two-year public institutions of higher education.".

FAMILY CONTRIBUTION DEFINED

SEC. 483. Section 473 of the Act is amended by striking out "except subparts 1 and 3 or part A,".

DATA ELEMENTS

SEC. 484. Section 474 of the Act is amended—

(1) by amending paragraphs (1), (2), and (3) to read as follows:

"(1) the available income of (A) the student and his or her parents, in the case of a dependent student, or (B) the student (and spouse), in the case of an independent student;

"(2) the number of (A) dependents of the parents of the student, in the case of a dependent student, or (B) dependents of the student (and spouse), in the case of an independent student;

"(3) the number of (A) dependents of the parents of the student, in the case of a dependent student, who are enrolled in, on at least a half-time basis, a program of postsecondary education and for whom the family may reasonably be expected to contribute to their postsecondary education, or (B) dependents of the student (and spouse), in the case of an independent student, who are so enrolled and for whom such contribution may reasonably be expected;";

(2) in paragraph (4)(B), by striking out "(and spouse)"; and

(3) in paragraph (6)—

(i) in subparagraph (A) by striking out "the student and the student's parents," and inserting in lieu thereof "the students's parents and the dependents of the parents, including the student,"; and

(ii) in subparagraph (B) by inserting "spouse and" immediately following "his or her".

FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS

SEC. 485. Section 475 of the Act is amended—

(1) in subsection (a), by striking out "(and spouse)" each place it appears;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B) by adding "and" at the end thereof;

(ii) by redesignating in subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting the subparagraph designation "(A)" immediately following the paragraph designation; and

(iv) by adding at the end thereof the following new subparagraph;

"(B) if the amount determined under subparagraph (A) is a negative amount, setting the parents' adjusted available income at zero, and converting such negative amount to a positive number and using it to increase the adjustment to student income (determined in accordance with subsection (g)(2));"

(B) in paragraph (3), by striking out the semicolon at the end thereof and inserting in lieu thereof a period; and

(C) by striking out the matter immediately following paragraph (3);

(3) in subsection (c)—

(A) in paragraph (2), in the table therein, by striking out "$15,000 more" and inserting in lieu thereof "$15,000 or more";

(B) in paragraph (4), by amending the table therein to read as follows:

"STANDARD MAINTENANCE ALLOWANCE

Family size (including student)	Number in college					For each additional subtract
	1	2	3	4	5	
2	$10,370	$8,600				
3	12,910	11,150	$9,380			
4	15,940	14,180	12,410	$10,640		
5	18,810	17,050	15,280	13,510	$11,740	
6	22,010	20,240	18,470	16,700	14,930	$1,770
For each additional add	2,490	2,490	2,490	2,490	2,490	";

(C) in paragraph (5)—

(i) by striking out "$2,100" each place it appears and inserting in lieu thereof "$2,500"; and

(ii) by striking out "1987–1988," and inserting in lieu thereof "1992–1993,"; and

(D) in paragraph (7), by striking out "instructional";

(4) in subsection (d)—

(A) in paragraph (1), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"except that the amount determined under this paragraph shall not be less than zero.";

(B) in paragraph (2)—

(i) in subparagraph (B), by striking out "a dislocated worker" through the end thereof and inserting in lieu thereof: "a family with an adjusted gross income of less than $20,000; and"; and

(ii) in subparagraph (C)—

(I) by striking out "a business or farm" and "such business or farm" and inserting in lieu thereof "business or farm assets" and "such business or farm assets", respectively; and

(II) by amending the table therein to read as follows:

"ADJUSTED NET WORTH OF BUSINESS OR FARM ASSETS

If the net worth of business or farm assets is—	Then the adjusted net worth is:
Less than $1	$0
$1 to $75,000	$0 + 40 percent of NW
$75,001 to $225,000	$30,000 + 50 percent of NW over $75,000
$225,001 to $370,000	$105,000 + 60 percent of NW over $225,000
$370,001 or more	$192,000 + 100 percent of NW over $370,000";

and

(B) in paragraph (3), by amending the table therein to read as follows:

"ASSET PROTECTION ALLOWANCE FOR FAMILIES AND STUDENTS

If there is one parent, and the age of that parent is, or if there are two parents, and the average age of both parents is—	And there are	
	two parents	one parent
	Then the asset protection allowance is—	
25 or less	$0	$0
26	500	1,700
27	1,100	3,300
28	1,600	5,000
29	2,100	6,700
30	2,600	8,400
31	3,200	10,000
32	3,700	11,700
33	4,200	13,400
34	4,700	15,100
35	5,300	16,700
36	5,800	18,400
37	6,300	20,100
38	6,800	21,800
39	7,400	23,400
40	7,900	25,100
41	8,100	25,700
42	8,300	26,200
43	8,500	26,800
44	8,700	27,300
45	8,900	28,000
46	9,100	28,700
47	9,400	29,200
48	9,700	29,900
49	9,900	30,600
50	10,200	31,400
51	10,500	32,100
52	10,800	32,900
53	11,100	33,700
54	11,400	34,700
55	11,700	35,500
56	12,100	36,400
57	12,500	37,500
58	12,900	38,300
59	13,300	39,500
60	13,700	40,600
61	14,200	41,700
62	14,700	42,900
63	15,200	44,100
64	15,700	45,400
65 or more	16,200	46,900";

(5) in subsection (e)—

(A) by striking out "under section 479):" and inserting in lieu thereof "under section 478):"; and

(B) by amending the table therein to read as follows:

"PARENTS' ASSESSMENT FROM ADJUSTED AVAILABLE INCOME (AAI)

If AAI is	Then the assessment is
Less than zero	Zero
$0 to $9,300	22 percent of AAI
$9,301 to $11,600	$2,046+25 percent of AAI over $9,300
$11,601 to $14,000	$2,621+29 percent of AAI over $11,600
$14,001 to $16,300	$3,317+34 percent of AAI over $14,000
$16,301 to $18,700	$4,099+40 percent of AAI over $16,300
$18,701 or more	$5,059+47 percent of AAI over $18,700";

(6) in subsection (g)—

(A) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—The minimum student contribution from available income is equal to the greater of—

"(A)(i) in the case of a student who has not completed the first year of undergraduate studies—

"(I) zero, if the parents' total income is $12,000 or less;

"(II) $500, if the parents' total income is between $12,001 and $15,000, inclusive; and

"(III) $700, if the parents' total income is $15,001 or more; and

"(ii) in the case of any other student—

"(I) zero, if the parents' total income is $12,000 or less;

"(II) $600, if the parents' total income is between $12,001 and $15,000, inclusive; and

"(III) $900, if the parents' total income is $15,001 or more; or

"(B) an amount equal to 70 percent of the student's total income (determined in accordance with section 480) minus the adjustment to student income (determined in accordance with paragraph (2));

"except that, if the amount determined in accordance with subsection (b)(1)(B) results

in a negative amount, then such negative amount shall be converted to a positive number and increase the adjustment to student income (determined in accordance with paragraph (2)), except that the dependent student's contribution from income shall not be reduced to less than zero.";

(B) in paragraph (2)—

(i) in the paragraph heading, by striking out "(AND SPOUSE)";

(ii) by striking out "(and spouse)" each place it appears; and

(iii) in subparagraph (A), by striking out "estimated"; and

(C) in paragraph (4) by striking out "(and spouse)";

(7) in subsection (h)—

(A) in the subsection heading, by striking out "(AND SPOUSE)";

(B) by striking out "(and spouse)" each place it appears; and

(C) by striking out "35 percent," through the end thereof and inserting in lieu thereof "35 percent."; and

(8) in subsection (i), in the matter immediately preceding paragraph (1), by striking out "For" and inserting "Except for purposes of subpart 1 of part A, for".

FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITHOUT DEPENDENTS

SEC. 486. Section 476 of the Act is amended—

(1) by amending the section heading to read as follows: "FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITHOUT DEPENDENTS";

(2) in subsection (a)—

(A) in the matter immediately preceding paragraph (1)—

(i) by inserting "married or single" immediately following "For each"; and

(ii) by striking out "(including a spouse)," and inserting in lieu thereof a comma;

(B) in paragraph (1), by inserting "(and spouse's)" immediately following "student's"; and

(C) in paragraph (2), by inserting "(and spouse's)" immediately following "student's";

(3) in subsection (b)—

(A) by amending the section heading to read as follows: "STUDENT'S (AND SPOUSES) CONTRIBUTION FROM INCOME.—"

(B) by amending paragraph (1) to read as follows:

"(1)(A) IN GENERAL.—Subject to subparagraph (B), the student's (and spouse's) contribution from income is determined by—

"(i) adding the student's (and spouse's) adjusted gross income and any income earned from work but not reported on a Federal income tax return, and subtracting excludable income (as defined in section 480);

"(ii) computing the student's (and spouse's) available taxable income by deducting, from the amount determined under clause (i)—

"(I) Federal income taxes;

"(II) an allowance for State and local income taxes, determined in accordance with paragraph (2);

"(III) the allowance for social security taxes, determined in accordance with paragraph (3);

"(IV) an employment expense allowance, determined in accordance with paragraph (4); and

"(V) a maintenance allowance of up to $600 per month, during periods of non-enrollment, for the independent student without dependents, and $5,240 per year, for the spouse of the independent student without dependents, or amounts established by the Secretary in accordance with section 478;

"(iii) assessing such available taxable income in accordance with paragraph (5); and

"(iv) adding to the assessment resulting under clause (iii) the amount of the untaxed income and benefits of the student (and the student's spouse), determined in accordance with section 480(c).

"(B) The student's (and spouses') minimum contribution from income shall be the greater of—

"(i)(I) zero, if the student's (and spouse's) total income is $12,000 or less;

"(II) $780, if the student's (and spouse's) total income is between $12,001 and $15,000, inclusive; and

"(III) $1,200, if the student's (and spouse's) total income is $15,001 or more; or

"(ii) the amount calculated under subparagraph (A).";

(C) in paragraph (3), by inserting "(and the student's spouse)" immediately following "student";

(D) by redesignating paragraph (4) as paragraph (5);

(E) by inserting immediately following paragraph (3) the following new paragraph:

"(4) EMPLOYMENT EXPENSE ALLOWANCE.—The employment expense allowance is determined as follows: If both the student and a spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the student or spouse with the lesser earned income. For any award year after award year 1992–1993, this paragraph shall be applied by increasing the dollar amount specified to reflect increases in the amount and percent of the Bureau of Labor Standards' budget of the marginal costs for meals away from home, apparel and upkeep, transportation, and housekeeping services for a two-earner versus a one-worker family."; and

(F) in paragraph (5) (as redesignated by subparagraph (D))—

(i) in the matter preceding subparagraph (A)—

(I) by inserting "(and spouse's)" immediately following "student's"; and

(II) by striking out "paragraph (1)(A)" and inserting in lieu thereof "paragraph (1)(A)(i)";

(ii) in subparagraph (A), by striking out "$8,600," and inserting in lieu thereof "$10,600,"; and

(iii) in subparagraph (B), by striking out "$8,600,", "$6,020", and "$8,600." and inserting in lieu thereof "$10,600,", "$7,240", and "$10,600.", respectively; and

(4) in subsection (c)—

(A) in the subsection heading, by inserting "(AND SPOUSE'S) immediately following "STUDENT'S";

(B) in paragraph (1), by inserting "(and spouse's)" after "student's" each place it appears;

(C) in paragraph (2)—

(i) in the paragraph heading, by inserting "(AND SPOUSE'S)" immediately following "STUDENT'S";

(ii) in the matter immediately preceding subparagraph (A) by inserting "(and spouse's)" immediately following "student's");

(iii) in subparagraph (B), by striking out "a displaced worker" through the end thereof and inserting in lieu thereof: "a student (and spouse) with an adjusted gross income of less than $20,000; and"; and

(iv) in subparagraph (C)—

(I) by striking out "a business or farm" and "such business or farm" and inserting in lieu thereof "business or farm assets" and "such business or farm assets", respectively; and

(II) by amending the table therein to read as follows:

"ADJUSTED NET WORTH OF BUSINESS OR FARM ASSETS

If the net worth of business or farm assets is—	Then the adjusted net worth is:
Less than $1	$0
$1–$75,000	$0 + 40 percent of NW
$75,001–$225,000	$30,000 + 50 percent of NW over $75,000
$225,001–$370,000	$105,000 + 60 percent of NW over $225,000
$370,001 or more	$192,000 + 100 percent of NW over $370,000";

and

(D) by amending the table in paragraph (3) to read as follows:

"ASSET PROTECTION ALLOWANCE FOR INDEPENDENT STUDENTS

If the age of the single student, or the average age of the student and spouse, is—	And the student is	
	Married	Single
	Then the asset protection allowance is—	
25 or less	$0	$0
26	500	1,700
27	1,100	3,300
28	1,600	5,000
29	2,100	6,700
30	2,600	8,400
31	3,200	10,000
32	3,700	11,700
33	4,200	13,400
34	4,700	15,100
35	5,300	16,700
36	5,800	18,400
37	6,300	20,100
38	6,800	21,800
39	7,400	23,400
40	7,900	25,100
41	8,100	25,700
42	8,300	26,200
43	8,500	26,800
44	8,700	27,300
45	8,900	28,000
46	9,100	28,700
47	9,400	29,200
48	9,700	29,900
49	9,900	30,600
50	10,200	31,400
51	10,500	32,100
52	10,800	32,900
53	11,100	33,700
54	11,400	34,700
55	11,700	35,500
56	12,100	36,400
57	12,500	37,500
58	12,900	38,300
59	13,300	39,500
60	13,700	40,600
61	14,200	41,700
62	14,700	42,900
63	15,200	44,100
64	15,700	45,400
65 or more	16,200	46,900".

FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITH DEPENDENTS

SEC. 487. Section 477 of the Act is amended—

(1) by amending the section heading to read as follows: "FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITH DEPENDENTS";

(2) by amending subsection (a) to read as follows:

"(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each married or single independent student with dependents, the expected family contribution is equal to—

"(1) the sum of—

"(A) the family's contribution from income (determined in accordance with subsection (b)); and

"(B) the family's income supplemental amount from assets (determined in accordance with subsection (c)); divided by

"(2) the number of family members who will be attending, on at least a half-time

basis, a program of postsecondary education during the award period for which assistance under this title is requested; "except that the amount authorized under this subsection shall not be less than zero.";

(3) in subsection (b)—

(A) by amending the subsection heading to read as follows: FAMILY'S CONTRIBUTION FROM INCOME.—"

(B) by amending paragraph (1) to read as follows:

"(1)(A) IN GENERAL.—Subject to subparagraph (B), the family's contribution from income is determined by—

"(i) calculating the family's available income by deducting from total income (as defined in section 480)—

"(I) Federal income taxes;

"(II) an allowance for State and other taxes, determined in accordance with paragraph (2);

"(III) an allowance for social security taxes, determined in accordance with paragraph (3);

"(IV) a standard maintenance allowance, determined in accordance with paragraph (4);

"(V) an employment expenses allowance, determined in accordance with paragraph (5);

"(VI) a medical-dental expense allowance, determined in accordance with paragraph (6); and

"(VII) an educational expense allowance, determined in accordance with paragraph (7); and

"(ii) assessing the family's available income in accordance with subsection (d).

"(B) The family's minimum contribution from income shall be the greater of—

"(i)(I) zero, if the family's total income is $12,000 or less;

"(II) $780, if the family's total income is between $12,001 and $15,000, inclusive; and

"(III) $1,200, if the family's total income is $15,001 or more; or

"(ii) the amount calculated under subparagraph (A).";

(B) in paragraph (4)—

(i) by striking out "section 479):" and inserting in lieu thereof "section 478):"; and

(ii) by amending the table therein to read as follows:

"STANDARD MAINTENANCE ALLOWANCE

Family size (including student)	Number in college					
	1	2	3	4	5	For each additional subtract
2	$10,370	$8,600				
3	12,910	11,150	9,380			
4	15,940	14,180	12,410	10,640		
5	18,810	17,050	15,280	13,510	11,740	
6	22,010	20,240	18,470	16,700	14,930	$1,770
For each additional add:	2,490	2,490	2,490	2,490	2,490	";

(C) in paragraph (5)—

(i) by striking out "$2,100" each place it appears and inserting in lieu thereof "$2,500"; and

(ii) by striking out "1987–1988," and inserting in lieu thereof "1992–1993,"; and

(D) in paragraph (7), by striking out "instructional";

(4) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (C), by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(ii) by adding at the end thereof the following:

"except that the family's income supplemental amount from assets shall not be less than zero.";

(B) in paragraph (2)—

(i) in subparagraph (B), by striking out "a dislocated worker" through the end thereof and inserting in lieu thereof: "a family with an adjusted gross income of less than $20,000; and"; and

(ii) in subparagraph (C)—

(I) by striking out "a business or farm" and "such business or farm" and inserting in lieu thereof "business or farm assets" and "such business or farm assets", respectively; and

(II) by amending the table therein to read as follows:

"ADJUSTED NET WORTH OF A BUSINESS OR FARM

If the net worth of a business or farm is	Then the adjusted net worth is
Less than $1	$0
$1–$75,000	$0 + 40 percent of NW
$75,001–$225,000	$30,000 + 50 percent of NW over $75,000
$225,001–$370,000	$105,000 + 60 percent of NW over $225,000
$370,001 or more	$192,000 + 100 percent of NW over $375,000";

and

(C) by amending the table in paragraph (3) to read as follows:

"ASSET PROTECTION ALLOWANCE FOR INDEPENDENT STUDENTS

If the age of the single student, or the average age of the student and spouse, is	And the student is	
	Married	Single
	Then the asset protection allowance is	
25 or less	$0	$0
26	500	1,700
27	1,100	3,300
28	1,600	5,000
29	2,100	6,700
30	2,600	8,400
31	3,200	10,000
32	3,700	11,700
33	4,200	13,400
34	4,700	15,100
35	5,300	16,700
36	5,800	18,400
37	6,300	20,100
38	6,800	21,800
39	7,400	23,400
40	7,900	25,100
41	8,100	25,700
42	8,300	26,200
43	8,500	26,800
44	8,700	27,300
45	8,900	28,000
46	9,100	28,700
47	9,400	29,200
48	9,700	29,900
49	9,900	30,600
50	10,200	31,400
51	10,500	32,100
52	10,800	32,900
53	11,100	33,700
54	11,400	34,700
55	11,700	35,500
56	12,100	36,400
57	12,500	37,500
58	12,900	38,300
59	13,300	39,500
60	13,700	40,600
61	14,200	41,700
62	14,700	42,900
63	15,200	44,100
64	15,700	45,400
65 or more	16,200	46,900";

(5) in subsection (d)—

(A) by striking out "adjusted";

(B) by striking out in the first parenthetical "subsection (a)(1) and hereafter referred to as 'AAI'" and inserting in lieu thereof "subsection (b)(1)(A)(i)"; and

(C) by amending the table therein to read as follows:

ASSESSMENT FROM AVAILABLE INCOME

If available income is	Then the assessment is
Less than zero	Zero

ASSESSMENT FROM AVAILABLE INCOME—Continued

If available income is	Then the assessment is
$0 to $9,300	22 percent of AAI
$9,301 to $11,600	$2,046 + 25 percent of AAI over $9,300
$11,601 to $14,000	$2,621 + 29 percent of AAI over $11,600
$14,001 to $16,300	$3,317 + 34 percent of AAI over $14,000
$16,301 to $18,700	$4,099 + 40 percent of AAI over $16,300
$18,701 or more	$5,059 + 47 percent of AAI over $18,700".

UPDATED TABLES

SEC. 488. Section 478 of the Act is amended—

(1) in the section heading, by striking out "REGULATIONS;";

(2) by striking out subsection (a);

(3) by striking out "academic year 1987–1988," and "1986" each place each appears and inserting in lieu thereof "academic year 1992–1993," and "1991", respectively;

(4) in subsection (b), by striking out "and 477(b)(4). Such revised table" and inserting in lieu thereof "and 477(b)(4), and revised maintenance allowances for purposes of section 476(b)(1)(B)(iv). Such revisions";

(5) in subsection (c)(2), by striking out "'$24,000', '$84,000', and '$156,000'" and inserting in lieu thereof "'$30,000', '$105,000', and '$192,000'"

(6) by amending subsection (e) to read as follows:

"(e) ASSESSMENT SCHEDULES AND RATES.—For each academic year after academic year 1992–1993, the Secretary shall publish in the Federal Register revised tables of assessments for the purposes of section 475(e), 476(b)(5), and 477(d). Such revised tables shall be developed—

"(1) by increasing each dollar amount that refers to adjusted available income, available taxable income, and available income in sections 475(e), 476(b)(5) and 477(d), respectively, by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary after consultation with the Advisory Committee on Student Financial Assistance) between December 1991 and the December next preceding the beginning of such academic year, rounded to the nearest $100; and

"(2) adjusting the other dollar amounts to reflect the changes made pursuant to paragraph (1)."; and

(7) by redesignating subsections (b), (c), (d), (e), and (f) as subsections (a), (b), (c), (d), and (e), respectively.

AID ADMINISTRATOR DISCRETION

SEC. 489. Section 479A of the act is amended—

(1) in subsection (a)—

(A) by striking out the subsection designation and "IN GENERAL.—"; and

(B) by striking out "subparts 1 and 2" each place it appears and inserting in lieu thereof "subpart 2"; and

(2) by striking out subsections (b) and (c).

INDEPENDENT STUDENT AND OTHER DEFINITIONS

SEC. 490. Section 480 of the Act is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking out "paragraphs (2) through (4)," and inserting in lieu thereof "paragraphs (2) and (3), and subsection (e),";

(B) in paragraph (2), by striking out "subpart 2 of part A and parts B, C, and E of";

(C) by striking out paragraph (3); and

(D) by redesignating paragraph (4) as paragraph (3);

(2) in subsection (b), by amending the matter preceding paragraph (1) to read as follows:

"(b) UNTAXED INCOME AND BENEFITS.—The term 'untaxed income and benefits' when applied to parent contributions and the contributions of dependent students or independent students (with or without dependents) means—";

(3) by striking out subsection (c), and inserting in lieu thereof the following new subsection:

"(c) SECRETARIAL ADJUSTMENTS OF DATA ELEMENTS FOR SPECIAL CIRCUMSTANCES.—The Secretary may prescribe regulations specifying situations in which the data elements considered in determining a student's expected family contribution may be modified to accommodate the special circumstances of the student.";

(4) in subsection (d)—

(A) in paragraph (1)(A), by striking out "24" and inserting in lieu thereof "26";

(B) in paragraph (2)—

(i) in subparagraph (C), by striking out "who declares" through the end thereof and inserting in lieu thereof a semicolon;

(ii) in subparagraph (D), by striking out "who declares" through the end thereof and inserting in lieu thereof a semicolon; and

(iii) by amending subparagraph (F) to read as follows:

"(F) is a single undergraduate student with no dependents who—

"(i) did not live with his or her parents for more than six weeks in the aggregate during the calendar year preceding the award year;

"(ii) will not live with his or her parents for more than six weeks in the aggregate during the first calendar year of the award year; and

"(iii) prior to the disbursal of assistance under this title, demonstrates to the student financial aid administrator self-sufficiency during each of the two calendar years preceding the award year by demonstrating annual total income (excluding resources from parents and student financial assistance and living allowances from programs established under the National and Community Service Act of 1990) that is equal to or exceeds the amount specified in the Department of Labor's Lower Living Standard Income Level, adjusted for a family size of one; or";

(C) by striking out paragraphs (3) and (4); and

(D) by adding at the end thereof the following new paragraph:

"(3) An individual who meets the requirements of paragraphs (1) and (2) may, in unusual circumstances, be determined to a dependent student by a student financial aid administrator, provided that such determination is documented.";

(5) by striking out subsection (e);

(6) by redesignating subsections (f), (g), (h), and (i) as subsections (e), (f), (i), and (j), respectively;

(7) by inserting immediately following subsection (f) (as redesignated by paragraph (6)) the following new subsections:

"(g) FARM ASSETS.—The term 'farm assets' means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the consumption of the family, even if some income is derived from incidental sales.

"(h) BUSINESS ASSETS.—The term 'business assets' means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights."; and

(7) by adding at the end thereof the following new subsections:

"(k) DEPENDENT OF THE STUDENT.—Except as otherwise provided, the term 'dependent of the student' means the student's dependent children and other persons (except the student's spouse) who live with and receive more than one half of their support from the student and will continue to receive more than half of their support from the student during the award year.

"(1) DEPENDENT OF THE PARENT.—Except as otherwise provided, the term 'dependent of the parent' means the student, any of the student's dependent children, dependent children of the student's parents, including those children who are deemed to be dependent students when applying for aid under this title, and other persons who live with and receive more than one half of their support from the parent and will continue to receive more than half of their support from the parent during the award year.

"(m) FAMILY SIZE.—(1) In determining family size in the case of a dependent student—

"(A) if the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents including the student;

"(B) if the parents are divorced or separated, family members include the parent whose income is included in computing available income and that parent's dependents, including the student; and

"(C) if the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse's income is included in determining available income or the student's contribution from income.

"(2) In determining family size in the case of an independent student with dependents—

"(A) family members include the student, the student's spouse, and the dependents of the student; and

"(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student's dependents.

"(3) In determining family size in the case of an independent student without dependents—

"(A) family members include the student and the student's spouse; and

"(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student.".

PART G—GENERAL PROVISIONS

DEFINITIONS

SEC. 491. Section 481 of the Act is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A)—

(I) by striking out "subsection (e),"; and

(II) by striking out "and part B," and "section 1201(a)—" and inserting in lieu thereof a comma, and "section 1001(a)—", respectively;

(ii) by striking out subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(B) by adding at the end thereof the following new paragraph:

"(4)(A) An institution whose cohort default rate, as defined in section 435(k)(1), is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this title for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue its participation in a program under this part if—

"(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B); or

"(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable. "During such appeal, the Secretary may permit the institution to continue to participate in a program under this title.

"(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

"(i) 35 percent for fiscal years 1991 and 1992;

"(ii) 30 percent for fiscal year 1993; and

"(iii) 25 percent for any succeeding fiscal year.

(C) Until July 1, 1994, this paragraph shall not apply to any institution that is—

"(i) a part B institution within the meaning of section 322(2) of the Act;

"(ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

"(iii) a Navajo Community College under the Navajo Community College Act.".

(2) in subsection (b)—

(A) by striking out "section 1201(a)," each place that it appears and inserting in lieu thereof "section 1001(a),"; and

(B) by adding at the end thereof the following: "If the Secretary determines that a particular category of proprietary institution of higher education does not meet the requirements of paragraph (4) because there is no nationally recognized accrediting agency or association qualified to accredit institutions in such category, the Secretary may, pending the establishment of such an accrediting agency or association, appoint an advisory committee, composed of persons specifically qualified to evaluate training provided by institutions in such category, which shall make recommendations to the Secretary concerning the standards of content, scope, and quality that must be met in order to qualify institutions in such category to participate in programs under this title, and whether particular schools not meeting the requirements of paragraph (4) meet the standards established by the Secretary after review of the standards recommended by the advisory committee.";

(3) by striking out subsections (c) and (e); and

(4) by redesignating subsection (d) as subsection (c).

AWARD MAXIMUMS FOR SHORT-TERM PROGRAMS

SEC. 492. Part G of Title IV of the Act is further amended by inserting immediately after section 481 the following new section:

"AWARD MAXIMUMS FOR SHORT-TERM PROGRAMS

"SEC. 481A. The maximum grant or loan amount that may be awarded under any

grant or loan program under this title to a student enrolled in any course of study of less than one academic year (defined for this purpose as 24 semester or trimester hours, 36 quarter hours, or 900 clock hours) shall not exceed the amount that bears the same relation to the annual statutory maximum for such grant or loan as the course of study measured in semester, trimester, quarter or clock hours bears to one academic year.".

MASTER CALENDAR

SEC. 493. Section 482 of the Act is amended—

(1) in subsection (a)(1)—

(A) by striking out subparagraph (B);

(B) in subparagraph (C), by striking out "final modifications and updates pursuant to sections 411E and 478" and inserting in lieu thereof "updates pursuant to section 478"; and

(C) by redesignating subparagraphs (C) through (J) as subparagraphs (B) through (I), respectively;

(2) in subsection (b), by striking out "section 413D(e), 442(e), or 462()j)," and inserting in lieu thereof "section 413D(d) or 442(d),";

(3) by striking out subsection (c); and

(4) by redesignating subsection (d) as subsection (c).

FORMS

SEC. 494. Section 483 of the Act is amended—

(1) in subsection (a)—

(A) by amending paragraphs (1), (2), and (3) to read as follows:

"(1) The Secretary shall prescribe a common financial reporting form to be used to determine the expected family contribution of a student for purposes of this title. No student or parent shall be charged a fee for processing the form prescribed by the Secretary. A student or parent may be charged a fee for processing an institutional or State financial aid form or data elements that are not required by the Secretary.

"(2)(A) Any need analysis servicer or State that collects information to be used to determine the expected family contribution of a student for purposes of this title, and is certified by the Secretary for this purpose, shall use the common financial reporting form prescribed by the Secretary and forward such information to the central processor designated by the Secretary.

"(B) The central processor designated by the Secretary shall perform all determinations of the expected family contributions of students for purposes of this title.

"(3)(A) The institution of higher education that a student awarded grant, loan, or work assistance under this title is or will be attending shall—

"(i) examine and assess the data used to determine the expected family contribution of the student;

"(ii) recalculate the expected family contribution of the student if there has been a change in the circumstances of the student or in the data submitted;

"(iii)(I) make the award to the student in the correct amount; or

"(II) in the case of a loan made, insured, or guaranteed under part B of this title, certify the correct loan amount; and

"(iv) for purposes of subpart 1 of part A of this title only, after making such award, report the corrected data to the need analysis servicer and the central processor for a confirmation of the correct computation of the amount of the expected family contribution for each such student.

"(B) Whenever a student receives assistance under this title that, due to recalculation errors by the institution of higher education, exceeds the amount that the student should have received, such institution shall—

"(i) pay the Secretary the amount of such excess unless such excess is resolved in a subsequent disbursement to the institution; or

"(ii) in the case of a loan made, insured, or guaranteed under part B of this title, return the amount of such excess to the lender.";

(2) by striking out subsections (b) and (c);

(3) by amending subsection (f) to read as follows:

"(f) NOTICE OF STUDENT AID RECEIPT.—In its notification to each student who receives assistance under this title (except assistance received under subpart 5 of part A) of the type and estimated amount of assistance awarded to such student under this title, each eligible institution shall specify that such assistance is federally supported."; and

(4) by redesignating subsections (d), (e), and (f) as subsections (b), (c), and (d), respectively.

STUDENT ELIGIBILITY

SEC. 495. Section 484 of the Act is amended—

(1) in subsection (a), by amending paragraph (2) to read as follows:

"(2) satisfy the minimum academic achievement standards specified in subsection (c);";

(2) in subsection (c)—

(A) by amending the heading to read as follows: "MINIMUM ACADEMIC ACHIEVEMENT STANDARDS.—";

(B) by amending paragraph (1) to read as follows:

"(1) For the purposes of subsection (a)(2), any student, other than a student entering his or her first year of postsecondary education, must achieve academic standing above the bottom ten percent of his or her postsecondary class, as determined by grade point averages (or is equivalent, if the institution does not use a system of ranking its students by grade point averages) on a cumulative basis and including the most recent grading period for which academic standing information is available.";

(C) in paragraph (2), by striking out "for graduation," and inserting in lieu thereof "of this subsection,"; and

(D) in paragraph (3)(C), by striking out the period at the end thereof and inserting in lieu thereof "in accordance with the regulations of the Secretary.";

(3) in subsection (c), by striking out "by the institution," each place it appears and inserting in lieu thereof "by the institution subject to such minimum standards as the Secretary may prescribe in regulations,";

(4) in subsection (d), by striking out "approved by the Secretary." and inserting in lieu thereof "that meets such standards for development, administration, and scoring as the Secretary may prescribe in regulations.";

(5) by striking out subsections (f), (h), (i), and (j); and

(6) by inserting immediately preceding subsection (g) the following new subsection:

"(f) VERIFICATION OF IMMIGRATION STATUS.—(1) The Secretary shall implement a system under which the statements and supporting documentation, if required, of an individual declaring that he or she satisfies the requirements of subsection (a)(5) shall be verified prior to the individual's receipt of grant, loan, or work assistance under this title.

"(2) The Secretary is authorized to verify such statements and supporting documentation through a data match, using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.".

BORROWER INFORMATION

SEC. 496. Section 485(b) of the Act is amended—

(1) by amending the subsection heading to read as follows: EXIT COUNSELING FOR BORROWERS; BORROWER INFORMATION.—"; and

(2) by adding at the end thereof the following: "Each eligible institution shall require that the borrower of a loan made under part B, part D, or part E submit to the institution, during the exit interview required by this subsection, the borrower's expected permanent address after leaving the institution, regardless of the reason for leaving; the name and address of the borrower's expected employer after leaving the institution; and the address of the borrower's next of kin. In the case of a loan made under part B, the institution shall then submit this information to the holder of the loan.".

REPEAL; INSTITUTIONAL REFUNDS

SEC. 497. (a) Section 486 of the Act is repealed.

(b) Part G of Title IV of the Act is amended by inserting immediately following section 485B the following new section:

"INSTITUTIONAL REFUNDS

SEC. 486. (a) Each institution of higher education participating in a program under this title shall have in effect a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to a student who received grant, loan, or work assistance under this title, or whose parent received a loan made under section 428B on behalf of the student, if the student—

"(1) does not register for the period of attendance for which the assistance was intended; or

"(2) withdraws or otherwise fails to complete the period of enrollment for which the assistance was provided.

"(b) The institution shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and make its refund policy known to currently enrolled students. The institution shall include in its statement the procedures that a student must follow to obtain a refund, but whether or not the student follows those procedures, the institution shall, in accordance with subsection (e), pay to the lender the portion of a refund allocable to the student's loans made, insured, or guaranteed under section 427, 428, 428A, or 428B, and return the portion of the refund allocable to another program under title IV of the Act to the appropriate account for that program. If the institution changes its refund policy, it shall ensure that all students are made aware of the new policy.

"(c) The institution's refund policy shall be considered to be fair and equitable for purposes of this section if that policy provides for a refund in an amount of at least the largest of the amounts provided under—

"(1) the requirements of applicable State law;

"(2) the specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary;

"(3) if no such standards exist, the specific refund policy standards set by another asso-

ciation of institutions of postsecondary education and approved by the Secretary; or

"(4) the pro rata refund calculation described in subsection (d), except that this paragraph will not apply to the institution's refund policy for any student whose date of withdrawal from the institution is after the halfway point (in time) in the period of enrollment for which the student has been charged.

"(d)(1) As used in this section, the term 'pro rata refund' means a refund by the institution of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less a reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100.

"(2) For purposes of paragraph (1), 'the portion of the period of enrollment for which the student has been charged that remains' shall be determined—

"(A) in the case of a program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment of which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student;

"(B) in the case of a program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student; and

"(C) in the case of a correspondence program, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

"(e) For purposes of this section, a refund shall be credited against grant, loan, or work assistance awarded under this title on a pro rata basis.".

(c) Section 485(a)(1)(F) of the Act is amended by inserting a comma and "in accordance with section 486," immediately following "institution".

PROGRAM PARTICIPATION AGREEMENTS

SEC. 498. Section 487 of the Act is amended—

(1) in subsection (a), by adding at the end thereof the following new paragraphs:

"(13) The institution acknowledges the authority of the Secretary, guaranty agencies, accrediting agencies, and State licensing bodies under section 1011 to share with each other any information pertaining to the institution's eligibility to participate in programs under this title.

"(14) The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments to any persons or entities engaged in any student recruiting or admission activities or in making decisons regarding the award of student financial assistance.".

(2) in subsection (b)(2), by striking out "on the record,"

"(3) in subsection (c)—

"(A) in paragraph (1)(D), by striking out "on the record," and inserting in lieu thereof a comma; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking out "on the record," and inserting in lieu thereof a comma; and

(ii) in subparagraph (B)(i), by striking out "on the record," and inserting in lieu thereof a comma; and

(4) by adding at the end thereof the following new subsection:

"(e) CONDITIONAL CERTIFICATION OF INSTITUTIONAL ELIGIBILITY.—(1) Notwithstanding any other provision of law, the Secretary is authorized to conditionally certify an instutition's eligibility to participate in programs under this title if—

"(A) the institution's administrative capability and financial responsibility is being determined for the first time:

"(B) there is a complete or partial transfer of ownership of an eligible institution; or

"(C) the Secretary deems that an institution is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its responsibilities under its program participation agreement.

"(2) The Secretary may conditionally certify an institution under this subsection for up to three complete award years.

"(3) If, prior to the end of a period of conditional certification under this subsection, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may terminate the institution's participation in programs under this title after notice and opportunity for a hearing.".

WAGE GARNISHMENT

SEC. 499. (a) Part G of title IV of the Act is further amended by inserting immediately following section 488 the following new section:

"WAGE GARNISHMENT REQUIREMENTS

"SEC. 488A. (a) GARNISHMENT REQUIREMENTS.—Notwithstanding any provision of State law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this title that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayments under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B on which the guaranty agency received reimbursement from the Secretary under section 428(c), with the guaranty agency holding the loan, as appropriate, provided that—

"(1) the amount deducted for any pay period may not exceed 10 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;

"(2) the individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;

"(3) the individual shall be provided an opportunity to inspect and copy records relating to the debt;

"(4) the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for the repayment of the debt;

"(5) the individual shall be provided an opportunity for a hearing in accordance with subsection (b) on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;

"(6) the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in a State or Federal court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt by such employer of notice of the withholding order, plus attorneys' fees, costs, and, in the court's discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph; and

"(7) an employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorneys' fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

"(b) HEARING REQUIREMENTS.—A hearing described in subsection (a)(5) shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2), and in accordance with such procedures as the Secretary or the head of the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

"(c) NOTICE REQUIREMENTS.—The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

"(d) DEFINITION.—For the purpose of this section, the term 'disposable pay' means that part of the compensation of any individual remaining after the deduction of any amounts required by law to be withheld.".

(b) Section 428E of the Act is repealed.

(c) Section 428(c)(6) of the Act is amended by striking out subparagraph (D).

DATA MATCHING

SEC. 499A. Part G of title IV of the Act is further amended by inserting immediately following section 489 the following new section:

"DATA MATCHING

"SEC. 489A. (a)(1) The Secretary is authorized to obtain information from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States, or of any State, concerning the most recent address of an individual obligated on a loan held by the Secretary or a loan made in accordance with part B of this title held by a guaranty agency, or an individual owing a refund of an overpayment of a grant awarded under this title, and the name and address of such individual's employer, if the Secretary determines that such information is needed to enforce the loan or collect the overpayment.

"(2) The Secretary is authorized to provide the information described in paragraph (1) to a guaranty agency holding a loan made under part B of this title on which such individual is obligated.

"(b)(1) Notwithstanding any other provision of law, whenever the head of any department, agency, or instrumentality of the United States or of a State receives a request from the Secretary for information authorized under this section, such individual or his designeee shall promptly cause a search to be made of the records of the agency to determine whether the information requested is contained in those records.

"(2)(A) If such information is found, the individual shall, in conformance with the provisions of the Privacy Act of 1974, as amended, immediately transmit such information to the Secretary, except that if disclosure of this information would contravene national policy or security interests of the United States, or the confidentiality of census data, the individual shall immediately so notify the Secretary and shall not transmit the information; or

"(B) if no such information is found, the individual shall immediately so notify the Secretary.

"(3)(A) The reasonable costs incurred by any such agency of the United States or of a State is providing any such information to the Secretary shall be reimbursed by the Secretary, and retained by the agency.

"(B) Whenever such information is furnished to a guaranty agency, that agency shall be charged a fee to be used to reimburse the Secretary for the expense of providing such information.

"(c) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt access for the Secretary, in accordance with this section, to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.".

CRIMINAL PENALTIES

SEC. 499B. Section 490 of the Act is amended—

(1) in subsection (a), by inserting immediately after "under this title" a comma and "or attempts to so embezzle, misapply, steal, or obtain such funds, assets, or property,";

(2) in subsection (b), by inserting immediately after "under this title" a comma and "or attempts to so make any false statement, furnish any false information, or conceal any material information in connection with such assignment,";

(3) in subsection (c), by inserting immediately after "under part B" a comma and "or attempts to make such unlawful payment"; and

(4) in subsection (d), by inserting immediately after "under this title" a comma and "or attempts to so destroy or conceal".

TECHNICAL AMENDMENTS

SEC. 499C. (a) Section 485(a)(1) of the Act is amended by redesignating subparagraph (L) (as added by P.L. 101-610) as subparagraph (M).

(b) Section 485B(a) of the Act is amended—

(1) in paragraph (9), by striking out "and" at the end thereof;

(2) in paragraph (10), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by redesignating paragraph (5) (as added by P.L. 101-160) as paragraph (11).

AMENDMENTS TO OTHER LAWS

SEC. 499D. Section 3(c) of the Higher Education Technical Amendments of 1991 (P.L. 102-26) is amended by striking out "that are brought before November 15, 1992".

TITLE V—EDUCATOR RECRUITMENT, RETENTION, AND DEVELOPMENT

REPEALS

SEC. 501. Sections 501 and 502 of the Act are repealed.

PARTNERSHIPS FOR INNOVATIVE TEACHER EDUCATION

SEC. 502. Part A of title V of the Act is amended to read as follows:

"PART A—PARTNERSHIPS FOR INNOVATIVE TEACHER EDUCATION FINDINGS"

"SEC. 511. The Congress finds as follows:

"(1) All students must master challenging subject matter and learn to be critical thinkers and self-directed learners, so that they will be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

"(2) Teachers must have a thorough understanding of the content they teach and knowledge and skill in how to teach it to all students.

"(3) Teachers learn to teach most effectively in clinical, school-based settings with prospective and novice teachers working under the guidance of master teachers.

"(4) Research and development for improving teaching practices and student learning can and should be done by and with teachers for use in their particular schools.

"(5) School-based research and development is an effective way to generate knowledge that is needed for improving teaching and learning.

"(6) To be effective, training provided prospective teachers by institutions of higher education must be responsive to the needs of schools and teachers.

"(7) The business community has an important role to play in encouraging school-based research and development to improve teaching and learning.

"(8) Interested and committed individuals who possess demonstrated subject area competence but have pursued no formal study in the field of education should be assisted in entering the teaching profession.

"PURPOSE

"SEC. 512. It is the purpose of this part to assist in the establishment of teaching schools for the improvement of teacher education and teaching by providing financial assistance to partnerships involving institutions of higher education and elementary and secondary schools, with the support and collaboration of the State and local educational agencies, other educational organizations, social or human service agencies, other community organizations, and the business community.

"PROGRAM AUTHORITY

"SEC. 513. (a) AUTHORITY.—The Secretary is authorized to make grants to, and enter into contracts and cooperative agreements with, State educational agencies, local educational agencies, institutions of higher education, and consortia of such agencies and institutions to plan, establish, and operate teaching schools to develop and put into practice the best knowledge about teaching.

"(b) DEFINITIONS.—For the purpose of this part, the term—

"(1) 'teaching school' means an elementary or secondary school whose mission, in addition to providing the best possible education to its students, is to provide a site for formal collaboration between one or more institutions of higher education and the school for the purpose of—

"(A) the training of prospective and beginning teachers under the guidance of master teachers and teacher educators;

"(B) the continuing development of experienced teachers; and

"(C) research and development to improve teaching and learning; and

"(2) 'institution of higher education' shall not include proprietary schools.

"(c) AWARDS AND RENEWALS.—(1)(A) An award made under this part shall be for a term of three years.

"(B) An award made under this part may be renewed without further competition for a period of two additional years, if the Secretary determines that the award recipient—

"(i) has achieved the goals set out in its application for the original term;

"(ii) shows promise of continuing its progress;

"(iii) will meet its share of the project costs; and

"(iv) has developed, during the final year of the original term, a plan for continuing the teaching school after federal funding is no longer available.

"(2) No teaching school may be supported with funds provided under this part for a period of more than five years.

"APPLICATIONS

"SEC. 514. (a) APPLICATIONS.—(1) Any State educational agency, local educational agency, institution of higher education, or consortium of such agencies and institutions desiring to receive an award under this part shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require.

"(2) Each such application shall include—

"(A) an identification of the elementary or secondary school, or schools, that will operate as teaching schools;

"(B) an identification of the institution, or institutions, of higher education that will be the partner in each teaching school;

"(C) a statement of the goals to be achieved during the initial period of the award;

"(D) a plan for evaluating the effectiveness of the teaching school in meeting the goals it has developed for teacher and student performance; and

"(E) estimates of the number of prospective and beginning teachers to be trained in the teaching school in each year of the project and assurances that a significant number of prospective and beginning teach-

ers will be trained in the teaching school in each year of the project.

"(b) PRIORITIES.—In making awards under this part, the Secretary shall give priority to applicants that—

"(1) select teaching school sites based on need, as evidenced by measures such as a high rate of teacher attrition and a high proportion of the student body at risk of educational failure;

"(2) propose projects that demonstrate the active support of the State educational agency, the local educational agency, and the university or college; and

"(3) propose projects that demonstrate collaboration with other educational organizations, social or human service agencies, other community organizations, and the business community in the teaching school's operation.

"(c) SPECIAL RULES.—(1) An application from a State educational agency must describe how the agency will address the need to change or waive a State rule or regulation that is found by a teaching school to impede the school's progress in achieving its goals.

"(2) An application from a local educational agency must describe how the agency will address the need to change or waive a local rule or regulation that is found by a teaching school to impede the school's progress in achieving its goals.

"(3) An application from an institution of higher education must describe how the School of Education, the School of Arts and Sciences, and any other department of the institution will be involved in the program.

"USES OF FUNDS

"SEC. 515. (a) USES OF FUNDS.—(1) Applicants may use funds awarded under this part for the planning, establishment, and operation of teaching schools, including—

"(A) staff development;

"(B) purchase of books, materials, and equipment, including new technology;

"(C) minor remodeling;

"(D) payment of personnel directly related to the operation of the teaching school program;

"(E) participation in the activities of a network of teaching schools; and

"(F) other costs incidental to planning, establishing, or operating teaching schools.

"(2) The Secretary may limit the amounts of funds that may be used for minor remodeling and the purchase of equipment under this part.

"(b) AUTHORIZED ACTIVITIES.—Teaching schools shall use funds under this part for the following activities:

"(1) Training activities for prospective teachers in the school setting.

"(2) Internship training and other induction activities for prospective and beginning teachers, including those seeking to enter teaching alternate routes or alternative certification.

"(3) Training and other activities to promote the continued learning of experienced teachers, especially in their subject matter knowledge and how to teach it.

"(4) Participation of experienced teachers in the internship training and assessment of prospective and beginning teachers.

"(5) Participation of higher education faculty with expertise in pedagogy in the school-based training and continuing development of teachers.

"(6) Activities designed to increase beginning and experienced teachers' understanding and use of research findings.

"(7) Participation of expert practicing teachers and administrators in the university-based education studies of prospective teachers.

"(8) Participation of faculty with expertise in the liberal arts and sciences in the training of prospective and beginning teachers and in the continuing development of experienced teachers.

"(9) Experimentation and research conducted in the school by teachers and university faculty to improve teaching and learning.

"(10) Activities designed to disseminate information about the lessons learned in the teaching school with other teachers in the district's schools.

"(11) Other activities proposed by the applicant and approved by the Secretary.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 516. (a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part $20,000,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years.

"(b) RESERVATIONS.—The Secretary is authorized to reserve up to five percent of the amount appropriated for each fiscal year under subsection (a) to—

"(1) study the planning and implementation processes and the results of the teaching schools established under this program;

"(2) disseminate findings of such studies to researchers, practitioners, policymakers, and parents;

"(3) provide technical assistance to teaching schools; and

"(4) support the development of a network or networks of teaching schools.

"(c) COST SHARING.—The Federal share of the cost of the activities set forth in an approved application shall be 75 percent for the first three years and 50 percent for the last two years. The non-Federal share may be provided in cash or in kind.".

SCHOOL, COLLEGE, AND UNIVERSITY PARTNERSHIPS

SEC. 503. Part B of title V of the Act is repealed.

PROFESSIONAL DEVELOPMENT AND LEADERSHIP PROGRAM

SEC. 504. Part C of title V of the Act is amended—

(1) by redesignating part C as part B;

(2) by striking out the subpart 1 heading;

(3) by amending section 531 to read as follows:

"AUTHORIZATION

"SEC. 521. There are authorized to be appropriated $370,000 for fiscal year 1992 for the purpose of completing the final year of funding for the territories under subpart 2 of part C of title V of the Act, as in effect prior to the effective date of the Higher Education Act Amendments of 1991."; and

(4) by repealing section 532 through to the end of the part.

TEACHER SCHOLARSHIPS AND FELLOWSHIPS

SEC. 505. (a) HEADING.—Part D of title V is amended by striking out the part heading and inserting in lieu thereof "PART C—TEACHER SCHOLARSHIPS AND FELLOWSHIPS".

(b) CONGRESSIONAL TEACHER SCHOLARSHIP PROGRAM (PAUL DOUGLAS).—Subpart 1 of Part D of title V of the Act is amended—

(1) by amending the subpart heading to read as follows: "Subpart 1—Paul Douglas Teacher Scholarship Program";

(2) by striking out "Congressional Teacher Scholarship" each place it appears in subpart 1 and inserting in lieu thereof "Paul Douglas Scholarship";

(3) in section 551, by striking out "during fiscal years 1987 through 1991 to a maximum of 10,000 individuals who are outstanding high school graduates and who demonstrate an interest in teaching," and inserting in lieu thereof "to outstanding high school graduates or college students who demonstrate an interest in teaching,";

(4) in section 552—

(A) by amending the section heading to read "AUTHORIZATION AND ALLOCATIONS";

(B) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively;

(C) by adding a new subsection (a) to read as follows:

"(a) AUTHORIZATION.—There are authorized to be appropriated $14,639,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years to carry out this subpart."; and

(D) in subsection (b), as redesignated, by striking out "pursuant to section 502(d)";

(5) in section 553(b)—

(A) by amending the paragraph to read as follows:

"(4) provides assurances that each recipient eligible under section 535(b) of this part who receives a Paul Douglas Scholarship for either or both of the two academic years prior to completion of a program of study for which the recipient would receive a teaching certificate, shall enter into an agreement with the State agency under which the recipient shall—

"(A) teach for a period of not less than one year for each year for which assistance was received, in a public or private nonprofit school or education program at the preschool, elementary, or secondary level in any State or outside the United States in schools sponsored by the Department of Defense;

"(B) within the four year period after completing the program of study for which the Paul Douglas Scholarship was awarded, complete the teaching obligation specified in subparagraph (A), except that scholars who receive assistance under this subpart for one academic year or less shall complete such teaching obligation within the three-year period after completing the program of study for which the Paul Douglas Scholarship was awarded;

"(C) provide the State agency evidence of compliance with section 536 of this title as required by the State agency; and

"(D) repay all or part of a Paul Douglas Scholarship received under section 534 of this title plus interest and, if applicable, reasonable collection fees, in compliance with regulations issued by the Secretary under section 537 of this title, in the event that the conditions of subparagraphs (A) and (B) are not complied with, except as provided for in section 538 of this title.";

(B) in paragraph (8), by striking out "and" following the semicolon;

(C) in paragraph (9), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(D) by adding a new paragraph (10) to read as follows:

"(10) provide assurances that recipients of assistance under this part will sign a statement of their intention to pursue a teaching career at the preschool, elementary, or secondary level and be enrolled in a State-approved program of teacher education.";

(6) in section 555(b), by inserting "or who are maintaining at the postsecondary level a 3.25 or better grade point average on a 4-point grade scale, or the equivalent grade average on another scale" before the period at the end of the first sentence thereof; and

(7) by redesignating sections 551 through 559 as sections 531 through 539, respectively.

(c) CHRISTA MCAULIFFE FELLOWSHIP PROGRAM.—Subpart 2 of part D of title V of the Act is amended—

(1) in section 563—

(A) by amending subsection (a) to read as follows:

"(a) AUTHORIZATION AND ALLOTMENTS.—(1) There are authorized to be appropriated $2,036,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years to carry out this subpart.

"(2)(A) Funds awarded under this subpart shall be allotted to each State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Palau (only to the extent authorized by section 104(c) of Public Law 99-658 and until the effective date of the Compact of Free Association with the Government of Palau) based on the number of public school teachers in each State and the jurisdictions enumerated above in proportion to the total number of public school teachers in all the States and the jurisdictions enumerated above.

"(B) No State or jurisdiction enumerated in subparagraph (A) shall receive less than the average national salary of public school teachers, in the most recent year for which satisfactory data are available as determined by the Secretary.

"(3)(A) Fellowship awards may not exceed the national average salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary.

"(B) Christa McAuliffe teacher fellows may not receive an award for two consecutive years.

"(C) Subject to the repayment of provisions of section 566, Christa McAuliffe teacher fellows shall be required to return to a teaching position in their current school district or private, nonprofit school for at least two years following the fellowship award; provided that the Secretary is authorized, in extraordinary circumstances, to waive or defer all or a portion of the service requirement, or to allow fellows to fulfill their service requirement by going to a teaching position in another school or school district."; and

(B) by striking out paragraph (3);

(2) in section 564—

(A) by inserting "(a) STATEWIDE SELECTION PANEL.— before "recipients"; and

(B) by adding a subsection (g) to read as follows:

"(b) PRIORITY.—In making awards under this part, States, consistent with State law, shall give priority to applicants that propose fellowship projects that involve pursuit of eligible activities on a full-time basis as part of a sabbatical.";

(3) in section 565—

(A) by striking out "(a) and the subsection heading; and

(B) by striking out subsection (b); and

(4) by redesignating sections 561 through 566 as sections 541 through 546, respectively.

STATE TASK FORCES ON TEACHER TRAINING

SEC. 506. Part E of title V of the Act is repealed.

TITLE VI—INTERNATIONAL EDUCATION PROGRAMS

LANGUAGE AND AREA CENTERS

SEC. 601. Section 602 of the Act is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

PERIODICALS

SEC. 602. Part A of title VI of the Act is amended—

(1) by repealing section 607; and

(2) by redesignating sections 608 and 609 as sections 607 and 608, respectively.

AUTHORIZATION OF APPROPRIATIONS

SEC. 603. (a) Part A of title VI of the Act is further amended by repealing section 610.

(b) Part B of title VI of the Act is amended by repealing section 614.

(c) Part C of title VI of the Act is amended by adding a new section 621 to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 612. There are authorized to be appropriated to carry out this title $28,670,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 604. (a) Section 602(a) of the Act is amended—

(1) by amending paragraph (1) to read as follows:

"(a)(1) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating comprehensive language and area centers and programs and undergraduate language and area centers and programs. Such centers and programs shall be national resources for—

"(A) teaching any modern foreign language;

"(B) instruction in fields needed to provide full understanding of areas, regions, or countries in which such language is commonly used;

"(C) research and training in international studies and the international and foreign language aspects of professional and other fields of study; and

"(D) instruction and research in affairs that concern one or more countries."; and

(2) in paragraph (3), by striking out "centers described in paragraph (1)(A)" and inserting in lieu thereof "comprehensive language and area centers".

(b) Section 605 of the Act is amended—

(1) by striking out subsection (b);

(2) in subsection (a)(2)(C), by striking out "subparagraphs (A) and (B)" and inserting in lieu thereof "paragraphs (1) and (2); and

(3) by redesignating subsections (a)(1), (a)(2), (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(3), (a)(3)(A), (a)(3)(B), (a)(3)(C), and (a)(4) as subsections (a), (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), (c)(2), (c)(3), and (d), respectively.

(c) Section 611(a) of the Act is amended—

(1) in paragraph (3), by striking out "presently" and inserting in lieu thereof "currently"; and

(2) in paragraph (4), by inserting a comma after "chambers of commerce".

(d) Section 612 of the Act is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, to pay the Federal share of the cost of planning, establishing, and operating centers for international business education that shall—

"(A) be national resources for the teaching of improved business techniques, strategies, and methodologies that emphasize the international context in which business is transacted;

"(B) provide instruction in critical foreign languages and international fields needed to provide understanding of the cultures and customs of United States trading partners; and

"(C) provide research and training in the international aspects of trade, commerce, and other fields of study.

"(2) In addition to providing training to students enrolled in the institution of higher education in which such center is located, such centers shall serve as regional resources to businesses located in proximity to such centers by offering programs and providing research designed to meet the international training needs of such businesses.";

(2) in subsection (b)—

(A) by inserting a comma after "establishing";

(B) in paragraph (1), by striking out the comma after "countries" and inserting in lieu thereof a semicolon;

(C) in paragraph (2), by striking out the comma after "materials" and inserting in lieu thereof a semicolon;

(D) in paragraph (3), by striking out the comma after "development" and inserting in lieu thereof a semicolon; and

(E) in paragraph (4), by striking out "research, and" inserting in lieu thereof "research; and";

(3) in subsection (c)(1)(C), by inserting a comma after "professionals";

(4) in subsection (d)(2)—

(A) by striking out "Center Advisory Council" and inserting in lieu thereof "center advisory council"; and

(B) in subparagraph (E), by striking out "representative" and inserting in lieu thereof "representatives";

(5) in subsection (e)(2)—

(A) by inserting a comma after "establishing";

(B) in subparagraph (A), by striking out the comma after "furnished" and inserting in lieu thereof a semicolon; and

(C) in subparagraph (B), by inserting a semicolon after "year"; and

(6) in subsection (f)—

(A) in paragraph (1)(D), by striking out "by institutions of higher education described in subsection (c)(1)" and inserting in lieu thereof "under this section by such institution or combination of institutions";

(B) by striking out the paragraph designation "(1)"; and

(C) by redesignating subparagraphs (A), (B), (C), and (D) as paragraphs (1), (2), (3), and (4), respectively.

(e) Section 613 of the Act is amended—

(1) in subsection (b)(10), by striking out "the establishment" and inserting in lieu thereof "establishment"; and

(2) in subsection (c)—

(A) by inserting a comma after "trade organization" and "improving"; and

(B) by striking out "by institutions of higher education described in subsection (b)" and inserting in lieu thereof "under this section by such institution".

(f) Section 622 of the Act is amended—

(1) in paragraph (1), by inserting a comma after "international relations";

(2) in paragraph (3), by inserting a comma after "teaching" and "laws"; and

(3) in paragraph (6)—

(A) by striking out "language an area studies programs, professional" and inserting in lieu thereof "language and area studies programs, or professional";

(B) by inserting a comma after "curriculum development"; and

(C) by striking out the comma after "baccalaureate degree programs", "foreign language knowledge", and "works in translation" and inserting in lieu thereof a semicolon.

TITLE VII—COLLEGE FACILITIES LOANS AND INSURANCE

COLLEGE FACILITIES LOANS AND INSURANCE

SEC. 701. (a) PURPOSES AND AUTHORIZATION OF APPROPRIATIONS.—Title VII of the Act is amended—

(1) by striking out the title designation "TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES" and inserting in lieu thereof "TITLE VII—COLLEGE FACILITIES LOANS AND INSURANCE";

(2) by amending section 701 to read as follows:

"PURPOSE

"SEC. 701. It shall be the purpose of this title to provide higher education institutions with access to private capital construction debt through the College Construction Loan Insurance Association and to provide for the servicing of the remaining loan portofolio of the Higher Education Facilities Loans, the College Housing Loans, and the College Housing and Academic Facilities Loans authorized by this title prior to the effective date of the enactment of the Higher Education Amendments of 1991."; and

(3) by repealing section 702.

(b) REPEALS.—Title VII of the Act if further amended by repealing Parts A, B, C, D, F, and G thereof.

(c) COLLEGE CONSTRUCTION LOAN INSURANCE ASSOCIATION.—Part E of title VII of the Act is amended—

(1) by redesignating Part E as Part A; and

(2) by redesignating sections 751 through 760 as sections 711 through 720, respectively.

(d) GENERAL.—Part H of Title VII of the Act is amended—

(1) by redesignating Part H as Part B;

(2) in section 781—

(A) in subsection (a), by inserting a comma and "as in effect before the effective date of the Higher Education Act Amendments of 1991," after "A or B of this title"; and

(B) in subsection (b), by inserting a comma and "as in effect before the effective date of the Higher Education Act Amendments of 1991," after "A or B of this title";

(3) in section 782—

(A) in paragraph (1)(A), by inserting a comma and "as in effect before the effective date of the Higher Education Act Amendments of 1991," after "part A or C";

(B) in paragraph (3)(A)(i), by inserting a comma and "as in effect before the effective date of the Higher Education Act Amendments of 1991," after "part A or B"; and

(C) in paragraph (3)(A)(ii), by inserting a comma and "as in effect before the effective date of the Higher Education Act Amendments of 1991" after "part C"; each place it occurs;

(4) by redesignating sections 781 through 783 as sections 731 through 733, respectively; and

(5) by adding a new section 734 to read as follows:

"PRIOR RIGHTS AND OBLIGATIONS UNDER TITLE VII

"SEC. 734. (a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal year 1992, and for each of the four succeeding fiscal years, to pay obligations incurred prior to 1987 under Parts C, D, and F of this title, as in effect before the effective date of the Higher Education Act Amendments of 1991.

"(b) LEGAL RESPONSIBILITIES.—All entities with continuing obligations incurred under Parts A, B, C, D, and F of this title, as in effect before the effective date of the Higher Education Act Amendments of 1991, shall be subject to the requirements of those parts as in effect before the effective date of the Higher Education Act Amendments of 1991.".

TITLE VIII—COOPERATIVE EDUCATION

GENERAL PROVISIONS

SEC. 801. Section 801 of the Act is amended—

(1) by amending the section heading to read "GENERAL PROVISIONS";

(2) in subsection (a), by striking out "$17,000,000 for fiscal year 1987" and inserting in lieu thereof "$13,175,000 for fiscal year 1992";

(3) in subsection (b)—

(A) in paragraph (1), by adding "and" after the semicolon at the end thereof;

(B) by amending paragraph (2) to read as follows:

"(2) not to exceed 25 percent shall be available for carrying out grants and contracts under section 803."; and

(C) by striking out paragraphs (3) and (4); and

(4) by adding at the end thereof two new subsections to read as follows:

"(d) DEFINITION.—As used in this title, the term 'cooperative education' means the provisions of alternating or parallel periods of academic study and public or private employment in order to give students work experience related to their academic or occupational objective and an opportunity to earn the funds necessary for continuing and completing their education.

"(e) PURPOSE.—The purpose of this title is award grants to institutions of higher education to encourage these institutions to develop and make available to as many of their students as possible programs of cooperative education in order to provide work experience that will aid these students in future careers and will enable them to support themselves financially while in school.".

MATCHING REQUIREMENTS

SEC. 802. Section 802 of the Act is amended—

(1) in subsection (b)—

(A) by amending paragraph (3) to read as follows:

"(3) describe the plans that the applicant will carry out to increase the applicant's share of the fiscal support for the program to ensure that the total amount expended for such program in subsequent years of the grant is not less than the total amount expended for such program during the initial year of Federal assistance;" and

(B) in paragraph (4), by inserting a comma and "at not less than the total amount expended during the initial year of Federal assistance," immediately after "continue the cooperative education program"; and

(2) by adding at the end thereof a new subsection to read as follows:

"(e) MAINTENANCE OF EFFORT.—If the Secretary determines that a recipient of funds under this section has failed to maintain the fiscal effort required under subsection (b)(3), the Secretary may elect not to make a contribution award under this section to the recipient. Pursuant to subsection (b)(4), each recipient of funds under this section shall provide to the Secretary information documenting its maintenance of fiscal effort beyond the 5-year period of Federal assistance as required by the Secretary through notification in the Federal Register.".

APPLICATION REQUIREMENTS

SEC. 803. (a) Section 802(b) of the Act is further amended—

(1) in paragraph (7), by striking out "and" at the end thereof;

(2) by redesignating paragraph (8) as paragraph (10); and

(3) by inserting after paragraph (7) two new paragraphs to read as follows:

"(8) describe the extent to which programs in the academic discipline for which the application is made have had a favorable reception by public and private sector employers;

"(9) describe the plans that the applicant will carry out to evaluate the applicant's cooperative education program at the end of the grant period and to disseminate the results of this evaluation; and".

(b) Section 802(d) of the Act amended—

(1) by striking out paragraph (1); and

(2) in paragraph (2)—

(A) by striking out the paragraph designation "(2)";

(B) by striking out "also"; and

(C) by striking out "which demonstrate" and all that follows through the end thereof and inserting in lieu thereof "that demonstrate a commitment to serving disadvantaged students and studens with disabilities.".

DURATION OF GRANTS

SEC. 804. Section 802(c) of the Act is amended—

(1) by amending paragraph (1) to read as follows:

"(1)(A) Except as provided in subparagraph (B), no institution of higher education may receive, individually or as a participant in a combination of such institutions, more than one grant, for a period of not more than 5 years, under this section.

"(B) Any institution of higher education that received a grant under this section prior to enactment of the Higher Education Act Amendments of 1991 shall be eligible to receive not more than one additional grant, of not more than 5 years, under this section.";

(2) by striking out paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

TRAINING AND RESOURCE CENTERS

SEC. 805. Section 803(a)(2)(B) of the Act is amended by inserting a comma and "in conjunction with other activities listed in this paragraph" after "programs".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 806. (a) Section 802(a) of the Act is amended—

(1) in paragraph (2)—

(A) by striking out subparagraph (A); and

(B) by striking out subparagraph designation "(B)".

(b) Section 820(b) of the Act is further amended—

(1) by inserting a comma after "combination of institutions"; and

(2) in paragraph (6), by inserting a comma after "including" and "receives a grant".

(c) Section 803(a) of the Act is amended—

(1) by inserting "from the amount available under section 801(b)(2) in each fiscal year and" after "The Secretary is authorized,";

(2) in paragraph (1), by striking out "from the amounts available in each fiscal year under section 801(b)(2)";

(3) in paragraph (2), by striking out "expand comprehensive cooperative education programs," and inserting in lieu thereof "expand comprehensive cooperative education programs; and";

(4) by striking out the flush left language at the end of paragraph (2); and

(5) in paragraph (3), by striking out "cooperative education, from the amounts available in each fiscal year under section 801(b)(4)" and inserting in lieu thereof "cooperative education".

TITLE IX—POSTSECONDARY IMPROVEMENT PROGRAMS

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

SEC. 901. Part A of Title X of the Act is amended—

(1) in section 1001, by striking out the text and the dash immediately before paragraph (1) and inserting in lieu thereof "The Secretary is authorized to make grants to, and enter into contracts with, institutions of postsecondary education (including combinations of such institutions) and other public and private institutions and agencies (except that no grant shall be made to an institution or agency other than a nonprofit institution or agency) to improve postsecondary educational opportunities by:";

(2) by repealing section 1002;

(3) in section 1003—

(A) in subsection (a), by inserting immediately before the period at the end of the first sentence a comma and "with a Director appointed by the Secretary";

(B) in subsection (c)—

(i) in paragraph (1), by adding "and" at the end thereof;

(ii) by striking out paragraphs (2) and (4); and

(iii) by striking out paragraph (3) and inserting in lieu thereof the following:

"(2) advise the Secretary and the Director of the Fund on the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions under the program.";

(4) in section 1004—

(A) by striking out the subsection designation "(a)"; and

(B) by striking out subsection (b);

(5) in section 1005—

(A) by striking out "$14,500,000" and inserting in lieu therof "$14,639,000"; and

(B) by striking out "1987" and inserting in lieu thereof "1992"; and

(6) by redesignating sections 1001, 1003, 1004, and 1005 as sections 901, 902, 903, and 904, respectively.

MINORITY SCIENCE IMPROVEMENT PROGRAM

SEC. 902. Part B of Title X of the Act is amended—

(1) in the Part B heading, by striking out "MINORITY SCIENCE AND ENGINEERING PROGRAMS" and inserting in lieu thereof "MINORITY SCIENCE IMPROVEMENT PROGRAM";

(2) in section 1021(a), by striking out "Institutions";

(3) in section 1022—

(A) in subsection (b), by striking out "Institutions"; and

(B) by striking out subsection (c);

(4) by repealing section 1024;

(5) by redesignating sections 1021, 1022, and 1023 as sections 911, 912, and 913, respectively;

(6) by adding a new section 914 to read as follows:

"MULTI-AGENCY STUDY OF MINORITY SCIENCE PROGRAMS

"SEC. 914. Prior to 1995, the Secretary in cooperation with the heads of other departments and agencies that operate programs similar in purpose to the Minority Science Improvement Program, seeking to increase minority participation and representation in scientific fields, shall submit a report to the President summarizing and evaluating those programs.";

(7) by repealing subpart 2 (sections 1031 through 1033);

(8) by redesignating subpart 3 as subpart 2;

(9) in section 1041—

(A) in paragraph (2), by striking out the semicolon and "and" at the end thereof and inserting in lieu thereof a period; and

(B) by striking out paragraph (3);

(10) in section 1042 by adding a new subsection (c) to read as follows:

"(c) CONTINUED GRANTS ELIGIBILITY.—To remain eligible to receive funds awarded under this part, a grant recipient must demonstrate to the Secretary that it is making reasonable progress toward achieving the goals of the project.";

(11) in section 1043—

(A) by inserting "and consult" following "cooperate"; and

(B) by striking out "and Engineering" following "Minority Science";

(12) in section 1044—

(A) by striking out the subsection designation "(a)"; and

(B) by striking out subsection (b);

(13) by repealing section 1045;

(14) in section 1047—

(A) in subsection (a)—

(i) by striking out the subsection designation "(a)";

(ii) by striking out "$7,500,000" and inserting in lieu thereof "$6,100,000'; and

(iii) by striking out "1987" and inserting in lieu thereof "1992"; and

(B) by striking out subsections (b) and (c); and

(15) by redesignating sections 1041, 1042, 1043, 1044, 1046, and 1047 as sections 921, 922, 923, 924, 925, and 926, respectively.

INNOVATIVE PROJECTS FOR COMMUNITY SERVICE

SEC. 903. Part C of Title X of the Act is amended—

(1) by amending the part heading to read "PART C—INNOVATIVE PROJECTS FOR COMMUNITY SERVICES";

(2) by amending section 1061 to read as follows:

"STATEMENT OF PURPOSE

"SEC. 1061. It is the purpose of this part to support innovative projects in order to encourage student participation in community service projects, including literacy projects.";

(3) in section 1062—

(A) by amending the section heading to read "INNOVATIVE PROJECTS FOR COMMUNITY SERVICES";

(B) in subsection (b), by striking out "Director" and inserting in lieu thereof "Secretary";

(C) by striking out subsection (c); and

(D) by adding new subsection (c) to read as follows:

"(c) DEFINITION.—For the purpose of this part, 'community services' means planned, supervised services designed to improve the quality of life for community residents, particularly those of low income, or to assist in the solution of particular problems related to the needs of such residents. Such services may address problems related to illiteracy, education (including turorial services), health and health care, vocational rehabilitation and training, social and legal services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and any other problem specified by the Secretary.";

(4) in section 1063—

(A) in subsection (a)—

(i) by striking out the subsection designation "(a)";

(ii) by striking out "$3,000,000" and inserting in lieu thereof "$6,830,000"; and

(iii) by striking out "1987" and inserting in lieu thereof "1992"; and

(B) by striking out subsection (b); and

(5) by redesignating sections 1061, 1062, and 1063 as sections 931, 932, and 933, respectively.

REDESIGNATION OF TITLE X

SEC. 904. Title X of the Act is redesignated as Title IX.

TITLE X—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE

REPEAL

SEC. 1001. The Act is further amended by repealing title XI.

TITLE XI—GENERAL PROVISIONS

DEFINITIONS

SEC. 1111. Section 1201(a) of the Act is amended—

(1) in paragraph (2), by adding at the end thereof the following: "subject to such minimum State licensing standards as the Secretary may prescribe in regulations, which the relevant State licensing body shall impose upon institutions that it licenses, and with which an institution is required to comply in order to be eligible to participate in programs under this Act,";

(2) by amending paragraph (5)(B) to read as follows:

"(B) if the Secretary determines that a particular category of institutions is not so accredited because there is no nationally recognized accrediting agency or association qualified to accredit institutions in such category, the Secretary may, pending the establishment of such an accrediting agency or association, appoint an advisory committee, composed of persons specifically qualified to evaluate training provided by institutions in such category, which shall make recommendations to the Secretary concerning the standards of content, scope, and quality that must be met in order to qualify institutions in such category to participate in programs under this Act, and whether particular institutions not so accredited meet the standards established by the Secretary after review of the standards recommended by the advisory committee.";

(3) by inserting immediately following the second sentence the following: "For purposes of title IV, such term also includes any school which provides not less than a six month (or 600 clock hour) program of training to prepare student for gainful employment in a recognized occupation, which has been in existence for at least two years, and which meets the requirements of clauses (1), (2), (4), and (5).'; and

(4) by adding at the end thereof the following: "If an institution is accredited by more than one accrediting body, the institution shall, for purposes of eligibility under this Act, designate one such accrediting body as its primary accreditor, either on an institutionwide basis or by program, and if the institution's accreditation is withdrawn, revoke, or otherwise termined for cause by the primary accreditor, or the institution withdraws from accreditation by the primary accreditor voluntarily under a show cause or suspension order, the institution (or a program thereof) shall no longer be deemed to meet the requirements of clause (5) for 24 months from the date of such withdrawal, revocation or termination, unless during such period of time the institution's accreditation is restored by the same accrediting agency which had accredited it prior to such withdrawal, revocation or termination.".

TREATMENT OF TERRITORIES AND TERRORITORIAL STUDENT ASSISTANCE

SEC. 1112. Section 1204 of the Act is amended—

(1) in subsection (a)—

(A) by striking out "required" and inserting in lieu thereof "authorized"; and

(B) by striking out the subsection designation; and

(2) by striking out subsections (b) and (c).

NATIONAL ADVISORY COMMITTEE ON ACCREDITATION AND INSTITUTIONAL ELIGIBILITY

SEC. 1113. Section 1205(f) of the Act is amended by striking out "1991." and inserting in lieu thereof "1996.".

APPLICATION OF PEER REVIEW PROCESS

SEC. 1114. Section 1210 of the Act is amended—

(1) by inserting the subsection designation "(a)" immediately following the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary is authorized to use up to one-half of one percent of the funds appropriated for discretionary grants, contracts, or cooperative agreements under parts A and B of title I, titles II and III, subpart 5 of part A of title IV, parts A and B of title V, and titles VI, VIII, and IX of this Act to provide for the panels of readers required by this section to review the applications for such discretionary grants, contracts, or cooperative agreements.".

PROGRAM EVALUATIONS

SEC. 1115. Title XII of the Act is amended by adding at the end thereof the following new section:

"PROGRAM EVALUATIONS

"SEC. 1213. (a) The Secretary is authorized to use a portion of the funds appropriated for programs authorized by this Act, in the amounts described in subsection (b), to conduct, to the extent the Secretary determines necessary, evaluations and studies of such programs to determine their effectiveness in providing program services.

"(b) The amount that the Secretary may use for program evaluations under subsection (a) shall be specifically appropriated for such purpose, and shall not exceed—

"(1) $10,000,000 in the aggregate for any fiscal year for all title IV program evaluations; and

"(2) $5,000,000 in the aggregate for any fiscal year for all evaluations of programs authorized by any other title of the Act, except that the amount that may be expended under this section to evaluate a particular program so authorized may not exceed five percent of the funds appropriated for such program for that fiscal year.".

SHARING OF INSTITUTIONAL ELIGIBILITY INFORMATION

SEC. 1116. (a) Title XII of the Act is further amended by adding at the end thereof the following new section:

"SEC. 1214. SHARING OF INSTITUTIONAL ELIGIBILITY INFORMATION.—Notwithstanding any other provision of Federal or State law, the Secretary, a guaranty agency, an accrediting agency, or a State licensing body—

"(1) may provide any information in the Secretary's or its possession, as the case may be, if that information is relevent to an institution of higher education's eligibility to participate in programs under this title, to the Secretary, or any other entity specified in this section that accredits, licenses, or serves as the primary guaranty agency for that institution; and

"(2) shall provide any such information to the Secretary, or any other entity specified in this section that accredits, licenses, or serves as the primary guaranty agency for that institution, as the case may be—

"(A) if the Secretary or other entity in possession of such information is considering, or preparing in possession of such information is considering, or preparing for, an action that would adversely affect an institution's eligibility to participate in programs under this title; or

"(B) upon the request of the Secretary or such other entity, if the Secretary or such other entity is considering, or preparing for, an action that would adversely affect an institution's eligibility to participate in programs under this title.".

INELIGIBILITY FOR DEFAULT ON FEDERAL OBLIGATION

SEC. 1117. (a) Title XII of the Act is further amended by adding at the end thereof the following new section:

"SEC. 1215. INELIGIBILITY FOR DEFAULT ON FEDERAL OBLIGATION.—Notwithstanding any other provision of law, an individual who is in default on any loan made, insured, or guaranteed by the Federal Government shall not be eligible to receive any assistance under this Act unless satisfactory repayment arrangements are made with regard to such default.".

REPEALS

SEC. 1118. Sections 1206, 1211 (as enacted in P.L. 99-498), and 1211 (as enacted in P.L. 100-418) of the Act are repealed.

REDESIGNATIONS

SEC. 1119. Title XII of the Act is further amended—

(1) by redesignating sections 1201, 1202, 1203, 1204, 1205, 1207, 1208, 1210, 1212, 1213 (as added by section 1115), 1214 (as added by section 1116), and 1215 (as added by section 1117) as sections 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, and 1012, respectively; and

(2) by redesignating Title XII as Title X.

TITLE XII—EFFECTIVE DATES

SEC. 1201. (a) Except as otherwise provided in this section, the amendments made by this Act shall be effective on October 1, 1992.

(b) The amendments made by sections 432, 433 (other than the amendments relating to graduated repayment) shall be effective for loans made in accordance with section 427 or 428 on or after the date of enactment to cover periods of instruction beginning on or after October 1, 1991, or made on or after October 1, 1991 in the case of loans made in accordance with section 428A, 428B, or 428C of the Act.

(c) The amendments made by section 463 and 473 shall be effective for loans made on or after the date of enactment for periods of enrollment beginning on or after July 1, 1992.

(d) The amendments made by sections 411, 412, 413, 414, 421, 446(a), (2), and (4), 453, 454, and 495 shall be effective for periods of enrollment beginning on or after July 1, 1992.

(e) The amendments made by sections 417 and 494, and part F of title IV of this Act shall be effective for determinations of need for periods of enrollment beginning on or after July 1, 1992.

(f) The amendments made by sections 439, 440, 441, 444, 448, 497, 498, 499A, 499B, 1116, and 1117 shall be effective 90 days after enactment.

(g) The amendments made by sections 434, 499C, and 499E shall be effective on enactment.

(h) The amendments made by section 433 relating to graduated repayment shall be effective for a loan made, insured, or guaranteed under part B of title IV of the Act, whenever made, for which the student borrower's first payment is due on or after 90 days after enactment.

HIGHER EDUCATION ACT AMENDMENTS OF 1991—SECTION-BY-SECTION ANALYSIS

TITLE I—ACCESS AND RETENTION

Title I. Title I (Access and Retention) of the bill would replace Title I (Postsecondary Programs for Nontraditional Students) of the Act with programs designed to enhance access to postsecondary education for, and retention of, qualified students from low-income or educationally disadvantaged backgrounds.

Title I of the bill would eliminate Part A (Program and Planning Grants) of Title I, which provides assistance to eligibile institutions of higher education to establish programs that meet the needs of adult learners and the adult work force, including off-campus programs and staff training, and continuing education services; Part B (National Programs) which establishes the Adult Learning Research program; Part C (The National Advisory Council on Continuing Education); and Part D (Student Literacy Corps), which authorizes the Secretary to make 2-year grants to institutions to establish student literacy corps programs.

Current Parts A and B are no longer necessary because of the changing characteristics of higher education enrollment during the last two decades. "Nontraditional" students (such as parttime and older students) make up a larger proportion of higher education enrollment, and institutions have responded to the special needs of these students well. Additional direct Federal support to institutions for support programs for those students is no longer needed. This is reflected by the fact that Parts A and B, the institutional support programs, have not been funded since their reauthorization five years ago. Also, significant non-federally funded research in this area is already taking place. Finally, limited, short-term research now authorized by Part B could be funded under the Fund for the Improvement of Postsecondary Education (FIPSE), in Title X of the Act.

Current Part C of Title I is also no longer necessary. With the shift of focus of Title I in 1986 from continuing education to the nontraditional student, the activities of the National Advisory Council gradually diminished during the early 1980's, and the Council was disbanded in 1987.

The literacy functions of Part D of Title I of the Act are being incorporated, in section 1001(c) of the bill, into Part C (Innovative Projects for Community Services and Student Financial Independence) of Title X of the Act.

Section 101. Section 101 of the bill would amend Title I of the Act to authorize the following programs:

Section 101 of the bill would authorize a new Part A (Precollege Outreach Program) of Title I of the Act. This new Part A would provide for a program of formula-based grants to States for the purpose of their making competitive awards to institutions of higher education and nonprofit organizations to provide outreach services to students from low-income and educationally disadvantaged backgrounds. The new Part A would combine important elements of a number of the TRIO programs, currently in Subpart 4 of Part A of Title IV of the Act, to provide for a more flexible, effective, and less burdensome program.

Applicants would be allowed greater creativity in designing programs and providing services. The provision of formula grants to State agencies would ensure that geographic distribution of program funds would be directly related to need and would place ad-

ministration control of the program closer to the people it serves.

States requesting funds under this new Part A must submit to the Secretary a plan for conducting competitions for the award of subgrants to eligible entities. The plan must include procedures for evaluating grant applications, setting award amounts, monitoring expenditure of funds, and evaluating project effectiveness.

New section 113(b) of the Act would authorize the Secretary to allocate funds to each State for this program. The State allocation formula would be based on each State's share of basic and concentration grant funds under Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965. Up to one percent of the total authorization would be allotted to the Territories and to the Secretary of the Interior.

New section 113(c) of the Act would require each State wishing to receive allocations to submit an application to the Secretary. The application would have to include a plan for conducting annual competitions for the award of grants and the designation of a State agency to administer the program.

New section 114 of the Act would authorize a State to make three-year, renewable, competitive subgrants to eligible entities (two-year and four-year nonprofit insitutions of higher education, public and private nonprofit organizations and agencies, businesses, and secondary schools (if there are no other applicants capable of providing the services for which funding is requested in the targeted service area)). The State would only award subgrants to entities that establish a relationship with local educational agencies serving the largest concentration of disadvantaged students. The Federal share of the cost of such projects could not exceed 90 percent the first year, 85 percent the second year, 80 percent the third year, 75 percent the fourth year, and 70 percent thereafter. Grants could be used for planning, developing, or carrying out a number of specified services.

New section 114(b) of the Act would require eligible entities wishing to receive an award from a State to submit an application to the State containing certain information and assurances, including an assurance that it demonstrate a relationship with local educational agencies receiving Chapter 1 funding.

New section 114(c) of the Act would require that the criteria used by the State in selecting grant recipients include the degree to which the applicant's target service area includes large numbers of low-income or first generation college students; the degree to which the proposed project is likely to increase the postsecondary admission rate of the individuals to be served; the degree to which the projects selected are coordinated with those funded under Chapter 1; and the adequacy of the performance standards proposed by an applicant when compared to the standards established by the State against which the project's success will be measured.

New section 115 of the Act would provide a list of services that could be funded. This list would offer the same variety of services as the School, College, and University Partnerships program, in Part B of Title V of the Act, and certain TRIO programs (Upward Bound, Talent Search, and Educational Opportunity Centers) within a single, flexible outreach program. This consolidation would allow institutions greater flexibility and creativity in designing programs and providing services and would reduce administrative burden on both institutions and the Department. New section 115 would prohibit the use of funds for the recruitment of students by an institution of higher education.

New section 116 of the Act would authorize $253,000,000 to be appropriated for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.

Section 101 of the bill would place the Student Support Services program, currently authorized in section 417D of the Act, in a new Part B of Title I of the Act. The Student Support Services program provides assistance to institutions of higher education for support services for individuals from disadvantaged backgrounds who need academic support to successfully complete their postsecondary education. This program is more appropriately placed in Title I in light of the proposed new focus of Title I on access and retention.

Section 101, however, would make the following changes to the Student Support Services program:

Section 101 would provide, in new section 125 of the Act, an authorization of $129,799,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.

Section 101 would replace the requirement, currently in section 417A(b)(2) of the Act, that the Secretary give consideration to applicant institutions that have prior experience in conducting Student Support Service projects with a requirement that the Secretary give the highest priority to the neediest applicant institutions (institutions with the lowest educational and general expenditures per full-time equivalent student). This change in priority would help ensure that assistance is directed to those institutions that have the greatest financial need in providing the support services that are necessary to ensure that all their students are able to complete their programs of study and otherwise to take full advantage of the educational opportunities they have been afforded.

The Ronald E. McNair Post-Baccalaureate Achievement graduate program, currently in section 417D(d) of the Act, would be taken out of the Student Support Services program and merged into the new Ronald E. McNair Graduate Outreach Program which would be authorized in section 101 of the bill as a new Part C of Title I of the Act. The new program would combine the Ronald E. McNair Post-Baccaulaureate Achievement program, currently in section 417(D)(d) of the Act, with the Grants to Institutions to Encourage Minority Participation in Graduate Education program, currently in Part A of Title IX of the Act, while maintaining the McNair title. The single new program would simplify program delivery and reduce administrative burden on both institutions and the Department.

New section 132 of the Act would authorize competitive grants and contracts to institutions of higher education to provide services to individuals from disadvantaged backgrounds to prepare them for graduate, professional, and doctoral study. The criteria for making awards would include the quality of the recruitment and outreach program, as well as the applicant's research and study program. The Secretary would, in making such grants, ensure an equitable geographic distribution among eligible public and private institutions of higher education. Awards would be for a three year period. Continuation awards would be made to institutions that demonstrate reasonable progress toward the performance goals included in their applications and the ability to provide the increasing match of funds.

New section 133 of the Act would require any institution of higher education desiring to receive an award under this part to submit an application to the Secretary, containing certain information and assurances. The Secretary would not make an award without assurances that at least two-thirds of the individuals participating in the proposed project are low-income first-generation college students; the remaining persons participating in the project are from a group that is underrepresented in graduate education; participants are enrolled in a degree program at an eligible institution; and participants in summer research internships have completed their sophomore year in postsecondary education.

New section 134 of the Act would provide a list of the projects and activities for which funds can be used. This list would contain a variety of uses similar to those specified in the existing McNair and Minority Participation programs.

New section 135 of the Act would authorize $10,826,000 to be appropriated for the new Part C for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.

TITLE II—NATIONAL GRADUATE FELLOWSHIPS PROGRAM

Section 201. Section 201(a) of the bill would repeal Title II of the Act, which authorizes the Secretary to provide assistance for academic library and information technology enhancement. The Library Career Training program (authorized under section 222 of current law) would be consolidated with other graduate fellowship programs under the Act, thus allowing the study of library and information sciences to compete with other fields of study for Federal fellowship assistance. The remaining library programs currently authorized in Title II of the Act no longer need to receive Federal assistance. These programs have met their goals of alleviating the shortage of college libraries and of demonstrating the uses of new information technologies. Further, non-Federal sources of funds are available to support these types of activities.

Section 201(b) of the bill would repeal Title IX of the Act, which authorizes the Secretary to provide assistance for graduate study. In general, programs currently authorized under Title IX of the Act would be consolidated into a new National Graduate Fellowships program that would provide flexibility to meet national priorities and would reduce the administrative burden associated with a multiplicity of requirements for individual fellowship programs. Thus, the Patricia Roberts Harris Fellowships, the Jacob K. Javits Fellows program, and the Graduate Assistance in Areas of National Need program would be incorporated into the proposed National Graduate Fellowships program. Further, Federal support of clinical legal education activities authorized under Part F of Title IX of the Act is no longer necessary, since this type of education has been successfully demonstrated, clinical education programs are now provided at many of the Nation's law schools, and these programs will continue to be provided without Federal assistance.

The minority participation program authorized in Part A of Title IX of the Act duplicates the Ronald E. McNair Post-Baccalaureate Achievement program, which also authorizes grants to institutions of higher education to prepare disadvantaged students for graduate school. In the interest of administrative simplicity, this program would be incorporated into a new Ronald E. McNair

Graduate Outreach program described in proposed Part C of Title I of the Act. Similarly, students currently assisted under Part E of Title IX of the Act to undertake training in the legal profession may be served under proposed outreach programs.

Section 202. Section 202 of the bill would create a new Title II of the Act, entitled the "National Graduate Fellowships Program," as a single, unified fellowship program for graduate students under this Act. In addition to the consolidation noted above, the proposed program would incorporate the Foreign Language and Area Studies Fellowship program authorized under Title VI of current law. The repeal of that program is provided in Title VI of the bill. The National Graduate Fellowships program, which would be designed to provide Federal support for graduate education in areas of national need, would contain the following provisions.

Proposed section 201. Proposed section 201 of the Act would state congressional findings that: (1) since the economic well-being and national security of the United States depend on an adequate supply, in areas of national need, of highly trained individuals capable of conducting advanced research, teaching at the postsecondary level, and applying their expertise in the world marketplace, it is in the best interest of the United States to support highly qualified individuals as they pursue their graduate studies; and (2) since certain groups continue to be underrepresented in graduate studies in areas of national need, even though these groups, as a percentage of the population, are increasing, it is also in the best interest of the United States to support highly qualified individuals who are members of these groups in their pursuit of graduate studies in areas of national need, and to encourage IHEs to assist these students in their graduate studies. Thus, this section of the bill would state that the purpose of proposed Title II would be to provide competitive grants to IHEs so that these institutions can provide financial support to highly qualified graduate students, including students from traditionally underrepresented groups, studying in areas of national need, to ensure that the highly skilled workforce needs of the United States are met.

Proposed section 202. Proposed section 202 of the Act would require the Secretary to make grants to IHEs that provide programs of study leading to a graduate degree to enable these IHEs to provide fellowship assistance to graduate students in accordance with the provisions of proposed Title II. The proposed program is intended to provide fellowship stipends primarily to students pursuing a doctoral degree or its equivalent, in order to have the academic preparation needed for advanced research, teaching at the postsecondary level, or the attainment of expertise applicable in the world marketplace. The Secretary would be authorized to define "graduate degree" when specifying areas of national need, since different disciplines have different requirements for a terminal degree. In addition, the program would include payments to institutions to help meet the cost of tuition and fees, as well as other costs of education, of students awarded a fellowship stipend under this program. This proposed section would also designate each recipient of a fellowship stipend awarded under proposed Title II as a "National Graduate Fellow."

Proposed section 203. Proposed section 203 of the Act would provide that any IHE that offers a program of post-baccalaureate study leading to a graduate degree in an area of national need may apply for a grant under proposed Title II. However, the IHE would be eligible only if the program of study in which a National Graduate Fellowship is sought has been in existence for at least four years prior to application for assistance under proposed Title II. The Secretary would designate areas of national need, as frequently as the Secretary determines to be appropriate, after consultation with public or private agencies and organizations, including other Federal agencies. Areas of national need would include such areas as biology, chemistry, computer science, engineering, foreign language or area studies, geosciences, mathematics, physics, or any discipline that the Secretary determines to be in accord with the purposes of proposed Title II. Requiring the Secretary to designate areas of national need would ensure that Federal support is provided for students in appropriate academic disciplines based on changing national workforce needs.

Proposed section 203 of the Act would also require that any IHE desiring to participate in the proposed Title II program submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application would be required to: (1) describe the applicant's program of graduate study for which the grant is sought; (2) set forth policies and procedures to ensure that, in awarding fellowship stipends under proposed Title II, the applicant will seek highly qualified students, including those students from traditionally underrepresented backgrounds; (3) set forth policies and procedures to ensure that, in awarding fellowship stipends under proposed Title II, the applicant will make awards to individuals eligible under Title II; (4) provide an assurance that Federal funds made available under proposed Title II for any fiscal year will be used to supplement the funds that would otherwise be made available for the purpose of this proposed title, and in no case to supplant those funds; (5) provide an assurance that, if funds made available to the applicant under proposed Title II are insufficient to provide the assistance due to a student under the commitment entered into between the applicant and the student, the applicant will endeavor, from any funds available to it, to fulfill the commitment to the student; and (6) contain such other information as the Secretary may prescribe.

Proposed section 204. Proposed section 204 of the Act would require the Secretary to allocate funds under proposed Title II based principally on the quality of the graduate programs presented in competing applications. The criteria with which to measure program quality would be identified in regulations and may include such measures as qualifications of teaching staff, plans for recruitment of highly qualified students, and institutional commitment to the program.

The Secretary would be required to seek to achieve an equitable geographic distribution of programs assisted under proposed Title II and an equitable distribution of such programs among eligible public and private IHEs. These two criteria would provide a basis for ranking IHEs in the case of equally acceptable applications based on quality; in essence these distribution factors would be "tie breakers."

Further, the Secretary would be required to ensure that, in making awards under proposed Title II, fellowships are made to highly qualified individuals, including, to the maximum extent feasible, highly qualified individuals from groups traditionally underrepresented in graduate studies in areas of national need. Thus, while the all of the fellowship stipends under proposed Title II would be awarded for graduate studies in areas of national need, highly qualified individuals other than those from traditionally underrepresented groups could be eligible for a fellowship.

Proposed section 204 of the Act would also provide that whenever the Secretary determines that an IHE is unable to use all of the funds available to it under proposed Title II, the Secretary shall, on such dates during each fiscal year as the Secretary may fix, reallot the amounts not used by the IHE to other participating IHEs that can effectively use the grants authorized by proposed Title II.

Finally, proposed section 204 of the Act would provide that whenever an IHE determines that a National Graduate Fellow at the IHE no longer satisfies program eligibility requirements, the Fellow would be required to remit to the IHE a portion of the fellowship in accordance with the pro rata refund provisions in proposed Title IV of the Act. The IHE would be authorized to use the amount remitted to assist another highly qualified student at that institution, under the conditions of the previous fellowship.

Proposed section 205. Proposed section 205 of the Act would require an IHE that receives an award under proposed Title II to make a commitment to each graduate student, enrolled in the IHE and designated as a National Graduate Fellow, at any point in his or her graduate study, to provide stipends for the length of time necessary for the student to complete his or her course of graduate study, including the time to complete a doctoral dissertation, but in no case longer than five years. However, the institution would not be allowed to make such a commitment unless the institution determined that adequate funds are available to fulfill the commitment either from funds received or anticipated under this title, or from institutional funds.

Proposed section 205 of the Act also would provide that the size of the fellowship stipend awarded to students for an academic year shall not exceed the lesser of the maximum stipend, as determined by the Secretary under proposed Title II, or the demonstrated level of financial need, according to the criteria under proposed Part F of Title IV. The maximum stipend for academic year 1992–1993 would be $10,000, while the Secretary would determine the maximum stipend for each academic year succeeding academic year 1992–1993. The proposed $10,000 maximum fellowship level is the same as that of the fellowship programs currently authorized in Title XI of the Act; it reflects an increase over the maximum fellowship stipend for the Foreign Language and Area Studies program in Title VI of current law and the Library Career Training program in Title II of current law.

Proposed section 206. Proposed section 206 of the Act would provide that a student would be eligible to receive a fellowship stipend only during periods in which the student: (1) is maintaining satisfactory progress in, and devoting essentially full time to, study or research (including acting as a teaching, research, or other assistant as may be required as a condition for receiving a post-baccalaureate degree) in the field in which such fellowship was awarded; and (2) is not engaging in gainful employment, other than part-time employment by the institution involved in teaching, research, or other similar activities, as approved by the Secretary. Further, a student would be eligible to re-

ceive a stipend under proposed Title II only if the student: (1) is a citizen, national, or permanent resident of the United States; (2) provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident of the United States; or (3) is a permanent resident of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Palau (but only until the Compact of Free Association with Palau becomes effective), Puerto Rico, and the Virgin Islands. This requirement would help achieve the goal of developing a highly qualified workforce in the United States.

Proposed section 207. Proposed section 207 of the Act would require the Secretary, in addition to paying fellowship stipends to students, to pay to an IHE, for each student awarded a fellowship stipend under proposed Title II for pursuing a course of study at the IHE, an amount up to $6,000 for academic year 1992–1993, and such amounts as the Secretary determines in subsequent academic years. Proposed section 207 would also require the IHE to use this payment only to cover the cost of tuition and fees for the student receiving the fellowship stipend and other costs of education to the extent that payment for these costs was not otherwise remitted to the IHE or forgiven by the IHE in conjunction with the student's receipt of a teaching, research, or other assistantship.

Proposed section 208. Proposed section 208 of the Act would authorize the Secretary to award continuation grants to IHEs that demonstrate satisfactory progress in achieving the purpose of proposed Title II. An IHE that receives a continuation grant would be required to give preference in awarding fellowship stipends to students who have received National Graduate Fellowships and who demonstrate satisfactory progress in their studies.

Proposed section 209. Proposed section 209 of the Act would require an IHE that receives a grant under proposed Title II to submit to the Secretary an annual report, which the Secretary may use in determining the award of continuation grants. The annual report would include, as the Secretary determines appropriate: (1) an assurance that each student that has been awarded a National Graduate Fellowship stipend at the IHE is making satisfactory progress in, and is devoting essentially full time to, his or her study or research; (2) a description of the effectiveness of the program, including, where feasible, the degree to which National Graduate Fellows have entered into the field for which they received a fellowship stipend; (3) a description of the extent to which the institutional payment covers the cost of tuition and fees, and other costs of education, of the National Graduate Fellows and the extent to which these costs have been waived by the Institution; and (4) such other information as the Secretary may reasonably require.

Proposed section 209 of the Act would also authorize the Secretary to require an IHE assisted under proposed Title II to submit such other reports, containing such information in such manner and at such times as the Secretary determines necessary.

Finally, proposed section 209 of the Act would require the Secretary, prior to the reauthorization of the National Graduate Fellowship Program, to submit a report to the Congress summarizing and analyzing the information received from institutions participating in the program. The reporting requirement would also provide that the Secretary report to Congress at such interim points in the administration of this program as the Secretary deems appropriate.

Proposed section 210. Proposed section 210 of the Act would provide for continued fellowship assistance as awarded under current law by requiring that the Secretary make new awards under proposed Title II only to the extent that funds remain after the Secretary provides continued funding, in accordance with the terms of the Act as in effect prior to enactment of this proposed Act, to recipients of fellowship assistance for the Foreign Language and Area Studies Fellowship program, the Patricia Roberts Harris Fellowship program, the Jacob K. Javits Fellows program, or the Graduate Assistance in Areas of National Need program.

Proposed section 210 of the Act would also require an IHE that receives a grant under proposed Title II to give preference in awarding fellowships to students who have received previous fellowships under the programs noted above. The terms of the fellowships would be the same as those of the fellowships received in the previous year. A student who received fellowship assistance under the programs listed above would be eligible to receive a National Graduate Fellowship stipend; however, no student would be eligible to receive more than a total of five years of fellowship assistance.

Proposed section 211. Proposed section 211 of the Act would authorize appropriations of $65,449,000 to carry out proposed Title II of the Act for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years. This proposed funding level would be the same as the combined fiscal year 1991 appropriation for the programs proposed for consolidation. A more focused and unified graduate fellowship program, as proposed above, should provide Federal support in a manner that would ensure a more efficient and effective use of Federal funds.

Section 203. Section 203 of the bill would make a technical amendment in accordance with the proposed repeal of Title II of current law.

TITLE III—INSTITUTIONAL AID

Title III. Title III of the bill would amend Title III (Institutional Aid) of the Act as follows:

Section 301. Section 301(1) of the bill would amend section 301(a)(1) of the Act to eliminate from the finding in paragraph (1) the reference to "declining enrollments and scarce resources" and to insert instead a reference to institutions "serving high percentages of minority students and students from low-income backgrounds." Current enrollment trends show that postsecondary enrollment is increasing. This change would more clearly define the Title III target institutions.

Section 301(2) of the bill would eliminate from the finding in section 301(a)(2) of the Act an inappropriate reference to "recruitment activities." Recruitment, either of students or faculty, has never been an allowable activity under Title III.

Section 301(3) of the bill would eliminate the outdated finding in section 301(a)(3) of the Act, that Title III programs prior to 1985 did not always meet the needs of Historically Black Colleges and Universities ("HBCUs") and other institutions with large concentrations of minorities and low-income students.

Section 301(4) of the bill would amend the finding in section 301(a)(5) of the Act to eliminate references to minimum assistance for and continuing participation of eligible institutions under Title III. These references are unnecessary since Title III programs continue to provide substantial support to eligible institutions to help them become, financially and academically, self-sustaining institutions of higher education.

Section 302. Section 302(a) of the bill would amend section 311 of the Act to substitute "ALLOWABLE ACTIVITIES" for "SPECIAL CONSIDERATION" in subsection (b)'s heading; eliminate subsection (b)(2)'s eligibility requirements for special consideration; and make subsection (b)(3)'s list of factors for special consideration into a nonexclusive list of examples of activities for which eligible institutions may use Part A funds. The special consideration provisions of section 311 were enacted to serve as grant tie-breakers.

Section 302(b) of the bill would amend section 312 of the Act as follows:

Section 302(b)(1) of the bill would amend section 312(b)(1)(B) of the Act to revise the eligibility criteria for institutions of higher education. Section 302(b)(1)(A)(i) of the bill would change the criteria in section 312(b)(1)(B) of the Act to require that the institution's average educational and general expenditures be lower, by a particular percentage determined yearly by the Secretary, than the expenditure of similar institutions. This amendment would give the Secretary the flexibility to adjust the currently large size of the Part A applicant pool to ensure that the neediest institutions have a better chance to compete successfully.

Section 302(b)(1)(A)(iii) of the bill would eliminate section 312(b)(1)(E) of the Act, which requires eligible institutions to have been accredited for 5 years prior to seeking assistance under this part. This requirement was enacted in 1965 when the number of new institutions being established was much higher. Now, there is less of a need to ensure that Part A funds will be used to strengthen existing "struggling" institutions rather than be awarded to new institutions to use for initial development. Also, the 5-year rule is unduly burdensome to administer and is subject to a number of statutory waivers.

Section 302(b)(1)(C) of the bill would eliminate sections 312(b)(3), (4), and (5) of the Act which define, respectively, an eligible institution as any institution that has an enrollment of at least 20 percent of Hispanic students, an institution that has an enrollment of at least 60 percent American Indian Students, and an institution that has an enrollment of a least 5 percent of Native Hawaiian, Asian American, American Samoan, Micronesian, Guamanian, or Northern Marianian students. These definitions act as waivers of the 5-year rule in section 312(b)(1)(E) of the Act. Since the 5-year accreditation rule would be deleted from the statute, these provisions are unnecessary.

Section 302(b)(2) of the bill would eliminate section 312(c)(1) of the Act, which defines "enrollment of needy students," for purposes of determining eligibility, as an institution at which at least 50 percent of the enrolled degree students are receiving need-based assistance under Title IV of the Act. Like the amendment made by section 302(b)(1)(A)(i) of the bill, this amendment would give the Secretary the flexibility to adjust the currently large size of the Part A applicant pool to ensure that the neediest institutions have a better chance to compete successfully.

Section 302(c) of the bill would amend section 313 of the Act to authorize only two types of grants (a 1-year planning grant and a 5-year development grant) under Part A, rather than the three types currently available. Section 302(c) would also limit each grantee to one of each type of grant. Planning grants help institutions thrive and

move towards self-sufficiency, while development is better served by grants that emphasize long-range projects. Limiting each grantee to one of each type of grant will ensure that more institutions receive Part A awards.

Section 302(d) of the bill would eliminate section 314 of the Act, which establishes rules for review panels. Since the Department has general administrative regulations that govern the selection of, and procedures for, review panels, section 314 of the Act is unnecessary. Section 301(d) of the bill would substitute, instead, a requirement that each application under Part A describe the establishment of measurable goals for the institution's financial planning and academic programs, and any continuation application must demonstrate progress toward achievement of those goals.

Section 303. Section 303(a) of the bill would amend section 322(2) of the Act to eliminate from the definition of "part B institution" the requirement that HBCUs have as a continuing principal mission the education of Black Americans. Such a principal mission could violate Title VI of the Civil Rights Act of 1964.

Section 303(b) of the bill would amend section 323 of the Act to add establishing or improving a development office to strengthen or improve alumni and private sector contributions as a new item to the list of allowable activities in subsection (a). Section 303(b) of the bill would also add a new requirement that grants to eligible undergraduate institutions be made for a period not to exceed 10 years from 1987 and that no more than two 5-year grants may be made to any one undergraduate institution. This change is consistent with the program's legislative history; Congress never intended that these grants be permanent.

Section 303(c)(1) of the bill would amend section 325(a) of the Act to clarify that HBCUs must submit applications and performance reports in accordance with the general requirements in section 351 of the Act. This is consistent with Part A applications, which must contain objectives and qualitative and quantitative outcome measures for each activity and the annual performance reports, which must indicate the grantees' success in achieving their objectives.

Section 303(c)(2) of the bill would amend section 325(c) of the Act to require that Part B applications, like Part A applications, describe the establishment of measurable goals for the institution's financial planning and academic programs, and continuation applications demonstrate progress toward achievement of those goals.

Section 303(d) of the bill would amend section 326(b) of the Act to require that Part B grants to eligible professional or graduate institutions be made for a period not to exceed 10 years from 1987 and that no more than two 5-year grants be made to any postgraduate institution. This change is consistent with the program's legislative history; Congress never intended that these grants be permanent.

Section 304. Section 304(a) of the bill would amend the heading for Part C so that it is correctly called the "Endowment Challenge Grant" program. Other amendments made by section 304 of the bill would conform terminology with this change.

Section 304(b) of the bill would repeal section 331 of the Act, which establishes the Challenge Grant Program. The Challenge Grant Program, authorized in 1982, was intended to be the mechanism to encourage Part A and B eligible institutions and certain postgraduate medical schools to strengthen their fundraising capabilities in order to achieve self-sufficiency and to "graduate" from Title III. It did not have this effect, however. Awards were made under this program for only two years. In 1984, when the Endowment Challenge Grant program was established. Congress stopped appropriate funds for new Challenge Grant awards. The last Challenge Grant continuation award expired in September, 1988.

Section 304(c)(1) of the bill would amend section 332(a)(2) of the Act to add a definition of eligible institution. This definition is nearly the same as the definition contained in section 331(a) of the Act, which would be repealed by section 304(b) of the bill above.

Section 304(c)(2)(B) of the bill would amend section 332(b) of the Act to allow the Secretary to make an endowment challenge grant under Part C of more than $1,000,000 in any fiscal year in which the appropriations for Part C exceed $20 million, rather than $10 million. Raising the appropriations trigger in section 332(b) of the Act would ensure that in a given year sufficient funds would be available for the smaller 1:1 matching grants. In the three years since the 2:1 matching awards were initiated, grant reservations for 2:1 matching awards have accounted for nearly 70 percent of the total funds available.

Sections 304(c)(2)(C) and (D) of the bill would amend sections 332(b)(4)(A) and (B) of the Act to make technical and conforming changes.

Section 304(c)(2)(E) of the bill would amend sections 332(b)(5)(A) and (B) of the Act to make technical corrections to subparagraph (A) and to update the provision setting the cap for the amount of an award in subparagraph (B).

Section 304(c)(3) of the bill would amend section 332(f) of the Act to give a priority under Part C to current recipients of Part A or B grants and grantees that have received those grants in any of the five fiscal years preceding the fiscal year in which the applicant is applying for the Part C grant. This amendment would expand the number of institutions serving low-income students that could be eligibleeach year for an endowment challenge grant.

Section 304(c)(4) of the bill would amend section 332(g) of the Act to require Part C applicants to provide a description of their long- and short- term plans for raising and using the funds under Part C.

Section 305. Section 305(a) of the bill would eliminate section 351(b)(7)(D) of the Act, which requires information from Title III applicants based on expectations of declining enrollments among institutions of higher education. This information is no longer necessary since enrollments are no longer expected to decline.

Section 305(b) of the bill would eliminate sections 352(a) (3) through (6) of the Act, which constitute waivers of the requirement that, in order to be eligible to receive Part A grants, institutions of higher education must have a certain enrollment of needy students. As noted, in the description of section 302 of the bill, Part A is burdened with a complex set of waivers that have the effect of making the eligibility pool too large and inclusive.

Some waiver authority would be retained, however. Section 305(b) of the bill would retain the waiver authorities in sections 352(a) (1) and (2) of the Act because they protect the eligibility of State-subsisized institutions with low tuition. Likewise, section 352(b) waivers, recognizing the impact on educational and general expenditures of cost-of-living differences between urban and rural areas, would be retained. These waivers are necessary to protect the eligibility of State-supported institutions and institutions in urban areas, both of which enroll large numbers of low-income and minority students.

Section 305(c) of the bill would repeal section 353 of the Act. Section 353, like section 314 of the Act (which would be repealed by section 302(d) of the bill), is unnecessary. Review panel selection and procedures are handled through the Department's general administrative regulations.

Section 305(d) of the bill would repeal section 355 of the Act. Sections 355 (a) and (b) of the Act provide for payments after the enactment of the 1986 amendments and are not out of date. Section 355(c) of the Act provides for the use of Part A and B funds that remain available after the end of the fiscal year. Since funds appropriated for Parts A and B of Title III are available only for one fiscal year, so this provision has no practical effect.

Section 305(e) of the bill would repeal section 356 of the Act, which provides for a waiver of the non-Federal share required under Titles II, IV, VII, and VIII for eligible institutions under Title III. The section 356 waiver would affect only three programs, the Cooperative Education program in Title VIII, and the College Work Study and Supplemental Educational Opportunity Grants (SEOG) programs in Title IV. The Cooperative Education program provides "seed money" and an increasing institutional share designed to encourage institutions to continue their programs with non-Federal resources after five years. The College Work Study and SEOG programs benefit the institutions as well as the students, through tuition revenues and subsidized labor, and the institution should bear some of the cost. Such a waiver of the non-Federal share is inappropriate for these programs. Also, Title III schools currently make up about one third of all the institutions of higher education. The sums waived and the disparity between costs for Title III and non-Title III schools will be considerable.

Section 305(f) of the bill would repeal section 359 of the Act. Section 359 of the Act is unnecessary, since the challenge grant authority would be repealed by section 304(b) of the bill.

Section 305(g)(1) of the bill would amend section 360(a) of the Act to authorize appropriations for Parts A, B, and C.

Also, section 305(g)(1) of the bill would amend section 360(a)(3) of the Act to authorize additional appropriations for endowment challenge grants under Part C for HBCUs that qualify as Part B institutions. As amended, section 360(a)(3)(B)(i) would authorize $60,000,000—$10,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, and $10,000,000 for fiscal year 1995 for endowment challenge grants to such institutions. Section 360(a)(3)(B)(ii) would clarify that if for any fiscal year a Part B institution competes successfully for an award from funds appropriated under the additional authorization in clause (i), it could not receive funds for that fiscal year appropriated under the basic authorization for the Part C program in section 360(a)(3)(A) of the Act, but that if for any fiscal year a Part B institution does not receive an award from the funds appropriated under the additional authorization in clause (i), that institution would be eligible to compete for and receive funds for that fiscal year appropriated under the basic authorization in subparagraph (a).

Section 305(g)(2) of the bill would eliminate section 360(c) of the Act. Section 360(c)(1) requires that two-year institutions of higher education receive no less than $51,400,000 of the funds appropriated annually under Part A, and sets aside 25 percent of the difference between the Part A appropriation and the fiscal year 1986 appropriation for eligible institutions with the "highest percentages" of minority students. Since two-year institutions of higher education compete so successfully for grants, no convincing case can be made for retaining the set-aside.

Section 360(c)(2) of the Act requires Title III funding of institutions based on their percentage of minority students from 100 percent down until the set-aside is exhausted. As a result, highly ranked institutions with high enrollments of minority students (some with minority enrollments of over 80 percent, for instance), and that have submitted the most meritorious applications, must be skipped to fund lower scoring applications from institutions with a 100-percent enrollment of minority students.

TITLE IV-STUDENT ASSISTANCE

Part A—Grants to students

Section 401. Section 401 of the bill would amend the statement of purpose for Part A of Title IV of the HEA in section 401 of the Act to eliminate references to programs that would be repealed by this bill—the State Student Incentive Grant (SSIG) program, Special Programs for Students from Disadvantaged Backgrounds, Assistance to Institutions of Higher Education (including the Veterans Education Outreach Program), and Special Child Care Services for Disadvantaged College Students—and to include references to the programs that would be added to Part A by this bill, namely the new Presidential Achievement Scholarship program and the National Science Scholars program, currently authorized under Part A of Title VI of the "Excellence in Mathematics, Science and Engineering Education Act of 1990" (P.L. 101-589). Both of these additions to Part A focus on academic achievement, as does the Robert C. Byrd Honors Scholarship program authorized in subpart 6 of Part A of Title IV of the Act, so it is appropriate that the statement of purpose for this part also reflect that emphasis on excellence.

Subpart 1—Pell Grants

Section 411. Section 411(1) of the bill would amend section 411(a)(1) of the Act to extend, through fiscal year 1997, the authorizaton for the Pell Grant program in Subpart 1 of Part A Title IV of the HEA. In addition, section 411(2) of the bill would eliminate the requirement that the Department pay an institution, in advance of each payment period, at least 85 percent of the amount the institution estimates that it will need to pay eligible Pell Grant recipients. This amendment would clarify the Secretary's authority to place institutions posing a high risk of fund mismanagement on the "reimbursement system" of Pell Grant funding, and would ensure that the Secretary has the necessary flexibility to treat problem institutions appropriately. Under the reimbursement system, an institution must document the need for Pell Grant funds after eligible students have enrolled and have started attending classes, not before. The reimbursement system thus reduces the likelihood that Pell grant funds will be misspent. In addition, the 85 percent requirement has resulted in cash flow problems for the Pell Grant program, when institutions have not promptly returned excess funds that would have otherwise been available to the Secretary for distribution to other institutions that need the funds for their Pell Grant recipients later in the year.

Section 412. Section 412 of the bill would make a number of changes to section 411(b) of the Act. First, the current three award rules, under which the amount of a Pell Grant that a student is eligible to receive is determined, would be replaced with two award rules designed to improve the targeting of Pell Grants on the lowest income students by taking into account each family's ability to contribute to the student's educational costs and funding a percentage of financial need. The amount of a students Pell Grant award would be the lesser of 1) the maximum Pell Grant minus the expected family contribution, or 2) a percentage of the student's need for financial assistance (defined as the cost of attendance minus the expected family contribution). The percentage used in the second proposed award rule would vary from 79 to 30 percent, declining as the income of the student's family increases. The first proposed award rule is one of the current award rules, and would serve as a limit on the awards to relatively higher income students attending institutions with higher costs of attendance. The second award rule would reduce the proportion of need met by the Pell Grant for higher income families.

Next, section 412 of the bill would substantially increase the maximum amount of a Pell Grant to $3,700 for award year 1992-1993 and the four succeeding award years. This amendment would support the Adminstration's major educational goals of promoting lifelong learning and ensuring access to postsecondary education for disadvantaged students. Such an increase would also greatly improve the purchasing power of the Pell Grant, which has eroded over the last decade as tuition costs and inflation have outpaced the increases in the maximum and average Pell Grant awards. Better targeting of the Pell Grant, through the modification of the award rules proposed in this section of the bill, and changes to the need analysis system (such as reducing the minimum contribution in cases of negative discretionary parental income) contained in Part F of Title IV of the bill would ensure that the new maximum Pell Grant would be available only to the lowest income students. In addition, the size of the proposed increase would ensure broad access to a wide range of postsecondary educational opportunities at a variety of institutions.

The minimum Pell Grant award would also be raised from $200 to $400. The Pell Grant minimum has not been increased since 1975 and the proposed increase would be only a partial adjustment for inflation. Pell Grants of less than $400 provide relatively little benefit to the student, and the administrative burden associated with such small awards outweighs that benefit. Moreover, Pell Grants of less than $400 are disproportionately awarded to students with the highest family incomes among those eligible.

Section 412 of the bill would also amend section 411(b) of the Act to elimnate the restrictions currently in sections 411(b)(6) and (7) of the Act regarding the eligibility of less than half-time students to receive Pell Grants. Pell Grant eligibility for less than half-time students provides access to postsecondary education for those individuals who cannot, for an variety of reasons, attend school on a half-time or greater basis. In addition, this amendment would reflect the changing demographics of the postsecondary education population, which includes an increasing share of part-time students.

Section 413. Section 413 of the bill would amend section 411(c)(1) of the Act to reduce the period of Pell Grant eligibility for short-term programs, and to clarify that the maximums for the various lengths of undergraduate degree or certificate programs are cumulative and includes prior coursework not necessarily taken at the same institution. A student taking an undergraduate degree or certificate program normally requiring two years or less would be eligible for Pell Grants for up to a total of three academic years, regardless of how many such short-term programs the student takes. Students should not be able to receive Pell Grants for numerous, successive programs of short duration, which could be an indication that the student is merely pursuing his or her recreational or avocational interests and may not be serious about obtaining an education. A three-year maximum would still provide sufficient flexibility to students enrolled in shorter programs, but would reduce the potential for abuse of the current, overly generous maximum duration for Pell Grants, which is designed to accommodate the length of time normally necessary to complete a first baccalaureate degree, not short-term programs. If a student who was initially subject to the new three-year maximum were to subsequently enroll in a program longer than two years, the student would then be subject to the applicable five- or six-year cumulative maximum in current law.

Section 413 of the bill would amend section 411(c)(3) of the Act to eliminate the use of the term "entitlement" from that provision. This amendment would not change the basic nature of the Pell Grant program, which does not fit the definition of a true entitlement program because the award amounts for which students are eligible can be reduced due to insufficient appropriations.

Section 414. Section 414 of the bill would eliminate the calculation of eligibility provisions in section 411(f) of the Act. A modified provisions in section 411(f) of the Act. A modified version of this provision is proposed for inclusion in section 483 of the Act by section 494 of the bill. The modifications and new placement of this provision would be consistent with other changes to the processing of student aid applications proposed in section 494 of the bill.

Section 415. Section 415 of the bill would modify the language of the linear reduction formula currently in section 411(g) of the Act. The current formula provides that in the event funds appropriated are insufficient in any given year to pay for all grants to students, then the most financially hardpressed students (the so-called "hold harmless" class of students, who have an expected family contribution, or EFC, of $200 or less) would not have their awards reduced. However other students would, under the formula, have their awards progressively reduced depending on their financial status. Section 415 would eliminate the "hold harmless" class of students from the linear reduction formula, because the practical result of the current formula is that a minority of the students receiving Pell Grants faces a substantial reduction of their awards, even though their financial need may be only slightly less than that of students in the "hold harmless" class. The "hold harmless" class represents 64.4 percent of all Pell Grant recipients; even reducing the EFC threshold for the "hold harmless" class would not restore the equity that originally justified this distinction, because 56.9 percent of all Pell Grant recipients have an EFC of zero. Reducing all awards by

a linear percentage would result in the smallest reductions for the most needy students, but would spread the impact of the reduction more equitably among students who all have relatively high levels of financial need. The minimum Pell Grant under the linear reduction formula would be increased from $100 to $200, consistent with the increase proposed in section 412 of the bill. In addition, the references to "entitlement," which is used in section 411(g) of the Act to refer to the award rule that calculates the amount of a Pell Grant for which a student is eligible by subtracting the student's EFC from the maximum award, would be eliminated, and that award rule would be cited explicitly.

Section 416. Section 416 of the bill would eliminate section 411(h) of the Act, which limits the availability of Pell Grant funds when excess amounts are available at the end of a fiscal year. This provision inappropriately restricts the Department's flexibility to use funds appropriated for a given fiscal year to cover shortfalls from prior years, or to carry over an excess appropriation into the next fiscal year to cover program costs for the next academic year.

Section 417. Section 417 would repeal sections 411A, 411B, 411C, 411D, 411E, and 411F of the Act. Sections 411A, 411B, 411C, 411D and 411F all relate to the determination of a student's financial need for a Pell Grant, and are no longer necessary because a single need analysis system applicable to the Pell Grant program as well as the rest of the Title IV, HEA student aid programs is proposed for Part F of Title IV of the Act in Part F of this title of the bill. Some provisions currently in section 411F of the Act, such as the definition of "cost of attendance" for Pell Grant purposes, will be incorporated, with revisions as necessary, into the proposed single need analysis system in Part F. Section 411E of the Act inappropriately restricts the Secretary's flexibility to administer the program and respond to issues as they arise.

Subpart 2—Supplemental Educational Opportunity Grants

Section 418.—Section 418 of the bill would amend section 413A(b) of the Act to authorize appropriations of $346,945,000 for fiscal year 1992, and such sums as may be necessary for fiscal years 1993 through 1996, for the Supplemental Educational Opportunity Grant (SEOG) program, authorized by Subpart 2 of Title IV of the Act. While this amount is below the fiscal year 1991 funding level, other changes proposed in this part of the bill, as discussed below, would minimize the impact of a reduced funding level and enable an additional 64,000 students to receive SEOGs. This reduction in funding is necessary to permit more funds to be directed to provide increases in student aid programs, particularly the Pell Grant program, that are more targeted on students with the greatest amount of financial need.

The Department of Education is continuing to explore ways in which to amend the allocation formula for the campus-based programs to both simplify the formula and focus it more precisely on needier students, and may propose amendments to the allocation formula at a later date.

Section 419. Section 419 of the bill would amend section 413C(a)(2) of the Act to reduce the Federal share of SEOG awards to students to a maximum of 50 percent for fiscal year 1992 and succeeding fiscal years. An institution should bear a higher share of a student's award under this program because it receives significant financial benefits from this program and has wide latitude to direct these funds to the students, from among those students with financial need, that it is most interested in enrolling.

Subpart 3—Repeals

Section 420. Section 420 of the Act would repeal Subparts 3, 4, 7, and 8 of Part A of Title IV of the Act, which authorize the State Student Incentive Grant (SSIG) program, Special Programs for Students from Disadvantaged Backgrounds (the TRIO programs), Assistance to Institutions of Higher Education (including the Veterans Education Outreach Program, or VEOP), and Special Child Care Services for Disadvantaged College Students, respectively.

The SSIG program, which provides grants to States to assist them in providing need-based grant and work-study assistance to eligible postsecondary students, is no longer necesary because all States now have need-based student assistance programs and have committed a consideration level of funding to these programs. That funding has continued to increase, despite years in which Federal funding for this program has either declined or remained level. It is estimated that of the 42 States that overmatched the Federal contribution in academic year 1989-90, 39 provided at least 160 percent more need-based grant assistance than was necessary to satisfy the program's matching requirements. The SSIG program has clearly achieved its purpose of encouraging States to provide financial aid to needy students, and has outlived its usefulness.

The TRIO programs in Subpart 4 of Part A of Title IV of the Act would be replaced by the access and retention programs proposed as a new Title I of the Act in Title I of this bill.

Section 420 of the Act authorizes payments to institutions of higher education, to be used to defray instructional expenses in the institutions' academic programs. Payments are based on the total number of students attending the institution and the aggregate amount of funds the institution receives under the SEOG, Work-Study, and Perkins Loan programs. However, the Payments to Institutions of Higher Education program, enacted in 1972, has never been funded, and it is not generally the Federal Government's role to help defray instructional costs that should be met by institutional revenues, including tuition charges. In addition, such a general subsidy to all institutions would be prohibitively expensive—if section 420 of current law were fully funded, this program would cost over $2 billion in fiscal year 1991 alone.

Section 420A of the Act authorizes the VEOP, which provides formula grants to institutions with at least 100 veterans with honorable discharges in attendance as undergraduates to assist the institutions in supporting offices of veterans' affairs that provide outreach services, special educational services, and counseling. This program is no longer necessary because its original purpose, to serve large numbers of Vietnam-era veterans, has been met. The needs of currently eligible veterans, including those who served in Operation Desert Storm, can be met by other Federal outreach and support programs (including those proposed in Title I of the bill), as well as by traditional tutorial and counseling services provided by institutions. In addition, the different branches of the military provide enlistees with information on veterans' educational benefits and ongoing benefits counseling. Individuals separating from military service receive mandatory counseling regrading their benefits. The Department of Veterans Affairs (DVA) provides information through its Separation Point program, its toll-free telephone service, and its Veterans Assistance Centers. Finally, eligible veterans can pursue refresher, remedial, and deficiency coursework and qualify for tutorial assistance under both the older Veterans Educational Assistance Program and the newer Montgomery G.I. bill administered by the DVA.

Special Child Care Services for Disadvantaged College Students, which authorizes grants to institutions to cover the full cost of child care expenses of low-income students through vouchers, contracted services, or direct services, has never been funded. With the enactment of a five-year $15 billion child care plan in P.L. 101-508, which includes a broad range of options, including tax credit provisions, a State-administered voucher program, and a school-based program for early childhood education and before- and after-school child care, it is neither necessary nor appropriate to reauthorize this small, never-funded program.

Subpart 4—Presidential Achievement Scholarship Program

Section 421. Section 421 of the bill would add a new Subpart 3 to Part A of Title IV of the Act to authorize a new Presidential Achievement Scholarship (PAS) Program. The Secretary would be authorized to award scholarships of up to $500 to Pell Grant recipients who demonstrate high levels of academic achievement. Appropriations of $170,000,000 would be authorized for the PAS program for fiscal year 1992, and such sums as may be necessary would be authorized for fiscal years 1993-1996. Funds would remain available for expenditure in the fiscal year following the fiscal year for which the funds were appropriated. This new program is designed to serve as an incentive for financially needy students to excel in their elementary and secondary studies, enter postsecondary education, and, once there, persist and excel in their postsecondary studies. It is estimated that there would be approximately 340,000 recipients in the first year of the program's operation.

One of the best predictors of a student's success in postsecondary education is a solid academic foundation obtained at the elementary and secondary school level. By providing an extra measure of financial support to academically outstanding Pell Grant recipients, the PAS program would demonstrate the Federal Government's dual commitment to providing access to postsecondary education for financially disadvantaged students, and recognizing academic excellence. This program would also encourage students to remain in postsecondary education.

A Presidential Achievement Scholar may receive up to four scholarships (or five scholarships if the Scholar is in a five-year undergraduate program), each awarded for a period of one academic year. In order for any student to receive a Presidential Achievement Scholarship, the student must receive a Pell Grant for that academic year, and be a full-time student. Requiring the receipt of a Pell Grant as a condition for the receipt of a PAS ensures that the neediest students will receive these scholarships. The full-time attendance requirement is based partially on the fact that full-time students are more likely to persist in postsecondary education, which is one of the purposes of the program, as well as the need to limit the complexity and cost of this large-scale effort.

In addition, if the student will be attending his or her first year of postsecondary education, he or she must rank in the top ten percent, by grade point average, of his or her

high school graduating class or achieve a high score on a nationally administered, standardized test, such as the ACT or SAT. Students who will be attending other years of postsecondary education must be enrolled in a program of study of not less than two academic years in length that leads to a degree or certificate, and rank in the top 20 percent, by cumulative grade point average (or its equivalent), of their postsecondary education class as of the last academic year of study completed. These levels of academic achievement are worthy of the national recognition that the PAS Program would provide. It is anticipated that a student's high school or postsecondary education class ranking for the complete academic year preceding the year for which the award determination is being made will be available in sufficient time to use that information in awarding the scholarships.

A student's eligibility for a PAS would not depend on whether a student received a PAS or a Pell Grant in the previous year, thus providing an incentive to excel and persist in postsecondary education to an even broader group of high-achieving, needy students, such as students who may not have done well in high school but are now excelling at the postsecondary level, or who, for a variety of reasons, may not have performed at their usual outstanding level in a given year of postsecondary education, but subsequently resumed that level of achievement.

The Secretary would establish the procedures by which Presidential Achievement Scholarships are awarded, with information on class ranks and test scores supplied by the institution. This would simplify the procedures necessary for obtaining this information. In general, under these procedures, the Secretary would first specify a cutoff date by which an institution would send to the Department its list of Pell recipients who are eligible to receive PAS awards. (The institution would produce this list by checking the merit qualifications of its projected Pell recipients. A cutoff date is necessary because students can become eligible for Pell Grants year-round.) The institution would also include in that list the dollar amount for which a particular student is eligible ($500, unless reduced under the cost of attendance rules described below). The Department would use that data to tally up the dollar amounts on those lists for all students, and, if that total exceeded the appropriation, reduce all awards by the percentage necessary. The institution would then be allocated the appropriate amount of PAS funds for its students.

In addition, although receipt of the Presidential Achievement Scholarship is an honor, it should bear some relation to the student's educational costs and other aid received. Need analysis provisions for Title IV of the Act require that the Pell Grant be the first source of Federal student assistance, and, if necessary, that other sources be reduced. Therefore, new section 415E would require that if the PAS, alone or in combination with other Federal or non-Federal grant and scholarship assistance, would exceed the student's cost of attendance, as defined in section 472 of the Act, then the PAS would be reduced by the excess amount.

Subpart 5—National Science Scholars Program

Section 422. Section 422 of the bill would move the National Science Scholars (NSS) program, currently authorized under Part A of Title VI of the "Excellence in Mathematics, Science and Engineering Education Act of 1990" (P.L. 101-589), into a new Subpart 4 of Part A of Title IV of the HEA. The NSS program is more appropriately placed with the other student financial assistance programs under the HEA with which it shares many common terms and provisions.

In addition, section 422 of the bill would reauthorize and make certain changes to the NSS program. First, appropriations of $10,000,000 for fiscal year 1992, $15,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, and such sums as may be necessary for fiscal years 1995 and 1996 would be authorized under a new section 417A(b). This would be a major increase over the current authorization of appropriations of $4.5 million for fiscal year 1991, and would highlight the importance of the NSS program and its goals, provide funding of scholarships for continuation awards for 1991 Scholars to continue their studies as well as fund new awards for 1992 Scholars, and substantially increase the average award from the 1991 estimated average award of $1,120. It is important to ensure that the funding for this prestigious program is also available at substantially increased levels in the outyears so that all Scholars who remain eligible may continue to receive awards throughout their undergraduate studies. Appropriations would also be available until expended.

The increase the authorization of appropriations would also permit an increase in the maximum award available to a Scholar from $5,000 per year to $6,000 per year under new section 417E. However, while receipt of the scholarship is an honor, it should bear some relation to the student's educational costs and other aid received. Section 605(b) of the current NSS program states that the NSS award must not be reduced on the basis of other aid received, but must be taken into consideration when determining the student's need for other Federal student financial assistance. However, need analysis provisions for Title IV of the Act require that the Pell Grant be the first source of Federal student assistance, and, if necessary, that other sources be reduced. Therefore, new section 417E would require that if the total of the NSS and other Federal and non-Federal grant and scholarship assistance would exceed the student's cost of attendance, as defined in section 472 of the Act, then the NSS would be reduced by the excess amount.

Section 422 of the bill would also amend the NSS program so that, if a student previously selected as a Scholar becomes ineligible to receive further scholarships and the student's circumstances do not qualify for reinstatement within the Secretary's guidelines, the funds that would have been used for those scholarships would be used to make other awards under this subpart.

In addition, section 422 of the bill would eliminate references in sections 603(b) (2) and (3) of the current NSS program to a gender-based nominating and selection process for the NSS program, as well as the reference in current section 601(a)(6). While the goal of increasing female participation in the fields of science, mathematics, and engineering is laudatory and supported by the Department of Education, the means chosen to achieve that goal—a strict quota based on sex—is inappropriate and unnecessary.

Section 422 of the bill would also amend the procedures for the announcement and award of scholarship under new section 417C of the Act to eliminate the January 1 deadline, currently in section 603(b)(4) of the NSS program statute, by which the selection of Scholars must be completed and announced. This deadline is inappropriate because the academic achievement of students in their senior year of high school could not be assessed as part of the selection process, and most students will not know at that point if they have been accepted for enrollment at an institution of higher education. Further, binding the Department and the President to a particular date does not allow for extenuating circumstances, such as the delayed enactment of appropriations Acts, that may delay the selection process.

Other relatively minor amendments that would be made by section 422 of the bill include: modifying the description of the development of selection criteria to reflect the joint development of the criteria by the National Science Foundation and the Department of Education; adding a maximum of ten nominees per congressional district; requiring the nominating committee to keep, and the State to maintain, records relating to the nominating process for five years after the nominations are made; eliminating the statement in current section 603(b)(4) regarding presentation of scholarships in a public ceremony, since no program funds may be used for such ceremonies; eliminating the citizenship requirement in current section 604(a)(2) in favor of the general citizenship requirements for Title IV in section 484(a)(5) of the Act; requiring the institution, subject to the approval of the Secretary, not the Secretary alone, to determine whether a Scholar is maintaining a high level of academic achievement; requiring the Scholar to submit to the institution, rather than the State, any statement, as necessary, of his or her continuing intent to major in one of the sciences, mathematics, or engineering; and specifying that unused scholarship proceeds are to be returned to the Secretary and used for other scholarships. These amendments are generally designed to simplify the NSS program statute and its administration.

Section 423. Section 423 of the bill would make a conforming change by repealing Part A of Title VI of the Excellence in Mathematics, Science and Engineering Education Act of 1990 (P.L. 101-589), which currently authorizes the National Science Scholars program.

Subpart 6—Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork

Section 424. Section 424 of the bill would make a number of changes to the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP) authorized by section 418A of the Act. First, the purpose of the program would be focused on providing discretionary grants to help build the capacity of educational institutions, agencies and organizations to operate high school equivalency and college assistance programs for migrant students, rather than to provide long-term grants for direct services. Appropriations of $10,169,000 would be authorized for that purpose for fiscal year 1992, and such sums as may be necessary for fiscal years 1993 through 1996. This shift in focus would better serve the migrant student population by equipping a broader pool of institutions and agencies with the tools to meet the needs of this population, and would be a more cost-effective use of limited Federal resources.

Next, the pool of potential HEP grantees would be expanded to include, in addition to the institution of higher education and nonprofit organizations currently eligible, State or local educational agencies (SEAs and LEAs). SEAs and LEAs have experience in providing secondary-level education and working with migrant students, are the agents through which other Federal high

school equivalency programs are funded, and have the resources to continue high school equivalency services to migrant students beyond the duration of the Federal grant. The entities eligible to apply for CAMP grants would be unchanged by this legislation.

As proposed in the bill, HEP services could be provided to individuals who are 16 years of age or older, or are beyond the age of compulsory school attendance in the State in which the individual resides are not currently enrolled in school, and who meet the other current requirements for eligibility. This change from the current requirement that HEP participants be 17 years of age or older conforms the age requirements for HEP with the eligibility requirements of the Adult Education Act.

In addition, the bill would clarify, consistent with current practice, that direct CAMP services are focused on migrant students in their first year of college. However, the bill would also require grantees to provide follow-up services for migrant students after they have completed their first year of college, such as follow-up reports on the students' progress, and referrals to on- or off-campus providers of counseling services, academic assistance, or financial aid. These follow-up services would help ensure that the gains achieved by these students in their first year of college would be maintained in subsequent years of study, and would provide useful information regarding the longer-term effects of the program. A grantee would be permitted to use up to ten percent of its CAMP grant to pay for the required follow-up services.

The remaining amendments to section 418A of the Act in the bill would also relate to the central theme of institutional capacity-building. A long-range management plan describing how, over the period of the grant, the applicant will gradually assume the financial responsibility to provide services that are substantially similar to those proposed in the project application would be required. This management plan would ensure that the grantee has considered the steps it will take to continue to provide HEP or CAMP services to this disadvantaged population after Federal assistance is reduced or no longer available.

First-time HEP or CAMP recipients would receive a grant for a period of five years, and the Federal share of that grant would not exceed 90 percent for the first year of the grant, 80 percent for the second year, 70 percent for the third year, 60 percent for the fourth year, and 50 percent for the fifth year. Recipients that have previously received HEP or CAMP funds would receive a grant for a period of three years, and the Federal share of the grant would not exceed 90 percent for the first year of the grant, 70 percent for the second year, and 50 percent for the third year. As under current law, the minimum grant would be $150,000. No special consideration would be afforded applicants with prior experience, and a recipient would be eligible to receive only one multiyear grant. The length of the proposed grant periods should provide sufficient time for the grantee to develop the capacity to provide the services without further Federal funding. Federal funds could then be used to assist other institutions in developing their capacity to provide HEP or CAMP services.

Finally, in order to ensure that the availability of services bears an appropriate relationship to the individuals to be served, the Secretary would consider the geographic distribution of the individuals who are to be served by grantees in awarding grants.

Subpart 7—Robert C. Byrd Honors Scholarship Program

Section 425. Section 425 of the bill would amend section 419D of the Act to change the way funds are allocated to States under the Robert C. Byrd Honors Scholarship Program authorized in Subpart 6 of Part A of Title IV of the Act. Section 419D of the Act currently requires the Secretary to allocate funds to States based on a formula that provides ten scholarships of $1,500 each for every congressional district in the State, plus an administrative allowance. In conformity with the changes proposed in section 426, section 425 of the bill would base the allocation of program funds on the relative size of the State's population ages 5 through 17, with a minimum of ten $1,500 scholarships awarded to each State. This simplification of the allocation formula is consistent with the appropriations Act language that has overridden the allocation formula in section 419D of the Act every year since the Byrd program was enacted. The administrative allowance would also be eliminated because the award ceremonies that are the primary reason for providing an administrative allowance would be eliminated in section 427 of the bill.

Section 426. Section 426(1) of the bill would amend section 419G of the Act to modify the requirements for the selection of Byrd Scholars to eliminate the ten Scholar per congressional district requirement, consistent with current practice and controlling appropriations Act language. Instead of a strict numerical formula, States would simply be required to ensure an equitable geographic distribution of awards within the State.

Section 426(2) of the bill would merely move the provision regarding the timing of the selection process from current section 419I(b) of the Act to a new section 419G(d) of the Act. The provision on timing of the selection process is more appropriately placed with the rest of the selection process provisions in section 419G, and section 419I(a) of the Act is proposed for repeal in section 427 of the bill.

Section 427. Section 427 of the bill would repeal section 419I of the Act, which requires States to arrange for award ceremonies at which Members of Congress, if possible, are to award Byrd Scholarships to the students selected. As with other changes relating to the Byrd program proposed in this bill, this amendment would make the authorizing statute consistent with the way in which the program has been administered since its inception because of appropriations Act provisions that have overridden the HEA provisions. States would still be able to hold award ceremonies if they wished, but would not be required to do so by law. In addition, section 427 of the bill would make conforming changes relating to the State participation agreement to remove the references to the award ceremony and to the administrative allowance proposed for elimination in section 425 of the bill.

Section 428. Section 428 of the bill would authorize appropriations for Byrd Scholarships of $9,271,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 through 1996.

Part B—Guaranteed student loans

Section 431. Section 431 of the bill would amend section 424(a) of the Act to extend the authorization for, and amount of, new loan principal that may be made to students covered by Federal loan insurance.

Section 432. Section 432 of the bill would amend sections 425(a), 428(b)(1), and 428A(b) of the Act to increase the annual and aggregate loan limits for the Stafford Loan and Supplemental Loans for Students (SLS) programs. Annual limits for Stafford Loans would be increased from $2,625 to $3,500 for first and second year undergraduate students, and from $4,000 to $5,000 for third, fourth, of fifth year undergraduates. The aggregate loan limits for undergraduate and graduate students would be increased from $17,250 to $22,000 and from $54,750 to $59,500, respectively to reflect the proposed annual increases. Currently, the annual SLS loan limit is $4,000 (with a lower limit for programs of less than one academic year). The current annual limits would be retained for first year undergraduates, but second, third, fourth, and fifth year undergraduates could receive up to $6,000 per year, and graduate students could receive up to $10,000 per year. Aggregate SLS loan limits would be raised from $20,000 for all students to $28,000 for undergraduates and $50,000 for graduate students. The moderate increases in Stafford Loan and SLS loan limits will offset the erosion in real value of the current loan limits and provide additional capital for all eligible students.

Section 433. Section 433 of the bill would make a number of changes to sections 427(a)(2) and 428 of the Act. First, lenders would be required to offer to borrowers of Stafford Loans and SLS loans the option of repaying their loans on a graduated repayment schedule instead of in equal installments over the life of the loan. Lenders would be required to give borrowers this option not more than six months prior to the date on which the student borrower's first payment on a loan is due. The schedule offered could not result in negative amortization of the loan, would provide for the repayment of only accrued interest during the first 12 months of repayment, and after the fourth year of repayment, would require the borrower to resume repayment on an equal installment basis in an amount sufficient to retire the debt in the normal 10-year statutory maximum period for repayment.

Studies suggest that borrowers who are offered an optional repayment schedule are significantly less likely to default than borrowers who are not given this option. Even if a borrower does not select a graduated repayment schedule, his or her active involvement in establishing the repayment terms reinforces the seriousness of the repayment obligation in the borrower's mind. In addition, the typical borrower experiences significant increases in income over the first few years of repayment, making graduated repayment during this period an appropriate way to manage the borrower's debt burden and minimize the risk of default.

Next, lenders would be required to obtain the borrower's driver's license number, if any, at the time of application for a Stafford, SLS, or PLUS Loan. This information would enhance collection efforts with little increase in the administrative burden on lenders. Similar amendments are proposed for the Perkins Loan and Income Contingent Loan (ICL) programs.

Finally, lenders would be required to obtain, as part of the promissory note, a "confess judgment" statement by the borrower that, in the event of default, the borrower waives certain rules of civil procedure governing commencement of suit, service of process, and trial. "Confess judgment" provisions are recommended by the Federal Claims Collections Standards whenever a Federal agency enters into a repayment agreement with a debtor. This provision would not, however, foreclose all opportunities for the defaulter to present a defense; a

judgment secured under a confession of judgment is treated like a default judgment, and most courts will hear debtor defenses after the judgment is entered.

Section 434. Section 434 of the bill would amend section 428(a)(2)(F) of the Act to prohibit an eligible institution from refusing to certify a student's determination of need for a loan. This amendment would eliminate the recent amendment to this provision by P.L. 102-26, which permitted an institution to refuse to certify a student's eligibility for a guaranteed student loan, or to certify a loan amount that is less than is determined under the statutory system of need analysis, so long as the institution documented the reason for the action and provides written notice to the student. As amended by P.L. 102-26, section 428(a)(2)(F) of the Act is excessively broad; there are no clear limits on the institution's discretion to refuse to certify a student's eligibility for a loan, and deserving students may be harmed by this provision, particularly as institutions seek ways in which to reduce their default rates.

Section 435. Section 435 of the bill would amend sections 427(a)(2) and 428(b)(1)(M) of the Act by mdoifying the extent to which a student may qualify for deferment of repayment of new GSLs. For new loans, the in-school deferment in current law would still be available, but the various other categorical deferments would be replaced by a single hardship deferment of up to three years in the aggregate. The categorical deferments in current law are not directly related to the financial ability of the borrower to repay the loan, and may be taken without an aggregate limit. However, many borrowers who would qualify for one of the categorical deferments would qualify for the financial hardship deferment, and if a Peace Corps or VISTA volunteer did not qualify, the lender would be required, at the borrower's request, to provide forbearance, under which interest would be capitalized during up to three years of service. A single hardship deferment would greatly simplify the administration of the program by lenders, and would be far more equitable since the deferment would be directly linked to the borrower's inability to repay the loan.

Section 436. Section 436 of the bill would amend section 428(c) of the Act to modify the way Federal reinsurance is calculated. First, guaranty agencies would be requried to file reinsurance claims within 45 days from the date an insurance claim is paid. This requirement of timely filing eliminates a loophole in the current law that guaranty agencies take advantage of by holding their reinsurance claims when their reinsurance rate drops below 100 percent. The claims are then submitted at the beginning of the next fiscal year, when the reinsurance rate automatically returns to 100 percent.

The automatic return to 100 percent reinsurance would also be modified by section 436 of the bill. The Secretary would be required to make the initial reimbursement payments in a fiscal year to a guaranty agency at the rate the agency was being reimbursed at the end of the preceding fiscal year, until the guaranty agency submitted data justifying a different reimbursement rate.

Both of these modifications would encourage guaranty agencies to monitor more rigorously the default prevention activities of the institutions and lenders they service, and eliminate loopholes in existing law.

Finally, section 436 of the bill would amend section 428(c)(7) of the Act to authorize, rather than require, the Secretary to provide 100% reimbursement to new guaranty agencies for the first five years of their operation. This amendment would provide the Secretary with the flexibility to give a new guaranty agency 100% reimbursement where the financial circumstances of the new agency warrent such treatment.

Section 437. Section 437 of the bill would amend sections 427(a)(2)(A) and 428(b)(1) of the Act to require all applicants for Stafford, SLS, and PLUS loans who are age 21 and older to undergo credit checks, and to require that applicants who, in the judgment of the lender (subject to regulatory standards prescribed by the Secretary) have adverse credit histories, obtain a credit worthy cosigner in order to receive the loan. Lenders would be authorized to charge applicants up to $25 or the actual cost of obtaining the credit report, whichever is less, to defray the cost of the credit checks. Students with very little or no credit history, who would be the majority of applicants, would not be required to obtain a cosigner, and, consequently, their access to financial assistance and to postsecondary education would not be limited by this amendment. By requiring credit checks only of applicants who are at least age 21, this amendment would be more cost-effective than requiring credit checks of all applicants, because the students who are least likely to have a credit history would not have to pay for a needless credit check, and the lenders' burden would be minimized. This amendment is targeted at only those loan applicants who have already demonstrated their lack of credit worthiness, and would reduce defaults by requiring that a financially responsible individual, whether it is the student or the student's cosigner, stand behind the student's loan obligation. Similar changes are proposed for the Perkins Loan and ICL programs.

Section 438. Section 438 of the bill would amend section 428G(b) of the Act to build on the current requirement that disbursement of GSLs to all first year students be delayed 30 days. This amendment would require a 60-day delay of disbursement to first year students attending institutions with default rates over 30 percent. This amendment would enhance current law and reduce defaults by ensuring that many of those students least able to repay their loans—early dropouts at high default schools—have no loans to repay.

Section 439. Section 439 of the bill would amend the procedures in section 432 of the Act for limiting, suspending, or terminating the eligibility of a lender or institution that violates program requirements by eliminating the requirements for a full-blown administrative hearing "on the record." Institutions would still be provided notice and an opportunity for a hearing that would satisfy due process considerations. The formal "on the record" hearings are unnecessary, burdensome, time-consuming, and costly for both the Government and the institution. Unscrupulous institutions often manipulate the various procedures associated with "on the record" hearings to delay the final disposition of the case for as long as possible in order to keep the Federal funds flowing to the institution.

In addition, section 439 of the bill would amend section 432(h) of the Act to permit the Secretary to apply any or all of the sanctions imposed by one guaranty agency on an institution or lender to the lender's or institution's participation in the student loan insurance programs of all guaranty agencies. Currently, when a guaranty agency limits, suspends, or terminates a lender's or an institution's participation in its student loan insurance program, the Secretary is authorized only either to disqualify the lender or institution from participation in the program, or to do nothing. Complete disqualification is a harsh penalty that may not be appropriate in all cases, especially where the guaranty agency has imposed only a limitation or suspension.

This amendment would provide much-needed flexibility in imposing sanctions for program violations, particularly in situations where complete disqualification would be inappropriate. In addition, this amendment would clarify that the Secretary's review of a limitation, suspension, or termination imposed by a guaranty agency on a lender or an institution is limited to a review of the written record of the proceedings in which the guaranty agency imposed the sanctions and a determination as to whether the guaranty agency complied with statutory and regulatory requirements. Congress never intended that the Secretary's review of guaranty agency's actions against a lender or an institution take the form of a full-blown administrative hearing, which would substantially lengthen and complicate the procedures required with no real benefit to the institution or lender, other than as a delaying tactic through which Federal funds would continue to flow to an entity already found in violation of program requirements by a guaranty agency.

Section 439 of the bill would also eliminate certain restrictions in section 432(g) of the Act regarding the Secretary's ability to fine lenders and guaranty agencies. The current restrictions limit the effectiveness of civil penalties as a sanction—if all a lender or guaranty agency has to do to avoid a civil penalty is correct (at least temporarily) the underlying problem, there is no incentive to follow program requirements. Further, in some cases it can be more cost-effective to pay a single fine rather than correct program violations.

Section 440. Section 440 of the bill would amend section 428(b) of the Act to prohibit a guaranty agency from permitting its officers and employees, as well as members of their immediate families, from having a direct financial interest in, or serving as officers and employees of, any lender, secondary market, contractor, or servicer with which the guaranty agency does business. These restrictions are necessary to prevent conflicts of interest.

Section 441. Section 441 of the bill would amend section 428 of the Act to clarify that the Secretary's authority to obtain information from guaranty agencies includes financial information, and would back this authority with the sanction of reduced or withheld administrative cost allowances if the guaranty agency doesn't provide the necessary information to the Secretary. This amendment would ensure that the Department is able to monitor the condition of guaranty agencies more closely, and is apprised of any agency instability or irregularities before the problems become irreparable.

Section 442. Section 442 of the bill would amend section 428(f)(1)(B) of the Act to change the amount of the administrative cost allowance that a guaranty agency currently receives from a fixed one percent of loan volume, to the lesser of one percent of loan volume or the guaranty agency's actual administrative costs, as estimated using criteria prescribed by the Secretary. Loan volume can fluctuate significantly from year to year, and may not always accurately reflect an agency's immediate administrative costs. However, it is necessary to specify a maximum administrative cost allowance in order

to contain costs and encourage fiscal responsibility.

Section 443. Section 443 of the bill would amend section 428(c)(6)(A)(ii) of the Act to limit the amount that a guaranty agency may retain from amounts collected on defaulted loans to the lesser of 30 percent of the amounts collected, or the cost of collections as estimated in accordance with criteria prescribed by the Secretary in regulation. Current law permits guaranty agencies to retain a flat 30 percent of collections, or 35 percent if the guaranty agency is located in a State that enacts and enforces a garnishment law that is consistent with the requirements of section 428E of the Act. It is appropriate to reimburse agencies in an amount based on a reasonable estimation of their collection costs, rather than at a fixed rate that may not accurately reflect those costs. The amendments made by this section would not change the current law provisions that permit the guaranty agency to retain from default collections the difference between the insurance paid to lenders and the reinsurance paid by the Federal Government at the time of default. Section 499 of the bill would remove the unnecessary and costly incentive to establish garnishment programs.

Section 444. Section 444 of the Act would amend section 432 of the Act to make a number of changes regarding the Secretary's authority to oversee guaranty agencies. First, the Secretary would be authorized to require a guaranty agency with an inadequate reserve level (to be set by the Secretary in regulations), or an agency that the Secretary determines to be in a financially or administratively weak condition to develop and carry out a management plan acceptable to the Secretary.

If the guaranty agency does not submit a management plan acceptable to the Secretary, or the Secretary determines that the guaranty agency has failed to improve substantially its administrative and financial condition under its management plan, the Secretary may terminate the guaranty agency's participation in the GSL programs. In addition, if the guaranty agency's reserve level is lower than a particular level set by the Secretary, or the Secretary otherwise determines that the guaranty agency is no longer able to perform its responsibilities under its guaranty agreement, the Secretary may terminate the guaranty agency's participation.

If a guaranty agency withdraws from a student loan insurance program under this part, or its guaranty agreement is terminated by the Secretary, the Secretary would be authorized to assume responsibility for the functions of the guaranty agency under its loan insurance program, require the guaranty agency to assign to the Secretary any of the guaranty agency's assets, books, records, computer software, and equipment that the Secretary determines are necessary to carry out those functions, and take appropriate action to ensure continued loan availability and the proper servicing of loans guaranteed by the guaranty agency prior to the Secretary's assumption of its responsibilities, including the transfer of the guaranty agency's functions and assets to another entity. The Secretary would not be required to guarantee new loans, or to serve as a lender of last resort in accordance with section 428(j) of the Act. The Secretary's liability for the liabilities of the guaranty agency would be limited to the value of the assets assigned to the Secretary, minus costs.

These provisions would provide an early warning to the Department of guaranty agency financial or administrative difficulties, and the means of requiring the necessary corrections in sufficient time to avert the agency's financial collapse. The termination authority would provide a strong incentive for guaranty agencies to avoid making business decisions that leave them in financial weak positions, and this authority, coupled with the Secretary's authority to assume guaranty agency functions, would provide for a smoother transition if a new agency needs to be designated in place of a weak agency that failed. The authority for the Secretary to assume guaranty agency functions is also necessary to ensure that loan servicing continues in the interim until a new agency is designated.

Section 445. Section 445 of the bill would amend section 428 of the Act to require that States share some of the financial responsibility for the guaranty agencies and institutions serving the State's residents. First, a State would be required to guarantee, with the full faith and credit of the State or its equivalent, all loans guaranteed under this part by the guaranty agency designated for that State for borrowers who are permanent residents of that State. If the guaranty agency backed by a State is unable to discharge its student loan insurance, the State would be responsible for discharging those obligations, as well as the administrative costs associated with transferring the operations of that guaranty agency to another entity. The Secretary would then pay the State the amount such guaranty agency would have otherwise received as reimbursement under subsection 428(c) of the Act.

If the State has not complied with the requirement to back the designated guaranty agency by January 1, 1994, the Secretary would assess institutions of higher education participating in the GSL programs that are located in that State a fee based on the risk of financial loss to the Federal Government that the State would otherwise assume by backing the guaranty agency.

Because the State would have a financial interest in the success of that State's guaranty agency, the State would have a powerful incentive to be more rigorous in overseeing GSL program participants in the State, including institutions, lenders, and the guaranty agency. The States often have access to better information, and would be able to monitor these entities more closely than the Department of Education can at the Federal level.

Section 445 of the bill would also add a requirement that the State share financial responsibility for a portion of the default costs above a certain level at institutions located in that State. If, based upon the latest available data, the cohort default rate for borrowers that attended institutions of higher education located in a particular State exceeds 20 percent, the State would be required to pay to the Secretary an amount equal to the percentage of new loan volume that equals the percentage by which the default rate exceeds 20 percent. The State would be authorized to charge a fee to a participating institution in the State according to a fee structure, approved by the Secretary, that is based on the institution's cohort default rate and the State's costs. This provision would encourage an increase in the States' role in monitoring the quality of institutions in the State, particularly in its licensing function. The State should bear some of the financial burden for high default costs in a State, because it shares an interest with the Federal Government in ensuring quality education, protecting the consumer, and generating a positive economic impact from the public investment in education.

Section 446. Section 446 of the bill would make a number of changes to the definitions in section 435 of the Act. First, several changes would be made to the definition of an "eligible institution." Because of the changes proposed to the definitions of an "institution of higher education" in Part G of Title IV and Title XII of the Act in sections 491 and 1111 of the bill, the definitions of "institution of higher education" and "vocational school" in sections 435(b) and (c) no longer necessary. In addition, foreign schools would no longer be eligible institutions for purposes of the GSL program with respect to students who are nationals of the United States. Many of the Title IV participation requirements are unenforceable against a foreign entity, and there are no requirements of accreditation, licensure and certification applicable to foreign school participation. Thus there is no accountability for GSL program funds. Eliminating foreign school eligibility would not, however, eliminate the opportunity for students receiving Title IV aid to study abroad; students enrolled in U.S. institutions can receive Title IV aid while studying at foreign schools if it is a part of their curriculum.

As part of the consolidation of definitions of institutional eligibility, the minimum course length for all Title IV programs would be set at six months or 600 clock hours in duration. Currently, shorter term programs are eligible under the GSL program. This six month minimum program length would reduce student loan default rates and help keep student debt burden more in balance with the expected earnings of graduates of short term training programs.

Next, the definition of "cohort default rate" in subsection (m) would be amended to add two new paragraphs. The first addition would alter, for purposes of this definition only, the point at which an SLS loan is considered to enter repayment. Normally, the SLS loan is considered to have entered repayment on the date it is made, regardless of whether payments on that loan are being deferred because the borrower is in school. Because there is no opportunity for default, the default rate thus appears much lower than it would be if the rate is calculated once the borrower is no longer enrolled in school and in an in-school deferment. In addition, each eligible lender of SLS loans would be required to provide the Secretary with the information necessary to determine when the SLS loans entered repayment for purposes of this definition.

The second addition would make the cohort default rate calculation in section 435(m) of the Act applicable to entities other than institutions, such as lenders and States. This change conforms with the changes proposed in sections 447 and 445 of the bill.

Section 435(n) of the Act, which relates to the impact of the loss of accreditation on an institution's participation, would be repealed because it is no longer necessary in view of the proposed consolidation of definitions of institutional eligibility. A comparable provision in Part G of Title IV, would instead be applicable to all Title IV programs.

Section 447. Section 447 of the Act would amend section 438(b)(2) of the Act to reduce the special allowance rate of a holder of loans for which the cohort default rate exceeds 20 percent by one quarter of a percent, to the three-month average of the 91-day Treasury bill rate plus 3 percent, minus the interest rate paid by the borrower. This

sanction should reinforce the due diligence requirements and serve to discourage the overzealous practices of some loan originators by reducing the marketability of high default loan portfolios in the secondary market.

This amendment would similarly reduce the special allowance rate of a lender who does not provide to the Department the information required to determine when a SLS loan entered repayment for purposes of calculating the cohort default rate. This would provide a sanction to ensure lender compliance with the reporting requirements proposed in section 446 of the bill.

Section 448. Section 448 of the bill would amend section 439(n) of the Act to require the Student Loan Marketing Association (Sallie Mae) to notify, within 15 days, notify the Secretary of Education when Sallie Mae makes a loan (or extends some other form of credit) to a guaranty agency, its cumulative loans (or other credit) outstanding to any one lender exceed $50 million, or it makes any additional loans to a lender whose cumulative outstanding loans from Sallie Mae exceed that amount. Sallie Mae would also be required to report to the Secretary on the amount of, and reason for, the loan. This reporting requirement would be in addition to the current law requirements (which would also be expanded to include more detailed information about the characteristics of Sallie Mae's student loan portfolio) that Sallie Mae report to the President and the Congress on its operations and activities each year, and that the Secretary of the Treasury be furnished copies of annual audit reports on Sallie Mae. These new reporting requirements would provide the Secretary of Education with information that could indicate that an agency or lender may be experiencing financial difficulties, and would give the Department of Education more direct access to information crucial to the operation of the GSL programs.

Part C—Work study programs

Section 451. Section 451 of the bill would amend section 441(b) of the Act to authorize appropriations of $396,615,000 for fiscal year 1992, and sums as may be necessary for fiscal years 1993 through 1996. This reduction in Federal funding is necessary to permit more funds to be directed to provide increases in the Pell Grant program, which is more targeted on students with the greatest amount of financial need.

The Department of Education is continuing to explore ways in which to amend the allocation formula for the campus-based programs to both simplify the forumla and focus it more precisely on needier students, and may propose amendments to the allocatioin formula at a later date.

Section 452.—Section 452 of the bill would amend section 443(b)(5) of the Act to reduce the Federal share of the compensation of students employed in the Work-Study program to a maximum of 50 percent for fiscal year 1992 and succeeding fiscal years. An institution (or other employer) should bear a higher share of a student's compensation under this program because it receives significant financial benefits from this program, including decreased labor costs, and has wide latitude to direct these funds to the students, from among those students with the same level of financial need, that it is most interested in enrolling.

Section 453. Section 453 of the bill would eliminate all of the special provisions applicable to the expenditure of funds for community service-learning jobs, although employment in this type of job would still be permitted under the provisions generally applicable to the Work-Study program. These special provisions, such as an increase Federal administrative allowance for institutions and an increased Federal share of the compensation of students employed in community service-learning jobs, were designed to encourage institutions to employ students in community serivice-learning jobs, but have not been successful. Only one percent of the institutions participating in the Work-Study program employment students in this type of job, and a number of these institutions are not utilizing the special statutory incentives available.

Section 453 of the bill would also reduce the Federal share of the cost of a Job Location and Development program to a maximum of 50 percent, consistent with the amendments proposed in section 452 of the bill.

Section 454. Section 454 of the bill would amend section 443(b)(1) and eliminate sections 442(b)(8) and (c) of the Act, which authorize the use of Federal funds to subsidize profitmaking business, including proprietary institutions of higher education. Section 443(b)(8) of the Act permits a student attending a proprietary institution to be employed by that institution under the Work-Study program. Section 443(b)(1) of the Act would be amended to prohibit students under the Work-Study program from being employed at the proprietary institution itself. Under these amendments, which would restore the law as in effect prior to the 1986 reauthorization, students attending proprietary institutions would still be able to participate in the Work-Study program, but would have to be employed by a government agency or a private nonprofit organization rather than the proprietary institution. The benefits of the Work-Study program would thus still be available to these students without improving the profitability of proprietary schools (through decreased labor costs) at the expense of the taxpayer.

Section 443(c) of the Act permits an eligible institution to provide a portion of its Work-Study funds to private, for-profit organizations that hire students on a part-time basis. This program is not intended simply to provide low-cost employees to private businesses, and students are not having any difficulty finding work with these businesses. Thousands of postsecondary students are able to find summer or part-time employment with for-profit organizations each year without any Federal subsidy to their employers.

In addition, section 454 of the bill would amend section 443(b)(4) of the Act to reduce the amount of Work-Study subsidized compensation that a student may receive in excess of his or her need for $200 to $100. While a limited degree of administrative flexibility is warranted, $200 is 20% of the average Work-study award, and is thus an excessive amount of leeway to provide the institution in calculating the number of hours of federally subsidized employment that a student may work.

Part D—Income Contingent Loan Program

Section 461. Section 461 of the bill would amend section 452(b) of the Act to authorize appropriations for the Income Contingent Loan (ICL) program of $10,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993–1996. This represents a $5,120,000 increase over the fiscal year 1991 appropriation for the ICL program and would enable up to 20 institutions to participate in this pilot program, a doubling of the current participation rate. This expansion would increase the funds available to needy students (and do so in more cost-efficient manner), increase the number of recipients by 2,000 for fiscal year 1992 alone, and would provide a broader range of institutional experiences with the program on which to base an evaluation of the feasibility of a full-scale ICL program.

Section 462. Section 462 of the bill would amend section 452(c) of the Act to eliminate the requirement in paragraph (2) that no more than ten institutions may participate in the ICL program, and to make consortia of institutions eligible to participate. Permitting ICL program participation by consortia would encourage the participation of institutions that might be reluctant to administer the ICL program on their own, but would be willing to participate if the financial and administrative resources of several institutions were pooled to reduce the administrative burden on any single institution.

Section 463. Section 463 of the bill would amend section 454(a) of the Act as follows:

Sections 463(1) and (2) of the bill would amend section 454(a) of the Act to add graduate student eligibility for ICLs with loan maximums of $10,000 annually and $50,000 in the aggregate (including any ICLs made to a borrower before he or she became a graduate or professional student). Graduate and professional student eligibility for ICLs is needed both for comparability with the other Title IV loan programs, and to provide graduate and professional student access to a source of loan funds that offers both substantial loan maximums and income—sensitive repayment terms.

Section 463(3) of the bill would amend section 454(a) of the Act to require applicants for ICLs who are age 21 and older to undergo credit checks, and to require that applicants who, in the judgment of the institution (subject to regulatory standards prescribed by the Secretary), have adverse credit histories to obtain a creditworthy cosinger in order to receive the loan. Institutions would be authorized to charge applicants up to $25 or the actual cost of obtaining the credit report, whichever is less, to defray the cost of the credit checks. Students with very little or no credit history, which would be the majority of applicants, would not be required to have a cosigner. By requiring credit checks only of applicants who are at least age 21, this amendment would be more cost-effective than requiring credit checks of all applicants, because the students who are least likely to have a credit history would not have to pay for a credit check, and the institutions' burden would be minimized. The cosigner requirement is targeted at only those loan applicants who have already demonstrated their lack of credit worthiness, and would reduce defaults by requiring that a financially responsible individual, whether it is the student or the student's cosigner, stand behind the student's loan obligation. Similar changes are proposed for the Guaranteed Student Loan and Perkins Loan programs.

Finally, section 463 of the bill would amend section 454(a) of the Act to require that the institution obtain the borrower's driver's license number, if any, at the time of application for an ICL. This information would enhance collection efforts with little increase in the administrative burden on institutions.

Section 464. Section 464 of the bill would amend section 455 of the Act, which currently authorizes a study, with reports due October 1, 1991 and October 1, 1995, of the feasibility of expanding the ICL pilot program

into a full-scale direct loan program. This amendment would provide for an evaluation, by October 1, 1993, of the impact of the ICL program on participating schools and students, as well as the program's cost-effectiveness. An examination of the feasibility of expanding the ICL program would still be included, but an evaluation of the program on additional issues, such as the changes proposed in this bill, would provide far more information that would be useful in setting the future direction of this program.

Part E—Perkins Loan Program

Section 471. Section 471 of the bill would amend section 461 of the Act to authorize appropriations for the Perkins Loan Progam under Part E of Title IV of the Act only for the payment of cancellations under section 465 of the Act on loans made before FY 1992. No new Federal capital contributions to the revolving student loan funds administered by participating institutions of higher education would be authorized, in part because the Perkins Loan Program duplicates the objectives of the less subsidized Stafford Loan Program, and amendments to that program as proposed in Part X of the bill, particularly higher loan limits, would ensure that post-secondary students have adequate access to loans. In addition, the revolving loan funds at some institutions are sizable enough to be self-sustaining without further Federal capital contributions.

Section 472. Section 472 of the bill would amend section 463 of the Act to modify the agreements between institutions of higher education and the Secretary to reflect the fact that no new Federal capital contributions would be authorized.

Section 473. Section 473 of the bill would make several changes to the terms of Perkins Loans in section 464 of the Act. First, section 464(b)(1) of the Act would be amended to require that the institution obtain the borrower's driver's license number, if any, at the time of application for a Perkins Loan. This information would enhance collection efforts with little increase in the administrative burden on institutions. Similar amendments are proposed for the GSL and ICL programs.

Next, section 473(2)(A) of the bill would increase the interest rate for Perkins Loans made on or after July 1, 1992 to 8 percent. This increase from the current 5 percent rate would make the interest rate for Perkins Loans comparable to that of Stafford Loans, and, by returning greater amounts to the funds at the institution, would make more resources available for Perkins Loans for other students at the institution.

Section 473(a)(A) of the bill would also amend section 464(c)(1)(E) of the Act to require applicants for Perkins Loans who are age 21 and older to undergo credit checks, and to require that applicants who, in the judgment of the institution (subject to regulatory standards prescribed by the Secretary), have adverse credit histories obtain a credit worthy cosigner in order to receive the loan. Institutions would be authorized to charge applicants up to $25 or the actual cost of obtaining the credit report, whichever is less, to defray the cost of the credit checks. Students with very little or no credit history, who would be the majority of applicants, would not be required to obtain a cosigner. By requiring credit checks only of applicants who are at least age 21, this amendment would be more cost-effective than requiring credit checks of all applicants, because the students who are least likely to have a credit history would not have to pay for a needless credit check, and the institutions' burden would be minimized. This amendment is targeted at only those loan applicants who have already demonstrated their lack of credit worthiness, and would reduce defaults by requiring that a financially responsible individual, whether it is the student or the student's cosigner, stand behind the student's loan obligation. Similar changes are proposed for the GSL and ICL programs.

Section 473(2)(B) of the bill would amend section 464(c)(2) of the Act by modifying the extent to which a student may qualify for deferment of repayment of new Perkins Loans. For new loans, the in-school deferment in current law would still be available, but the various other categorical deferments would be replaced by a single hardship deferment of up to three years in the aggregate. The categorical deferments in current law are not directly related to the financial ability of the borrower to repay the loan, and may be taken without an aggregate limit. However, many borrowers who would qualify or one of the categorical deferments would qualify for the financial hardship deferment, and if a Peace Corps for VISTA volunteer did not qualify for the hardship deferment, the institution would be required, at the borrower's request, to provide forbearance, under which no payments of principal would be required, and interest would be capitalized for up to three years of service, although the capitalized interest would not be subject to cancellation under section 465 of the Act. A single hardship deferment would greatly simplify the administration of the program by institutions, and, since the proposed single deferment would be directly linked to the borrower's inability to repay the loan, would be far more equitable and less subject to abuse.

Finally, section 473 of the bill would make conforming changes to reflect amendments proposed elsewhere in this part of the bill. The requirement that an institution must make Perkins Loans available to less than full-time students, if a portion of the Federal capital contributions it receives is based on the financial need of these students, would be eliminated because no new Federal capital contributions would be authorized. Whether to make Perkins Loans to these students would be left to the discretion of the institution.

Section 474. Section 474 of the bill would amend section 465 of the Act to eliminate, for Perkins Loans made for a period of instruction beginning on or after July 1, 1992, the cancellation of a specified percentage of a student's loan obligation in return for a period of service in a number of fields. Loan cancellation does not serve the purpose for which it is intended, namely, to attract additional individuals to a particular field of study or career. Instead, cancellation merely provides a windfall to those already intending to pursue that field of study or career.

Section 475. Section 475 of the bill would amend section 466 of the Act to delay for five years the required distribution of assets from Perkins Loan funds that would end the program. This amendment is consistent with the proposed extension of the program authorization for that period of time.

Section 476. Section 476 of the bill would repeal section 462 of the Act, which sets the allocation formula for Federal capital contributions and is no longer necessary because no new Federal capital contributions would be authorized for the program.

Part F—Need Analysis

Section 481. Section 481 of the bill would amend section 471 of the Act to delete the exclusion of the Pell Grant and SSIG programs from the definition of a student's amount of need for Title IV, HEA assistance. This is one of several amendments proposed here and in Subpart 1 of Part A of this title of the bill to create a single need analysis system in Part F of Title IV of the Act for use for all of the Title IV need-based student assistance programs (SSIG is proposed for repeal in section 420 of the bill, and Part F does not apply to the HEP/CAMP and Byrd Scholarship programs authorized in Subparts 5 and 6, respectively, of Part A of Title IV). Currently, there is a separate need analysis system for the Pell Grant program, while Part F applies to the rest of the Title IV need-based student assistance programs. A single need analysis system would simplify the delivery of Federal student aid, and reduce confusion and burden for students and their parents. Where necessary, some elements of the Pell Grant need analysis system would be retained, or used to modify the "Congressional Methodology" currently in Part F, but, in general, the Part F system would serve as the basis for the proposed new single need analysis system.

Section 482. Section 482 of the bill would amend the definition of "cost of attendance" in section 472 of the Act. First, section 472 would be amended to use the more precise term "uniform compulsory fees" from the Pell Grant need analysis provisions. Next, institutions would not be permitted to include costs related to the purchase of equipment, materials and supplies in determining the allowable amount of tuition and fees. These items are already covered by section 472(2) of the current law. In addition, the allowance for room and board for the Title IV aid programs (other than Pell) would be modified to be similar to the Pell Grant living allowances. Both the tuition and fees and room and board provisions would be clarified to ensure that separate sets of charges are not applied by an institution depending on whether a student is receiving Title IV assistance or not.

Certain special provisions applicable only to the determination of the cost of attendance for Pell Grant purposes would also be added to section 472 of the Act. First, because of the way that Pell Grants for student attending on a less than full-time basis are calculated, tuition and fees to be used in determining the student's cost of attendance for Pell Grant purposes would be first calculated on the basis of a full-time academic workload, and then adjusted in accordance with section 411(b)(1)(B) of the Act (as amended by section 412 of the bill), by reducing the full-time award amount to reflect part-time attendance.

The maximum living allowances (for room and board, books, supplies, transportation, and miscellaneous expenses) to be included in calculating a student's cost of attendance for Pell Grant purposes would be set at $1,700 for a student without dependents residing at home with his or her parents and $2,300 for all other students. These living allowances are derived from the current definition of cost of attendance for the Pell Grant program in section 411F(5) of the Act. However, the current living allowance definition would be modified by eliminating the provision that ties it to changes in the amount of the maximum Pell Grant. Section 412 of the bill would substantially increase the maximum Pell Grant, but a comparable increase in the size of the living allowance is not warranted. Section 482 would instead provide a more appropriate method of providing reasonable increases in the living allowance to

offset the effects of inflation, by tying changes in the maximum living allowance to the percentage changes in the standard maintenance allowances in section 475(c)(4) and 477(b)(4) of the Act after award year 1992–1993. Finally, the allowance for dependent care to be used in determining the student's cost of attendance for Pell Grant purposes would be limited to $1,000.

In addition, section 482 of the bill would amend section 472 of the Act to establish a maximum cost of attendance for short-term (one year or less) programs of training to prepare students for gainful employment in a recognized occupation. This maximum cost of attendance would be determined by the Secretary to equal the average State academic program expenditures per academic year for two-year public institutions of higher education, as determined by the Secretary. This provision is designed to discourage unscrupulous schools from increasing their tuition and fees simply because more Federal funds are available to their potential students due to the substantial increase to the Pell Grant maximum, as well as increases in the limits for the various student loan programs, proposed in this bill. Despite the inclusion of this provision in the bill, however, the Department is continuing to examine the issue of how best to control Federal costs for short-term vocational programs.

Section 483. Section 483 of the bill would amend section 473 of the Act to make a conforming change necessary because of the single need analysis system proposed in this part, and the repeal of the SSIG program proposed in section 420 of the bill.

Section 484. Section 484 of the bill would amend the data elements in section 474 of the Act that are considered in determining the expected family contribution (EFC), in order to make certain conforming changes. First, section 474 would be amended to conform to changes made to section 480 of the Act by section 490 of the bill, by using slightly different terminology regarding who is considered a dependent of the student or of the parent, and how family size is determined. This language was taken from the Pell Grant program statute and would provide clearer guidance for using the data elements than is now provided in Part F. Next, section 474 of the Act would be amended to conform to changes proposed throughout Part F of Title IV of the Act, discussed below, regarding the treatment of a student's spouse. Other minor editorial amendments would also be made to section 474 of the Act.

Section 485. Section 485 of the bill would amend section 475 of the bill to make a number of changes to the way the EFC for a dependent student is calculated. First, references to the spouse of a dependent student would be eliminated throughout section 475 of the Act, to conform with changes to the definition of an independent student, proposed in section 490 of the bill.

Section 485 of the bill would also amend subsection (b), (d), and (g) of section 475 of the Act to permit the application of the parents' negative available income, if any, first to reduce the parents' income supplemental amount from assets, down to zero if necessary, and then, if there is still any negative available income remaining, to increase the allowances against the dependent student's income by that amount, although the dependent student's contribution from income would never be reduced to less than zero. These changes would take into consideration that students from very low-income families would most likely be contributing more of their income to support their families' basic needs, and thus would have less to contribute to meeting their postsecondary education expenses.

Section 485 of the bill would also revise the minimum dependent student contribution in section 475(g) of the Act to be the greater of an amount that would vary according to family income, or 70 percent of the student's total income minus adjustments. As calculated under the variable portion of this provision, for a first year under graduate student, the minimum contribution would be zero, if his or her parents' total income is less than $12,000; $500, if the parents' total income is between $12,001 and $15,000; and $700, if the parents' total income is $15,001 or more; and for all other dependent students would be zero, $600, and $900 in those income categories.

Exceptions to the general need analysis calculations for dislocated workers and displaced homemakers would be eliminated from section 475, and elsewhere in this part of the bill, from sections 476, 477, and 480 of the Act. These exceptions have resulted in a substantial administrative burden and a significant lack of accuracy that outweigh the additional benefits provided to a relatively small number of these aid recipients. For example, about three-quarters of the 2,100 institutions that responded to a recent Survey of of Undergraduate Financial Aid Policies, Practices and Procedures reported that their aid applicants correctly claimed dislocated worker status less than 50 percent of the time, and correctly claimed displaced homemaker status about 20 percent of the time. About one in five schools reported that their students *never* claimed dislocated worker status correctly, and one in four schools reported the same information regarding displaced homemaker status. Instead of statutory exceptions for this very limited group of individuals, the Secretary would be authorized, in section 490 of the bill, to prescribe regulations specifying situations in which the data elements considered in determining a student's expected family contribution may be modified to accommodate the special circumstances of any student, including dislocated workers and displaced homemakers.

Next, section 475 of the Act, and elsewhere in this part of the bill, sections 476 and 477 of the Act, would be amended to exclude the net value of the principal place of residence from the calculation of net worth for the parents of dependent students and independent students with adjusted gross incomes of less than $20,000. For families with low incomes, home equity is generally not available to tap as a resource to pay postsecondary education expenses because their earnings are often insufficient to qualify for a loan against their homes in order to pay for their education, or the education of their children.

The tables and provisions used to determine the standard maintenances allowance, employment expense allowance, adjusted net worth of a business or farm, asset protection allowance, and parents' assessment from adjusted available income would all be updated to reflect the amounts to be used for award year 1992–1993 (with certain modifications) that were set in regulations, pursuant to section 478 of the Act. Updates for subsequent years would be published in the Federal Register, as is the case in current law.

This section of the bill would authorize the use of the parents' negative available income to reduce the parents' income supplemental amount from assets, and then increase the adjustments to the dependent student's income. The parents' income supplemental amount from assets would also be modified so that any negative amount resulting from the calculation of the parental income supplemental amount from assets would be converted to zero, rather than being added to the parents' negative available inome to create a larger offset against the dependent student's income. While students from very low income families may be contributing more of their income to support their families, assisting their parents to accumulate assets does not fall within that concept of support.

The asset protection allowance would be changed by looking at the average age of both parents in the calculation, rather than the age of the older parent. This amendment would reflect the significant increase in two-earner couples, and thus more accurately determine the appropriate asset protection allowance.

A minor terminology change would also be made to section 475(d)(2)(C) of the Act in order to conform with the slightly different provisions, taken from the Pell Grant program statute and added to section 480 of the Act by section 490 of the bill, regarding business and farm assets.

Finally, section 475(i) of the Act would be amended to exclude the Pell Grant program from the adjustment of award amounts for enrollment periods of other than nine months. This provision is unnecessary for Pell Grant purposes, because this calculation is already performed when the full scheduled award is adjusted to reflect the period of attendance.

Section 486. Section 486 of the bill would amend section 476 of the Act in a number of ways similar to the amendments to section 475 of the Act discussed above, including updating the various tables, modifying the asset protection allowance to reflect the average age of a married independent student and his or her spouse, eliminating the exceptions for dislocated workers and displaced homemakers, excluding the net value of the principal place of residence from the calculation of net worth for independent students with adjusted gross incomes of less than $20,000, and making necessary conforming changes to reflect the new farm and business assets definitions added to section 480 by section 490 of the bill.

In addition, section 486 of the bill would modify section 476 of the Act to include married, as well as unmarried, independent students without dependents. Currently, spouses are considered "dependents" of the students under section 476 and 477 of the Act, and the calculation of the expected family contribution for married independent students without dependents is now the same as the more generous need analysis formula used for families with children. Families without children do not have the same living expenses and financial responsibilities, and thus this provision would be altered to treat all independent students without children uniformly, regardless of marital status.

Because married independent students would be included under section 476, a maintenance allowance for the spouse of the independent student, and an employment expense allowance similar to those in sections 475(c)(5) and 477(b)(5) would be added to section 476 of the Act.

Similar to the changes proposed to section 475(g) of the Act, the minimum student contribution in section 476(b) of the Act would also be revised to be the greater of the amount calculated according to the formula in section 476 of the Act or an amount that

would vary according to family income. As calculated under the variable portion of this provision, a student's minimum contribuiton would be zero, if his or her total income is less than $12,00; $780, if that total income were between $12,001 and $15,000, and $1,200, if that total income were $15,001 or more.

Section 476 of the Act would also be amended to eliminate veteran's educational benefits from the calculation of the independent student without dependents' contribution from income. The current formula results in only a certain percentage of the veteran's educational benefits being used to reduce the student's amount of need for Title IV, HEA student assistance. Under this amendment these benefits would instead be treated as other forms of student financial aid, which are considered resources for meeting the student's financial need on a dollar-for-dollar basis.

Section 487. Section 487 of the bill would amend section 477 of the Act similar to the changes to sections 475 and 476, discussed above, including updating the various tables, modifying the asset protection allowance to reflect the average age of a married independent student and his or her spouse, eliminating the exceptions for dislocated workers and displaced homemakers, excluding the net value of the principal place of residence from the calculation of net worth for independent students with adjusted gross incomes of less than $20,000, making necessary conforming changes to reflect the new farm and business assets definitions added to section 480 by section 490, modifying section 477 of the Act to exclude married independent students without dependents, and eliminating veteran's education benefits from the computation of adjusted available income. The minimum contribution for an independent student with dependents would be the greater of the amount calculated according to the formula in section 477 of the Act or an amount that would vary according to family income. As calculated under the variable porton of this provision, a student's minimum contribution would be zero, if his or her total income is less than $12,000; $780, if that total income were between $12,001 and $15,000, and $1,200, if that total income were $15,001 or more. In addition, the way in which the expected family contribution is calculated in sections 477 (a) and (b) of the Act would be amended to make the calculation of the minimum contributions for independent students similar, and make the assessment of resources in section 477 of the Act, which is currently modeled on the calculation of the expected family contribuiton for parents of dependent students in section 475 of the Act, more appropriate for independent students.

Section 488. Section 488 of the bill would amend section 478 of the Act to eliminate the prohibition in subsection (a) against the Secretary prescribing regulations to carry out Part F, other than on limited topics. This elimination would restore the necessary Secretarial flexibility to regulate Title IV student aid programs and promptly address issues as they arise. In addition, the dollar amounts and years referenced in the remainder of section 478 of the Act would be updated in conformity with the updating of the various tables in sections 475, 476, and 477 of the Act as proposed in this part of the bill, and necessary corrections to cross references would be made.

Section 489. Section 489 of the bill would eliminate the references to Pell Grants and examples of asset adjustments in section 479A of the Act, which provides discretion to the student financial aid administrator to adjust a student's expected family contribution and cost of attendance. Under the campus-based programs, a school's Federal funds are limited by the availability of appropriations and by allocation formulas. The adjustment authority for the GSL program is also limited, in practice, because students would be less likely to take out excessive loans than they would be to accept higher grant amounts. However, under the current section 479A of the Act, there is no way to limit Pell Grant expenditures to the availability of appropriations. Any increase in eligibility for the Pell Grant program generally results in increased Federal funds to students at the school. Thus, discretion has the potential to be extraordinarily and unpredictably expensive.

There is also a very serious potential for institutional abuse of such a "blank check" authority to adjust award levels, particularly in light of the substantial increase in the Pell Grant maximum, proposed in section 412 of the bill. Furthermore, such blanket discretion is inequitable because two similar students applying for Federal assistance will not necessarily be judged by the same criteria. Section 490 of the bill would authorize the Secretary to prescribe regulatory modifications of the determination of a student's expected family contribution in special circumstances. The Secretarial authority would be more uniformly applied, remove the incentive for instatutional abuse, and be more predictable than the discretion found in current law, yet would provide ample flexibility to accommodate the special needs of students.

Section 490. Section 490 of the bill would amend the various definitions in section 480, including the definition of an "independent student" in section 480(d) of the Act. Under current law, a student is considered to be independent if he or she is 24 years of age or older by December 31 of the award year; is an orphan or ward of the court; is a veteran; is a gradate or professional student, or is married, and declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents during the first calendar of the award year; has legal dependents other than a spouse; is a single undergraduate student who was not claimed as a dependent for income tax purposes by his or her parents for the two calendar years preceding the award year and demonstrates total self-sufficiency by showing annual total resources (excluding established under the National and Community Service Act of 1990) of $4,000; or is a student from whom a student financial aid administrator makes a documented determination of independence due to unusual circumstances.

Section 490 of the bill would alter this definition by increasing the age at which a student would be automatically considered to be independent to age 26, and would eliminate the difficult-to-verify declaration required of graduate, professional and married students (as well as make conforming changes to the definition due to this change by eliminating paragraphs (3) and (4) of section 480(d)). In addition, this amendment would require a single undergraduate student with no dependents to demonstrate that he or she did not live with his or her parents for more than six weeks during the calendar year preceding the award year, and will not live with his or her parents during the first calendar year of the award year for a similar period, and show his or her self-sufficiency during each of the two calendar years preceding the award year by demonstrating annual total income (excluding resources from parents and student financial assistance and living allowances from programs established under the National and Community Service Act of 1990) of an annually adjusted amount, which would be $5,740 for award years 1992–1993.

Increasing the age at which a student would be automatically considered to be independent to age 26 would significantly reduce the number of students receiving artificially reduced EFCs despite their true dependency status, and is consistent with the Administration's position that the student and his or her parents should shoulder the primary responsibility for financing the student's postsecondary education. Eliminating the declaration regarding parental tax information currently required of graduate, professional, and married students recognizes that the tax returns necessary to verify this declaration are not available in sufficient time to permit any meaningful verification of this declaration. In addition, the current requirements for a single undergraduate student to establish independent student status through a certain level of "resources" are too generous, because such resources could include student financial aid, and are set at an insufficient level to allow a student to be truly self-supporting.

A student financial aid administrator would also be authorized to make a documented determination that, in unusual circumstances, an individual who meets the statutory definition of an independent student is in fact dependent. This is consistent with the aid administrator's authority in current law to make a documented determination that a student is independent in unusual circumstances, even though the student does not meet the statutory definition.

Section 490 of the bill would also amend section 480 of the Act to eliminate the exception in section 480(a)(3) of the Act regarding dislocated workers, and the definition of a displaced homemaker in section 480(e) of the Act, for the reasons discussed in section 485, above.

Section 490 would also add a provision to section 480 of the Act authorizing the Secretary to prescribe regulations specifying situations in which the data elements considered in determining a student's expected family contribution may be modified to accommodate the special circumstances of a student. This addition would provide the necessary flexibility to accommodate the special needs of students, and replace the elimination of student financial aid administrator discretion for purposes of the Pell Grant program proposed in section 489, above.

Finally, section 490 would add slightly different provisions, derived from the Pell Grant program statute, regarding what constitutes farm and business assets, who is considered a dependent of the student or of the parent, and how family size is determined. These changes would provide clearer guidance for using the data elements than is now provided in Part F.

Part G—General provisions

Section 491. Section 491 of the bill would amend the definitions in section 481 of the Act to simplify and consolidate the definitions regarding what types of postsecondary educational institutions may participate in programs under Title IV. Elsewhere in this bill, amendments are also proposed to sections 435 and 1201(a) of the Act in conformity with this simplification.

First, the separate definition for a "postsecondary vocational institution" would be

eliminated as unnecessary because of changes proposed to the definition of an "institution of higher education" currently in section 1201(a) of the Act.

Next, section 491 of the bill would also amend section 481(a) of the Act to make an institution with unacceptably high default rates ineligible to participate in any of the Title IV programs. This amendment is similar to the provision added to the GSL program by the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, but would apply to all Title IV programs, and the default rate at which an institution generally would be terminated would be set at 25 percent for fiscal year 1994 and beyond. High default rates are one indicator of poor academic quality. Termination of eligibility should not be limited to the GSL programs. Further, the reduction of the default threshold for termination of eligibility from the current 30 percent for fiscal years 1993 and beyond is not adequately stringent. Schools with default rates over 25 percent are not satisfactorily fulfilling their program participation obligations, and should not, in general, be permitted to continue to participate in the Title IV programs.

The definition of a "proprietary institution of higher education" would also be changed to permit the institution to be eligible under the same alternative to accreditation as proposed for nonprofit institutions in section 1111 of the bill. Currently, a proprietary institution must be accredited in order to participate in the Title IV programs generally but may utilize the alternative to accreditation under section 435(c) of the Act as one way to establish eligibility for GSL program participation. Section 491 of the bill would add to the definition of a proprietary institution language derived from the current sections 435(b) and (c) of the Act. This alternative would state that if there is no nationally recognized accrediting agency or association qualified to accredit institutions in a particular category, the Secretary may appoint an advisory committee that would make recommendations to the Secretary regarding the appropriate standards, and whether a particular school meets the standards the Secretary establishes.

Finally, section 481(e) of the Act would be eliminated because it would be superseded by changes proposed in section 1101 of the Act.

Section 492. Section 492 of the bill would add a new section 481A to Part G of Title IV of the Act that would reduce statutory maximums for grants and loans for students in short term programs. If a student is or will be enrolled in a course of study of less than one academic year (defined for this purpose as 24 semester or trimester hours, 36 quarter hours, or 900 clock hours), the maximum amount of a grant or loan that he or she may receive under any of the Title IV grant or loan programs would be reduced proportionately. For example, if the student is enrolled in a 600 clock hour program, the maximum amount of a Stafford Loan that he or she may receive is 600/900ths, or two-thirds, of the annual loan limit that would otherwise apply to that student. This amendment would match the award amount to the amount of training provided, and would serve as an incentive to institutions to constrain the amount of tuition charged for short-term training.

Section 493. Section 493 of the bill would amend the Master Calendar in section 482 of the Act to make changes to cross-references necessary to conform with other changes proposed in this bill, and to eliminate subsection (c), which currently delays the effective date of certain Title IV regulations published on or after December 1 to the second award year beginning after that date. This is an inappropriate intrusion on the administrative functions of the Department in the delivery of student aid. The unreasonably long delay of the effective date of regulations would, in certain circumstances, delay the implementation of desirable program improvements; constrain regulatory procedures and minimize opportunities for public comment; and severely limit the Secretary's ability to respond effectively to unforeseen administrative problems that require prompt regulatory guidance.

Section 494. Section 494 of the bill would make several changes to section 483 of the Act regarding how student financial aid forms are developed and processed. First, the Secretary would prescribe a common financial reporting form to be used to determine the expected family contribution of a student for purposes of all the Title IV programs, and no student or parent could be charged a fee for processing this form, although a fee could still be charged for processing additional items required for institutional or State financial aid purposes. Instead of having need analysis processors using a variety of forms, this amendment would streamline and make uniform the student aid delivery process. All of the aid application information would be collected using the common form, and forwarded to the central processor designated by the Secretary, where all determinations of the expected family contributions of students would be performed.

Currently, under sections 483(a)(2) and (3) of the Act, individual multiple data entry (MDE) agencies contract with the Department to collect the aid application information, using a variety of application forms (all of which contain the "core" elements for determining the expected family contribution for Title IV purposes), and forward the information to the central processor, where the student's expected family contribution for Pell Grant purposes is determined. In addition, the MDEs calculate a second expected family contribution, which is used to award campus-based aid.

The Department's Inspector General has criticized the MDE procurement as noncompetitive, expensive, and duplicative. Section 494 of the bill would eliminate the requirement that the Secretary enter into not less than five MDE contracts, thereby providing the Secretary with the flexibility necessary to ensure that the determination of expected family contributions is done as efficiently as possible. This amendment would ease the confusion and burden associated with the current system.

This amendment also contains elements taken from section 411(f) of the current Pell Grant program statute, in that the institution of higher education would be able to recalculate the expected family contribution of the student if there has been a change in circumstances or in the data submitted, make the corrected award (or certify the correct loan amount, in the case of a GSL), and, in the case of Pell Grants, report the corrected data via the need analysis servicer to the central processor for confirmation of the correct amount.

Finally, section 494 of the bill would amend section 483(f) to eliminate the requirement that institutions issue a "United States Department of Education, Federal Student Assistance Report," bearing the Great Seal of the United States and printed in the same color as checks issued by the Treasury Department, to student aid recipients that informs those recipients of the amount and type of Federal assistance awarded. Government documents that resemble Treasury checks both create confusion on the part of recipients and facilitate counterfeiting attempts. This amendment would merely require that an institution inform each student who receives Title IV assistance of the type and estimated amount of assistance awarded, that the assistance is federally supported. There is no need for a separate form in order to convey this information.

Section 495. Section 495 would amend the student eligibility requirements in section 484 of the Act by replacing the current requirement that, in order to be eligible to receive Title IV grant, loan or work assistance, a student must be making "satisfactory progress" toward a postsecondary degree or certificate. The amendments in section 495 of the bill would instead require that a student rank in the top 90 percent of his or her class in order to remain eligible to receive Title IV assistance. Each year, eligibility would be based on the student's cumulative class ranking at the end of the enrollment period most recently completed. In addition, the definition of "satisfactory progress" in section 484(c) of the Act would be amended to specify that the Secretary may regulate minimum standards of satifactory progress. However, it must be pointed out that the Department has indicated that it will reexamine this proposal, and develop an alternative approach ensuring that Federal student aid goes only to those students who recognize the importance of education and who take their studies seriously.

Next, section 495 of the bill would amend section 484(d) of the Act to make more explicit the Secretary's authority to regulate on a variety of issues relating to the testing of students who are not high school graduates. In order for such students to receive most forms of Title IV assistance, they are required under current law to pass an independently administered examination approved by the Secretary. Test approval encompasses a variety of issues, and this amendment would include clearer references to some of the elements of that process into the statute.

Section 495 of the bill also eliminates the limitation, in subsection (f), on the Secretary's authority to verify the accuracy of the data reported by aid applicants, and the verification of immigration status provisions in subsections (h), (i), and (j). Currently, section 484(f) of the Act prohibits verification of the data on more than 30 percent of aid applications for any Title IV student aid program per institution in any award year. This is an arbitrary limitation that interferes with the Department's efforts to reduce the documented high error rate on student aid applications. The Department spent many years developing a national system for identifying error-prone applications that has been seriously undermined by the addition of this limitation by the Higher Education Technical Amendments Act of 1987 (P.L. 100-50). Up to 60 percent of the applications each year at some institutions now contain patterns of reported data that, historically, have proven to be erroneous. This provision of current law permits institutions to manipulate the system by delaying the processing of difficult or error-prone aid applications until after the 30 percent limitation has been reached.

In addition, section 495 of the bill would substitute an authoirty for the immigration status alternative verification system for

the current sections 484(h), (i), and (j). These current subsections were added by the Immigration Reform and Control Act (IRCA), which also permitted this verification system to be waived if an alternative system would be more cost-effective. The Secretary determined that a centralized computer matching program implemented by the Department using INS information accomplishes the goals of IRCA through more economical and less burdensome means, and received a waiver of the subsections in current law. Thus, the current subsections are obsolete and create confusion on the part of institutions with regard to their verification responsibilities.

Section 496. Section 496 of the bill would require institutions to obtain additional information from borrowers that would make it easier to locate those who are delinquent or in default, and to share that information with lenders. This provision of the bill would amend section 485(b) of the Act to require the institution to obtain, during the exit interview, the borrower's expected address after leaving the institution, the name and address of the borrower's expected employer after leaving the institution, and the address of the borrower's next of kin. This information would enhance collection efforts with little increase in the administrative burden on schools.

Section 497. Section 497 of the bill would repeal section 486 of the Act and replace it with a new section 486 that would require that all institutions participating in Title IV programs implement fair and equitable refund policies, and inform prospective students in writing of those policies. The current section 486 of the Act, which authorizes the Secretary to enter into contracts in order to provide training to individuals in financial aid and support services, is unnecessary because the Secretary already has sufficient authority to provide the type of training described in section 486 without a special authorization, and does in fact provide such training, often in the form of conferences.

Under the new section 486, an institution's refund policy would be considered fair and equitable if it provides refunds of at least the largest of the amounts provided under applicable State law; the refund requirements established by the institution's nationally recognized accrediting agency requirements and approved by the Secretary; the specific refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; or a pro rata calculation under which the institution would refund a share of tuition, fees, room and board, and other charges assessed the student by the institution, in proportion to the amount of time remaining in the enrollment period at the time the student withdraws. The institution would also be permitted to retain a reasonable administrative fee.

If a student withdraws after the halfway point in the period of enrollment for which the student has been charged, the institution would not be required to determine the refund using the pro rata calculation. Section 497 would also make a minor conforming change to section 485(a)(1)(F) of the Act.

These amendments would help to minimize the problems of defaults by students who drop out near the beginning of a program of study, and would remove an incentive for a school to enroll students lacking a reasonable prospect for completing their studies.

Section 498. Section 498 of the bill would make a variety of changes to the program participation agreements in section 487, as well as amend the hearing requirements in section 487 (b) and (c). First section 498 would amend section 487(a) of the Act to require that institutions acknowledge, as part of their program participation agreements, the right of the Secretary, guaranty agencies, accrediting agencies, and State licensing bodies to share with each other information relating to an institution's eligibility to participate in Title IV programs. This would conform to the change proposed in section 1116 of the bill.

Section 498 of the bill would also prohibit an institution from paying an individual engaged in the recruiting or admission activities, or in making decisions regarding the award of student financial assistance, any form of incentive payment that is based directly or indirectly on that individual's success in securing enrollments at the institution.

A compensation system based on commissions or bonuses for recruiters is a powerful incentive for misrepresentation and unscrupulous tactics, including abuse of the ability-to-benefit student eligibility criterion in section 484(d) of the Act, and the enrollment of likely dropouts. This type of compensation system places an undue emphasis on generating student aid dollars for the institution rather than providing a high quality education to students who are adequately prepared to undertake the courses of study for which they enroll. This amendment would address a major source of program abuse through which some unscrupulous institutions have been able to exploit disadvantaged students, with a resulting waste of Federal grant aid and an increase in student loan defaults.

Next, section 498 of the bill would amend the procedures in section 487 of the Act for limiting, suspending, or terminating the Title IV participation of an institution that violates program requirements by eliminating the requirements for a administrative hearing "on the record." Institutions would still be provided notice and an opportunity for a hearing that would satisfy due process considerations. The formal "on the record" hearings are unnecessary burdensome, time-consuming, and costly for both the Government and the institution. Unscrupulous institutions often manipulate the various procedures associated with "on the record" hearings to delay the final disposition of the case for as long as possible in order to keep the Federal funds flowing to the institution.

Finally, section 498 of the bill would add a new subsection (e) to section 487 of the Act that would authorize the Secretary to certify conditionally that an institution is eligible to participate in Title IV programs if: an institution's administrative capability and financial responsibility is being determined for the first time; there is a complete or partial transfer of the ownership of an eligible institution; or the Secretary deems that institution is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its responsibilities under its program participation agreement. Apart from being in one of these categories, an institution would be subject to the same standards for a conditional certification as it would be under the current certification process.

The Secretary could conditionally certify an institution under this subsection for up to three complete award years. If, prior to the end of a conditional certification, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary could terminate the institution's participation after notice and opportunity for a hearing. A full administrative hearing "on the record" would not be required in order to terminate an institution's participation that is conditionally certified.

This amendment would greatly improve the Secretary's ability to take timely actions against institutions with unproven records of administering Federal funds, or changed circumstances that may affect their adminsitration of those funds. Such authority has become particularly necessary in recent years due to the growth in the number of postsecondary institutions seeking to participate in the Title IV programs.

Section 499. Section 499 of the bill would add a new section 488A to the Act that would provide a uniform authority under which the Secretary and guaranty agencies could garnish the pay of student loan defaulters. Under section 428E of the current law, a guaranty agency is entitled to retain 35 percent, rather than the 30 percent of its collections on defaulted loans normally allowed, if it is located in a State that has enacted and enforces a wage garnishment statute that is consistent with the requirements of that section.

Section 499 of the bill would authorize guaranty agencies or the Secretary, depending on who holds the loan, to garnish up to 10 percent of the defaulter's disposable pay, regardless of particular State law requirements. The provisions in current section 428E would also serve as the general parameters of the wage garnishment authority proposed in new section 488A. By retaining basically the same safeguards as described in current law, defaulters would be provided with ample due process protections.

It is also important to extend this administrative wage garnishment authority to the Secretary because it is not cost-effective for the Department of Justice (DOJ) to pursue defaulted loans in small dollar amounts through the judicial process, and the minimum dollar value that DOJ will accept for collection may increase in the near future. While these loans may be small individually, they add up to significant dollar amounts that could otherwise be uncollectible if the Secretary of Education does not obtain an administrative wage garnishment authority.

Finally, this section of the bill would eliminate the unnecessary and unduly costly incentive in current law discussed above that permits guaranty agencies to retain an additional five percent of collections.

Section 499A. Section 499A of the bill would add a new section 489A to Part G of Title IV of the Act to authorize the Secretary to obtain information from any agency of the United States, or of any State, concerning the most recent address of a student loan borrower, or an individual owing a refund of an overpayment of a Title IV grant, as well as the name and address of his or her employer, if the Secretary determines that the information is needed to enforce the loan or collect the overpayment. The information that the Secretary would be authorized to obtain would include, in addition to the address itself, information that might assist the Secretary in obtaining the address. The Secretary could then share the information obtained with a guaranty agency holding a loan made to that borrower.

The head of any agency of the United States or of a State would, in conformity with the Privacy Act requirements, be required to provide the information requested by the Secretary notwithstanding any other provision of law, unless disclosure of this in-

formation would contravene national policy or security interests of the United States, or the confidentiality of census data. The reasonable costs incurred by the agency in providing the information to the Secretary would be reimbursed by the Secretary and retained by the agency, and if the information is furnished to a guaranty agency, that agency would be charged a fee in order to reimburse the Secretary for the expense of providing the information.

This new provision would greatly enhance the Secretary's ability to locate student loan defaulters and others who owe Title IV funds in order to collect on those obligations. It is also necessary to provide this means of determining the name and address of the individual's employer in order for the wage garnishment provision proposed in section 499 of the bill to be fully utilized.

Section 499B. Section 499B of the bill would amend section 490 of the Act to make the attempt to commit the offenses listed in section 490 subject to criminal penalties. Whether an individual is subject to criminal penalties should not be dependent on whether the individual is successful in carrying out the commission of one of these offenses, which include embezzlement, providing false information, providing unlawful inducements to make or assign GSLs, and concealing or destroying records relating to Title IV assistance.

Section 499C. Section 499C of the bill would make certain purely technical corrections to sections 485 and 485B of the Act.

Section 499D. Section 499D of the bill would amend section 3(c) of the Higher Education Technical Amendments of 1991 (P.L. 102-26) to remove the November 15, 1992 sunset on the elimination of any limitation period applicable to an offset, lawsuit, or other action brought to collect on a defaulted student loan or a grant overpayment. This sunset is an arbitrary limitation of the Department of Education's ability to collect on older defaulted student loans. Permanent elimination of the statute of limitations is additionally justified for this unique type of debt because studies have shown that the student loan defaulter's ability to repay increases over time. Moreover, student loans are made without regard to the credit worthiness of the borrower, and the benefits that the borrower receives through obtaining a student loan far outweigh any burden on the student resulting from the Federal Government's ability to collect on the loan over an indefinite period of time.

TITLE V—EDUCATOR RECRUITMENT, RETENTION, AND DEVELOPMENT

Title V. Title V of the bill would amend Title V (Teacher Training and Development) of the Act as follows:

Section 501. Section 501 of the bill would repeal sections 501, purpose, and 502, authorizations of appropriations, of the Act. Each part or subpart already has a statement of purpose and an authorization of appropriations.

Section 502. Section 502 of the bill would replace the current Part A (Midcareer Teacher Training for Nontraditional Students) with a new Part A program, Partnerships for Innovative Teacher Education. The new program would assist in the establishment of teaching schools that develop and put into practice the best knowledge about teaching. The teacher education functions of the current Part A program would be subsumed by the new, more comprehensive, program.

Section 513 of new Part A would authorize the Secretary to make grants to, and enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and consortia of such agencies and institutions to plan, establish, and operate teaching schools.

A teaching school would be defined as an elementary or secondary school whose mission, in addition to providing the best possible education to its students, is to provide a site for a formal collaboration between one or more institutions of higher education and the school for the training of prospective and beginning teachers under the guidance of master teachers and teacher educators, the continuing development of experienced teachers, and research and development to improve teaching and learning. Proprietary schools would not be eligible for awards under this part.

Awards would be for a term of three years and could be renewed, non-competitively, for a period of two additional years if the Secretary makes certain determinations. No individual teaching school could receive funds provided under this part for a total period of more than five years.

Section 514 of new Part A would require State or local educational agencies, institutions of higher education, or consortia of such agencies and institutions that want to receive awards under this part to submit applications to the Secretary containing such information and assurances as the Secretary requires, including a plan for evaluating the effectiveness of the teaching school and assurances that a significant number of prospective and beginning teachers will be trained in each teaching school in each year of the project. Applications from State or local educational agencies would also have to indicate how the State or local agencies would deal with their own rules or regulations that are found by a teaching school to impede its progress in achieving its goals. Applications from institutions of higher education would have to describe how the Schools of Education and of Arts and Sciences and other departments will be involved in the project.

Priority would be given to applicants that select training school sites based on need, propose projects that demonstrate the active support of the State and local educational agency and the university or college, and propose projects that demonstrate collaboration with other educational organizations, social or human service agencies, other community organizations, and the business community.

Section 515 of new Part A would allow applicants to use award funds for planning, establishment, and operational activities, including staff development, purchase of books, materials, and equipment, minor remodeling, payment of additional personnel, participation in network activities, and other related costs. The Secretary would be authorized to limit the amounts of program funds used for remodeling and the purchase of equipment. Section 515 of new Part A would also require teaching schools to use program funds for specified activities.

Section 516 of new Part A would authorize $20,000,000 to be appropriated for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out the Part. A reservation of up to five percent of the amount appropriated for each fiscal year would be allowed to study the planning and implementation processes and the results of the teaching schools established under this program, disseminate findings of such studies, provide technical assistance to teaching schools, and support the development of a network or networks of teaching schools.

Section 516 of new Part A would also require that the Federal share of the cost of the activities set forth in an approved application be 75 percent for the first three years and 50 percent for the last two years.

Section 503. Section 503 of the bill would repeal Part B (School, College, and University Partnerships) of Title V of the Act. The program functions of the current Part B program would be subsumed by the more comprehensive new Part A (Precollege Outreach Program) of Title I of the Act proposed in section 101 of the bill.

Section 504. Section 504 of the bill would eliminate the programs contained in current Part C (Professional Development and Leadership Programs) of Title V of the Act.

Subpart 1 (Professional Development Resource Centers) of current Part C has never been funded and is not necessary.

Subpart 2 (Leadership in Educational Administration development, or "LEAD") of current Part C was originally envisioned as only a six-year effort. Currently in place is an excellent framework, the National Leadership Network, that supports the LEAD centers. In addition, the 1992 budget request for research includes $50,000 for a National LEADership Collaborative, which would assist the networking among the LEAD centers in support of the national goals. Section 504(3) of the bill would authorize $370,000 to be appropriated for fiscal year 1992 for the purpose of completing the final year of LEAD funding for the territories.

Section 505. Section 505(a) of the bill would amend current Part D (Teacher Scholarships and Fellowships) of Title V of the Act to make it Part C.

Sections 505(b) (1), (2), and (3) of the bill would change the heading of subpart 1 of Part D to the "Paul Douglas Teacher Scholarship Program," change references to Congressional Teacher Scholarships to Paul Douglas Scholarships, and correct an outdated reference.

Section 505(b)(4) of the bill would add a new subsection to section 552 of the Act, authorizing $14,639,000 to be appropriated for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out the Paul Douglas Teacher Scholarship Program.

Section 505(a)(5)(A) of the bill would amend section 553(b)(4) of the Act, which imposes a service obligation on Paul Douglas Scholarship recipients, to: apply the service obligation only to scholars who received scholarships for either one or both of the two academic years prior to completion of a program of study for which the recipient would receive a teaching certificate (i.e., chiefly junior and senior recipients); reduce the number of years of service from two years of service for every year of scholarship to one year of service for every year of scholarship; allow service to be performed in a public or private nonprofit school or education program at the pre-school, elementary, or secondary level in any State or outside the United States in schools sponsored by the Department of Defense; and require that recipients complete their teaching obligation within the four year period after completing the program of study for which the Paul Douglas Scholarship was awarded, or within three years for scholars who receive assistance for one academic year or less. This change would entice younger students to consider careers in teaching, help make teaching more attractive to current post-secondary students, and ease serious administrative burdens on the States.

Section 505(a)(5)(D) of the bill would amend section 553(b) of the Act to add a require-

ment that applications provide assurances that all recipients will sign a statement of their intention to pursue a teaching career and be enrolled or accepted in a State-approved program of teacher education. This change would be supportive of, and consistent with, the purpose of the program.

Section 505(a)(6) would amend section 555(b) of the Act to add an alternate eligibility requirement that a student be maintaining a postsecondary grade point average of 3.25 or better on a 4-point grade scale, or the equivalent grade average on another scale. This proposal would give States greater flexibility in selecting Douglas scholars.

Section 505(c)(1)(A) would amend section 563(a) of Subpart 2 (Christa McAuliffe Fellowship Program) of current Part D of Title V of the Act to authorize $2,036,000 to be appropriated for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out the program; replace the current requirement that a fellowship be awarded to a teacher teaching in each congressional district with a requirement that funds be distributed to the States, the District of Columbia, Puerto Rico, and to the Territories on the basis of the number of public school teachers in each State, District, Commonwealth, or Territory in proportion to the total number of public school teachers; and allow the Secretary, in extraordinary circumstances, to waive or defer all or a portion of the service requirement, and to allow fellows to accept a teaching position in another school or school district. Section 505(c)(1)(A) would retain current law that individual fellowships may not exceed the national average salary of public school teachers and that no State or territory shall receive less than the average national salary of public school teachers.

Since appropriations levels for the Christa McAuliffe Fellowship Program have consistently been too low to provide one fellowship for each congressional district, and allocations of funds for this program have been made on the basis of teacher count according to section 563(a)(3) of the Act, this amendment would conform the requirement with current practice. With this amendment, section 563(a)(3) of the Act, providing for alternative distribution of fellowships if there are not sufficient funds to provide one fellowship for each congressional district, would become unnecessary and, therefore, would be eliminated in section 505(c)(1)(B).

Section 505(b)(2) of the bill would amend section 564 of the Act to require States, consistent with State law, when making Christa McAuliffe Fellowship awards to give priority to applicants that propose fellowship projects that involve pursuit of eligible activities on a full-time basis as part of a sabbatical. This amendment would help ensure that fellowship awards actually support enrichment activities undertaken during sabbaticals. Over 70 percent of the 1990 fellowship recipients will conduct projects while teaching full-time during the fellowship award period. Devoting full-time to a fellowship would encourage more meaningful activities to improve skills or service of outstanding teachers and would enhance the program.

Section 505(c)(3) of the bill would amend section 565 of the Act by striking out subsection (b), the requirement that announcement of McAuliffe fellowship awards be made in a public ceremony. This requirement is unnecessary.

Section 506. Section 506 of the bill would repeal current Part E (State Task Forces on Teacher Training) of Title V of the Act. Part E has never been funded, and States are already examining ways to improve teacher training.

TITLE VI—INTERNATIONAL EDUCATION PROGRAMS

Section 601. Section 601 of the bill would remove the graduate fellowship authorities in section 602(b) of the Act. The provisions (currently in seciton 602(b)(1) of the Act) for stipends to individuals engaged in a program of language training, area studies, or international studies, or studying the international aspects of a professional studies program would be incorporated into the National Graduate Fellowships program proposed for Title II of the Act. This program would provide competitive grants to IHEs to provide support for graduate students studying in areas of national need. These areas, which would be designated by the Secretary, could include the programs of study that are currently the focus of section 602(b) of the Act.

The provisions (currently in section 602(b)(2) of the Act) authorizing awards to students beginning their third year of graduate training would be eliminated, since this authority would serve a limited number of students who could be served under the regular fellowship program. Section 601 of the bill would also remove a funding stipulation (currently in section 602(b)(3) of the Act) that is no longer necessary, given the removal of the other authorities under section 602(b) of the Act.

Section 602. Section 602 of the bill would remove the authority (currently in section 607 of the Act) for the Secretary to make grants to institutions of higher education to acquire foreign periodicals. Activities under this authority are the responsibility of the individual institutions and are an inappropriate use of Federal funds. This section of the bill would also redesignate sections 608 and 609 of the Act as sections 607 and 608, in conformity with the proposed removal of the current authority in section 607 of the Act.

Section 603. Section 603 of the bill would reauthorize Title VI programs through fiscal year 1996, with an authorization level of $28,670,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years. Since the authorization of appropriations incorporates programs under Parts A and B of Title VI, the authorization provisions would be placed in the general provisions part of the current title, in place of the recently repealed Advisory Board authority (previously section 621 of the Act). Section 603 of the bill would also repeal the current authorization of appropriations (in section 610 of the Act) for Part A programs and (in section 614) of the Act) for Part B programs, since the proposed appropriations authority would incorporate both Parts A and B.

Section 604. Section 604 of the bill would make a variety of technical and conforming amendments to Title VI of the Act. Section 604(a) of the bill would make several changes to grammar and punctuation in section 602(a)(1) of the Act to eliminate potential confusion in citing the "flush left" language that currently appears after section 602(a)(1)(B). Section 604(b) of the bill would delete a grant selection provision in section 605(b) of the Act that is unnecessary in light of the more general provision in section 608(c) of the Act; this section of the bill would also make conforming amendments to section 605 of the Act. The remaining provisions in section 604 of the bill would make changes to grammar and punctuation in current law that are needed for consistency and clarity.

TITLE VII—COLLEGE FACILITIES LOANS AND INSURANCE

Title VII. Title VII of the bill would amend Title VII of the Act (Construction, Reconstruction, and Renovation of Academic Facilities) as follows:

Section 701(a)(1) of the bill would change the title designation to "College Facilities Loans and Insurance."

Section 701(a)(2) of the bill would replace section 701 of the Act, a statement of purpose and priority for renovation projects, with a new purpose statement. Section 701 of the Act, as amended, would state the title's purpose as providing higher education institutions with access to private capital construction debt through the College Construction Loan Insurance Association and servicing of the remaining loan portfolio of the Higher Education Facilities Loans, the College Housing Loans, and the College Housing and Academic Facilities Loans programs as authorized by Title VII prior to the effective date of this Act.

Section 701(a)(3) of the bill would repeal section 702 of the Act, which authorizes appropriations for Parts A, B, C, D, and E of the Act. Parts A, B, C, and D are repealed in section 701(b) of the bill, and Part E is given its own authorization of appropriation in section 701(c)(5) of the bill.

Section 701(b) of the bill would amend Title VII to repeal Parts A (Grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities), B (Grants for Construction, Reconstruction, and Renovation of Graduate Academic Facilities), C (Loans for Construction, Reconstruction, and Renovation of Academic Facilities), D (Grants to Pay Interest on Debt), F (Housing and Other Educational Facilities Loans), and G (Special Programs). By repealing Parts A, B, C, D, F, and G of the Act, section 701(b) would eliminate the Secretary's authority to provide financial assistance for academic facilities construction by higher education institutions. Responsibility for financing the capital outlay needed to maintain an institution's physical plant lies with the institution itself, State and local governments, taxpayers at those levels, private sector users and beneficiaries of higher education services, and the College Construction Loan Insurance Association, not with the Federal Government. Only in special circumstances of national importance should the Government provide such support. Parts E (College Construction Loan Insurance Association) and H (General) of Title VII would be retained.

Section 701(c) of the bill would redesignate Part E of Title VII as Part A and redesignate Part E section numbers.

Section 701(d) of the bill would redesignate Part H of Title VII as Part B of that title and make conforming amendments. Section 701(d)(5) of the bill would add a new provision to the Act authorizing appropriations for fiscal year 1992, and for each of the four succeeding fiscal years, in order to maintain current Federal obligations under current Parts C, D, and F of the Act, which would be eliminated under section 701(b) of the bill. Section 701(d)(5) of the bill would also apply the requirements of current Parts A, B, C, D, and F, in effect before the effective date of the bill, in determining the legal requirements of entities with continuing obligations under those programs.

TITLE VIII—COOPERATIVE EDUCATION

Section 801. Section 801 of the bill would amend the appropriations authority in sec-

tion 801 of the Act by providing an authorization of $13,175,000 for fiscal year 1992 and such sums as may be necessary for each of the four succeeding fiscal years to carry out Title VIII activities. This section of the bill would also remove the funding reservations in current law that limit the amount available for specific categories of projects under section 803 of the Act, but would retain the current allocation of funds between sections 802 and 803 of the Act. Removal of these funding reservations would allow the Secretary to determine the appropriate funding levels for the various types of activities authorized under section 803 of current law, given the changing needs and requirements of this program.

Further, this section would make applicable to all Title VIII programs a definition of cooperative education that is similar to the provision in section 802(a)(2)(A) of the Act; the explanation of cooperative education in current law technically applies only to programs under section 802 of the Act. Finally, section 801 of the bill would add a statement of purpose for Title VIII activities, that is, to encourage institutions of higher education to develop and make available to their students cooperative education programs, so that the students are able to obtain work experience helpful to their careers and to support themselves financially while in school.

Section 802. Section 802 of the bill would amend the application requirements in section 802 of the Act to ensure that an applicant plans to use Federal support as "seed money" (rather than merely maintaining the applicant's fiscal effort) and to maintain fiscal support for the program for which it received Title VIII support after Federal assistance for the program is no longer available. Consistent with the use of Federal support as "seed money," this section of the bill would authorize the Secretary not to make a continuation award to a recipient of a multiyear project grant under this section, if the Secretary determined that the recipient failed to maintain the fiscal effort required under proposed section 802(b)(3) of the Act. Further, a recipient of assistance would be required to provide information documenting its fiscal effort after termination of Federal support as required by the Secretary through notification in the *Federal Register*.

Section 803. Section 803 of the bill would remove factors, in section 802(d)(1) of the Act, for which the Secretary is required to give special consideration in evaluating applications for cooperative education grants under section 802. The factors in sections 802(d)(1)(B) and 802(d)(1)(C) of the Act duplicate factors the Secretary uses in evaluating applications, and for which there need not be a special consideration. The bill would retain, as one of the factors to be considered among the other application provisions, the factor in section 802(d)(1)(A) of the Act, regarding prior favorable reception of cooperative education programs by public and private sector employers. This factor should not be given special consideration, since the purpose of Title VIII is to provide "seed money" and encourage new applicants; prior favorable reception of a cooperative education program would give an advantage to institutions that already have well-established programs.

This section of the bill would also amend the special consideration provision in section 802(d)(2) of the Act regarding applications from institutions that demonstrate a commitment to serving a variety of special populations. Instead, this section of the bill would authorize the Secretary to give special consideration to institutions that demonstrate a commitment to serving disadvantaged students and students with disabilities, in keeping with the Administration's focus on serving students most in need.

Finally, section 803 of the bill would add to the application requirements in current law a requirement that the applicant describe plans for evaluating its cooperative education program and disseminating the results of the evaluation.

Section 804. Section 804 of the bill would amend the cooperative education grant authority in section 802 of the Act to provide that an institution of higher education would not be allowed to receive more than one cooperative education grant award, for an award period of not more than five years. However, this section of the bill would allow institutions that received a grant prior to enactment of this legislative proposal to remain eligible for an additional grant of not more than five years. This section of the bill would also remove the exception in current law that allows an instituion, or an individual unit of an institution, that has received a five-year cooperative education grant to apply for another cooperative education grant if the institution has operated a cooperative education grant without Federal assistance for two years after the original grant and has satisfied several other conditions.

These proposed changes to the duration of Federal assistance are intended to expand the scope of the cooperative education program. First, since an institution would have only one opportunity for Federal "seed money," the institution would be encouraged to request support to develop its cooperative education programs on more of an institution-wide basis than is provided under current law. Further, since the number of institutions eligible for new awards would decrease every year (given a constant number of institutions), more institutions would eventually be served.

Section 805. Section 805 of the bill would amend a provision (in section 803(2)(B) of the Act) that currently authorizes Federal assistance for training and resource centers the purpose of which are to improve materials used in cooperative education programs. The amendment would allow training and resource centers to conduct this activity only in conjunction with other authorized activities that are designed to improve or expand cooperative education programs.

Section 806. Section 806 of the bill would make conforming amendments to sections 802 and 803 of the Act with regard to, for example, removing some of the funding reservations from current law, adding a definition of "cooperative education" to the Act, and removing some of the factors for special consideration for applications under section 802 of the Act. This section of the bill would also make several technical amendments to clarify and update current law.

TITLE IX—POSTSECONDARY IMPROVEMENT PROGRAMS

Title IX. Title IX of the bill would amend Title X (Postsecondary Improvement Programs) of the Act as follows:

Section 901. Section 901 of the bill would amend Part A (Fund for the Improvement of Postsecondary Education) (FIPSE) of Title X of the Act as follows:

Section 901(1) of the bill would make technical and editorial changes to section 1001 of the Act, to eliminate a reference to section 1002 (repealed in section 901(2) of the bill) and clarify that entities other than education institutions are eligible for funding.

Section 901(2) of the bill would repeal section 1002 of the Act, which prohibits FIPSE grants or contracts from being entered into unless an application has been submitted to the appropriate State entity and that entity has had an opportunity to submit comments to the Secretary. Section 1002 of the Act is unnecessary since under Executive Order 12372 "Intergovernmental Review of Federal Programs," and the Department's implementing regulations, the Secretary gives State entities an opportunity to comment on grants prior to funding.

Section 901(3)(A) of the bill would amend section 1003(a) of the Act, to clarify that the Secretary appoints the Director of the FIPSE Board.

Section 901(3)(B) of the bill would eliminate sections 1003(c)(2) and (c)(4) of the Act. Section 1003(c)(2) of the Act is identical to section 1003(c)(3) and, therefore, redundant. Section 1003(c)(4), requiring four meetings of the Board each fiscal year, is unnecessary and burdensome. Section 446 of the General Education Provisions Act already requires advisory committees to meet at least twice a year. Currently, the Board averages three meetings a year.

Section 901(4) of the bill would eliminate section 1004(b) of the Act, which requires the Director to establish procedures for reviewing and evaluating grants and contracts made under this Part, but prohibiting review of such procedures by anyone in the Department other than FIPSE program officials. The Secretary has established, through regulations and directives, policies and procedures dealing with review of grants and contracts. The requirements of section 1004(b) are unnecessary.

Section 901(5) of the bill would amend section 1005 of the Act to authorize $14,639,000 to be appropriated for fiscal year 1992 and such sums as may be necessary for the next four fiscal years.

Section 901(6) of the bill would conform the section numbers of Part A to the redesignation of this title as title IX in section 904 of the bill.

Section 902. Section 902 of the bill would amend Part B (Minority Science and Engineering Improvement Program) of Title X of the Act as follows:

Section 902(1) of the bill would change the name of Part B of Title X from "Minority Science and Engineering Programs" to "Minority Science Improvement Programs" ("MSIP"). Other sections of the bill would conform part name references with this change.

Section 902(3) of the bill would eliminate section 1022(c) of the Act, which lists specific criteria that the Secretary may consider in making grants. These criteria are already established in regulations pursuant to section 1022(a) of the Act.

Section 902(4) of the bill would repeal section 1024 of the Act, which requires the Secretary to submit to Congress annually a list of grantees receiving awards under this program. Congress is notified of grants made under all grant programs through the Office of Legislation and Congressional Affairs. This specific requirement for notification is unnecessary.

Section 902(5) of the bill would conform the section numbers of the subpart to the redesignation of this title as Title IX in section 904 of the bill.

Section 902(6) of the bill would add a new section to the Act requiring, prior to 1995, the Secretary in cooperation with the heads

of other departments and agencies that operate programs similar in purpose to MSIP to submit a report to the President summarizing and evaluating those programs.

Section 902(7) of the bill would repeal subpart 2 of Part B (sections 1031 through 1033) of Title X, which requires the Secretary to make grants to institutions of higher education that are designed to provide or improve support programs for minority students enrolled in science and engineering programs at institutions enrolling at least 10 percent minority students. Most activities under this subpart are currently being provided under the special programs for the disadvantaged under Subpart 4 of Part A of Title IV of the Act and the program of grants to institutions to encourage minority participation in graduate education under Part A of Title IX of the Act. These programs will continue to be available under the Precollege and the Graduate Outreach Programs proposed for Title I of the Act by Title I of this bill.

Section 902(9) of the bill would eliminate section 1041(3) of the Act, which refers to section 1032 of the Act (repealed by section 902(7) of the bill).

Section 902(10) of the bill would amend section 1042 of the Act to require as a condition of continued eligibility under the Act that a grant recipient demonstrate to the Secretary that it is making reasonable progress toward achieving the goals of the project.

Section 902(11) of the bill would amend section 1043 of the Act to require MSIP officials to consult, as well as cooperate, with other programs within the Department and with other Federal, State, and private agencies that carry out programs to improve the quality of science, mathematics, and engineering education.

Section 902(12) of the bill would eliminate section 1044(b) of the Act, which requires the Secretary to establish procedures for reviewing and evaluating grants and contracts made under this part, but prohibiting review of such procedures by anyone in the Department other than MSIP program officials. The Secretary has already established, through regulations and directives, policies and procedures dealing with review of grants and contracts.

Section 902(13) of the bill would repeal section 1045 of the Act, which requires establishment of a nine member Advisory Board. The Board required by this provision has been terminated pursuant to section 448(b) of the General Education Provisions Act. Therefore, this section is unnecessary.

Section 902(14) of the bill would amend section 1047 of the Act to authorize $6,100,000 to be appropriated for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years; and eliminate section 1047(b)'s allocation of appropriations among the subparts, since only one programmatic subpart would remain.

Section 902(15) of the bill would conform the section numbers of the subpart to the redesignation of this title as Title IX in section 904 of the bill.

Section 903. Section 903 of the bill would amend Part C (Innovative Projects for Community Services and Student Financial Independence) of Title X of the Act as follows:

Section 903(1) of the bill would amend the Part C heading to read "PART C—INNOVATIVE PROJECTS FOR COMMUNITY SERVICES." This would reflect the change in the program's focus.

Section 903(2) of the bill would amend section 1061 to change the purpose of the program from determining the feasibility of encouraging student participation in community service projects in exchange for educational services or financial assistance to that of supporting student participation in community service projects, including literacy. The added emphasis on literacy would allow incorporation of the functions of current Part D (Student Literacy Corps) of Title I of the Act into the Innovative Projects for Community Services program. The authority for the Innovative Projects for Community Service program would be broader than the current Student Literacy Corps. This consolidation would allow more flexibility in project design and greater coordination in the use of student volunteers.

Section 903(3) of the bill would amend section 1062 of the Act by adding a definition of "community services". The new definition would emphasize the broad nature of the program and retain Secretarial discretion, yet also emphasize the interest in focusing on the use of student volunteers for combatting illiteracy and other problems.

Section 903(3) of the bill would revise section 1062(b) of the Act, to make it clear that the Secretary may require application information, and eliminate section 1062(c) of the Act, which requires the FIPSE Board to approve applications. The first change would make the innovative projects application process consistent with the normal process. As for the second change, there is no need for such approval.

Section 903(4) of the bill would amend section 1063 of the Act to authorize $6,830,000 to be appropriated for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years. This increased funding level is in keeping with the consolidation of the Student Literacy Corps functions into the Innovative Projects for Community Services program. Section 903(4) of the bill would also amend section 1063 of the Act to remove the current linkage between Part C (Innovative Projects for Community Services) appropriations and Part A (FIPSE) appropriations. This would emphasize the important, freestanding, purpose of this program.

Section 903(5) of the bill would conform the section numbers of the part to the redesignation of this title as Title IX in section 904 of the bill.

Section 904. Section 904 of the bill would redesignate Title X as Title IX of the Act.

TITLE X—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE

Section 1001. Section 1001 of the bill would repeal Title XI of the Act. Title XI currently authorizes grants to: (1) postsecondary institutions (in cooperation with labor, government, business, community organizations, and industry) to enhance economic development; and (2) urban universities to provide services to their local community.

The proposed repeal of these authorities is in accord with focusing Federal funds to assist in the higher education of students rather than to enhance local economic growth or address community problems. Except for a one-time grant to the Wagner Institute of Urban Public Policy, these programs have not been funded. Should the Institute require additional operating funds, it is more appropriate to obtain funds from the City University of New York, with which it is affiliated, or from non-Federal sources, rather than through a noncompetitive Federal grant. Further, funding for economic development projects authorized under Title XI should result from market forces within the business community. Finally, these authorities have received scant support from the public. No references were made to Title XI programs in either public hearings or reauthorization of the Act or in written comment to the Department.

TITLE XI—GENERAL PROVISIONS

Section 1111. Section 1111 of the bill would amend section 1201(a) of the Act by simplyfying and consolidating the definitions regarding what types of postsecondary educational institutions may participate in the programs. The current section 1201(a) definitions, as they relate to all titles *except* Title IV will remain the same, with the exception of the amendment relating to State licensing standards, the alternative to accreditation, and the designation of a primary accreditor, discussed below. Two provisions in the consolidated "institution of higher education" definition would only apply for Title IV program purposes, as set out below. Amendments to sections 435 and 481 of the Act that are also designed to achieve this purpose are proposed elsewhere in this bill.

First, section 1111 would require that an institution, in addition to being legally authorized in a State, would be required to comply with any minimum standards prescribed by the Secretary and imposed by State licensing bodies. This amendment would provide the Secretary with greater authority to strengthen the State licensing component, that, in conjunction with accreditation by accrediting bodies and certification by the Department, is designed to ensure a minimum level of quality in institutions participating in the HEA programs.

Next, section 1111 would replace the current alternative to accreditation known as the "31C" rule with the alternative to accreditation currently in sections 435(b) and (c) of the Act and used as one option for establishing eligibility for GSL program participation. The 31C rule provides that an institution, in lieu of being accredited, may document that three accredited institutions accept the transfer of credits from that institution as though it were accredited. The 31C rule is very prone to abuse, and can be used to circumvent the requirement for accreditation in cases where an institution would not meet the standards of an accrediting body.

The proposed alternative states that if there is no nationally recognized accrediting agency or association qualified to accredit institutions in a particular category, the Secretary may appoint an advisory committee that would make recommendations to the Secretary regarding the appropriate standards, and whether a particular school meets the standards the Secretary establishes. This would provide a means of establishing HEA eligibility for institutions that have been accredited by an accrediting body that is no longer recognized by the Secretary, as well as for institutions for which there never has been a recognized accrediting body. A similar change is proposed to the defintion of a proprietary institution of higher education in section 481(b) of the Act by section 491 of the bill.

For Title IV program purposes, section 1111 of the bill would next expand the definition of an institution of higher education to include institutions that provide programs of at least six months (or 600 clock hours) that prepare students for gainful employment in recognized occupations, and that have been in existence for at least two years. The latter requirement, derived from the definition of a vocational school in section 435(c) of the Act and of a postsecondary vocational institution in section 481(c) of the Act, is desirable because it requires the institution to prove that they can exist without SFA funds.

The current definition of the postsecondary vocational institution in section 481(c) of the Act also includes the six months program requirements. Currently, under section 1201(a), programs must be of at least one year in duration, and there is no minimum amount of time that the institution is required to have been in existence.

Vocational schools and postsecondary vocational institutions would thus both be incorporated into the overall definition of an institution of higher education for Title IV program purposes, although the minimum program length would be made a uniform six months or 600 clock hours, eliminating the shorter term vocational school programs that are currently eligible under the GSL program. This six month minimum program length would be consistent across all Title IV student aid programs, and reduce student loan default rates.

Finally, section 1201(a) would be amended to require an institution that is accredited by more than one accrediting body to designate one accrediting body as its primary accreditor for purposes of eligibility under the Act, either on an institutionwide basis or by program. If the institution (or program) loses its primary accreditation, the institution (or program) would no longer be deemed to meet the accreditation requirements in the definition of an institution of higher education for 24 months from the date of the loss of accreditation, unless during that period of time the institution's accreditation is restored by the same accrediting agency which had accredited it previously. This provision is designed to prevent an institution from circumventing the potential loss of its HEA eligibility merely by establishing multiple accreditations. This amendment would replace a similar provision reagarding the impact of the loss of accreditation currently in sections 435(n) and 481(e) of the Act.

Section 1112. Section 1112 of the bill would amend section 1204(a) and eliminate sections 1204(b) and (c) of the Act. First, section 1204(a) would be amended to authorize, rather than require, the Secretary to waive the eligibility requirements of any postsecondary education program administered by the Department of Education to take into account the unique circumstances in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. It is not necessarily appropriate to waive every type of eligibility requirement for these programs.

Section 1204(b) of the Act relates to the promulgation of regulations concerning HEA program modifications to adapt these programs to the needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands. The authority under subsection (a) is adequate to make any program adaptations necessary. Section 1204(c) authorizes the Secretary to make grants to support the cost of providing postsecondary education on Guam for nonresident students from the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. This direct Federal subsidization of postsecondary education costs is not appropriate, and in no other case does the Federal Government make direct payments to postsecondary institutions to help meet the costs related to educating students who are not residents of that State or territory. Most of the institution's costs related to educating these students are met by the tuition and fees charged to the students. Furthermore, because many of those students are receiving Title IV student financial assistance to pay their tuition and fees, section 1204(c) results in a unique double Federal subsidy of the education of these students.

Section 1113. Section 1113 of the bill would extend the authorization of the National Advisory Committee on Accreditation and Institutional Eligibility for five years.

Section 1114. Section 1114 of the bill would amend section 1210 of the Act to authorize the Secretary to use up to one-half of one percent of the funds appropriated for discretionary grants, contracts, or cooperative agreements upon under parts A and B of title I, titles II and III, subpart 5 of part A of title IV, parts A and B of title V, and titles VI, VIII, and IX of the HEA to meet some of the administrative costs of providing the panels of field readers required by section 1210. This option to use program funds for this purpose is needed to ensure a high quality peer review process.

Section 1115. Section 1115 of the bill would add a new section 1213 to Title XII of the Act that would authorize the Secretary to use some of the funds appropriated for HEA programs to conduct any necessary evaluations and studies of the effectiveness of those programs. The Secretary could use up to $10 million in any fiscal year for all Title IV, HEA program evaluations, and up to $5 million in any fiscal year for program evaluations for all other HEA titles, except that the amount that could be expended to evaluate a particular program (other than a Title IV program) could not exceed five percent of the program appropriation for that fiscal year. In addition, funds would be have to be specifically appropriated for the purposes of evaluations. This would enable the Department to use a small amount of program funds to collect and disseminate data on program services, participants and outcomes; systematically assess the programs; and propose any necesssary changes to improve program effectiveness.

Section 1116. Section 1116 of the bill would add a new section 1214 to Title XII of the Act to permit explicitly the sharing of information relating to an institution's eligibility to participate in Title IV programs among the Secretary, and the guaranty agency, accrediting agency, and State licensing body that serves as the primary guarantor for, or accredits or licenses that institution, respectively. The sharing of such information would be required if the entity with the relevant information is considering, or preparing for, an action that would adversely affect an institution's eligibility to participate in programs under this title, or upon the request of another entity considering, or preparing for, such an action. There is great reluctance among some of these entities to share relevant information regarding an institution for fear of being sued by the institution over the disclosure, even if such a suit would not be successful. This reluctance makes it difficult for other entities to learn about actions on the part of one entity, for example, an accrediting agency, that may have an impact on the actions of, for example, a guaranty agency, in dealing with a particular institution. This diminished flow of information impedes the process of correcting problems at an institution, which can result in the wasting of Federal student aid funds and aggravating the default problem. This amendment would override any Federal or State laws impeding such disclosures, and help improve communication among responsible oversight agencies.

Section 1117. Section 1117 of the bill would add a new section 1215 to the Act that would prohibit an individual who is in default on any loan made, insured, or guaranteed by the Federal Government from receiving any assistance under the HEA, unless satisfactory repayment arrangements are made.

Section 1118. Section 1118 of the bill would repeal sections 1206, 1211 (as enacted in P.L. 99-498), and 1211 (as enacted in P.L. 100-318) of the Act. Section 1206 of the Act authorizes the Joint Study Commission on Postsecondary Institutional Recognition, which has never been funded. Section 1211 (as enacted in P.L. 99-498) sets out aggregate limits on authorizations of appropriations for programs under the Act, other than the Pell Grant and GSL programs and is unnecessary. Section 1211 (as enacted in P.L. 100-418) authorizes the establishment of technology transfer centers and has never been funded.

Section 1119. Section 1119 of the bill would redesignate Title XII of the Act as Title X, and renumber all sections accordingly.

TITLE XII—EFFECTIVE DATES

Section 1201. Section 1201 sets out the effective dates for the bill.•

By Mr. DODD (For himself and Mr. GRAMM) (by request):

S. 1247. A bill to amend the Securities Exchange Act of 1934 to extend the regulatory authority of the Secretary of the Treasury under the Government Securities Act of 1986, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

GOVERNMENT SECURITIES ACT AMENDMENTS

• Mr. DODD. Mr. President, today with my colleague and ranking minority member of the Securities Subcommittee, Senator GRAMM, I am introducing the Government Securities Act Amendments of 1991.

This legislation amends the Government Securities Act of 1986 by extending the regulatory authority of the Secretary of the Treasury to write rules with respect to government securities brokers and dealers. In addition, it would authorize sales practice rules for government securities brokers and dealers and rules governing disclosure of and access to government securities price and volume information.

This legislation was submitted to Congress by the Department of the Treasury, and we are introducing the bill by request. The Securities Subcommittee will hold a hearing on the bill on Wednesday, June 12.

The U.S. Government securities market is the largest securities market in the world. The fair and efficient operation of this market is absolutely essential for the issuance of Treasury debt securities at the lowest possible cost and for the protection of investors in this important market. We look forward to hearing from market regulators, investors, and other market participants as we consider the merits of this proposal.

I ask unanimous consent that the legislation, together with a section-by-section analysis and transmittal letter from the Department of the Treasury, be included in the RECORD at this point.

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

S. 1247

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

SECTION 1. SHORT TITLE.

This act may be cited as the "Government Securities Act Amendments of 1991".

SEC. 2. GOVERNMENT SECURITIES REGULATORY AUTHORITY.

(a) EXTENSION OF RULEMAKING AUTHORITY.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended by repealing subsection (g).

(b) ADDITIONAL RULEMAKING AUTHORITY.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended in subsection (b), by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (5), (6), (7), and (8) and inserting after paragraph (2) the following new paragraphs:

"(3) The Secretary may propose and adopt rules—

"(A) which define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative with respect to transactions in government securities effected by government securities brokers and government securities dealers; and

"(B) designed to promote just and equitable principles of trade with respect to transactions in government securities effected by government securities brokers or government securities dealers that are financial institutions."

"(4) In furtherance of the objective of assuring adequate dissemination of government securities price and volume information:

"(A)(i) The Secretary may propose and adopt rules and regulations designed to:

"(I) assure the prompt, accurate, reliable, and fair reporting, collection, processing, distribution, and publication of information with respect to quotations for and transactions in government securities and the fairness and usefulness of the form and content of such information;

"(II) assure that all government securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in government securities as is reported, collected, processed, or prepared for distribution or publication by any processor of such information (including self-regulatory organizations) acting in an exclusive capacity; and

"(III) assure that all government securities brokers, government securities dealers, government securities information processors, and, subject to such limitations as the Secretary, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with respect to quotations for and transactions in government securities as is published or distributed.

"(ii) No self-regulatory organization, government securities information processor, government securities broker, or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to report, collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any government security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security in contravention of any rules or regulations promulgated under this paragraph.

"(B) The Secretary may, by rule, as the Secretary deems necessary or appropriate in the public interest or for the protection of investors, after due consideration of any effects on the liquidity or efficiency of the government securities market, require any government securities broker or government securities dealer who has induced, attempted to induce, or effected the purchase or sale of any government security by use of the mails or any means or instrumentality of interstate commerce to report purchases, sales or quotations for any government security to a government securities information processor, national securities exchange, or registered securities association and require such a processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchases, sales or quotations.".

(c) TECHNICAL AMENDMENT.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended in subsection (d) by revising paragraph (2) to read as follows:

"(2) Information received by any appropriate regulatory agency, any Federal Reserve Bank, or the Secretary from or with respect to any government securities broker or government securities dealer or with respect to any person associated therewith may be made available by the Secretary, the recipient agency or the Federal Reserve Bank to the Commission, the Secretary, any appropriate regulatory agency, any self-regulatory organization, or any Federal Reserve Bank."

SEC. 3. RULES BY REGISTERED SECURITIES ASSOCIATIONS.

Section 15A(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(f)(2)) is amended—

(1) in clause (E), by striking the word "and" at the end thereof;

(2) in clause (F), by striking the period at the end thereof and inserting instead ", and"; and

(3) by adding at the end thereof the following new clause:

"(G) with respect to transactions in government securities, to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, provided such rules are consistent with any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(3)(A) of this title.".

SEC. 4. OVERSIGHT OF REGISTERED SECURITIES ASSOCIATIONS.

Section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) is amended—

(1) in subsection (b), by adding at the end thereof the following new paragraph:

"(5) The Commission shall consult with and consider the views of the Secretary of the Treasury (Secretary) prior to approving a proposed rule change filed by a registered securities association pursuant to section 15A(f)(2)(G) of this title, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor. If the Secretary comments in writing to the Commission on such proposed rule change that has been published for comment, the Commission shall respond in writing to such written comment before approving the proposed rule change."

(2) in subsection (c), by adding at the end thereof the following new paragraph:

"(5) With respect to rules adopted pursuant to section 15A(f)(2)(G) of this title, the Commission shall consult with and consider the views of the Secretary before abrogating, adding to, and deleting from such rules, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor."

SEC. 5. AMENDMENTS TO DEFINITIONS.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C 78c(a)) is amended—

(1) in paragraph 34(G) (relating to the definition of appropriate regulatory agency), by amending clauses (ii), (iii), and (iv) to read as follows:

"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25(a) of the Federal Reserve Act;

"(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank) or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978);

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation;";

(2) by amendment paragraph (46) (relating to the definition of financial institution) to read as follows:

"(46) The term 'financial institution' means—

"(A) a bank (as defined in paragraph (6) of this subsection);

"(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

"(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation."; and

(3) by adding at the end thereof the following new paragraph (relating to the definition of government securities information processor):

"(53) The term 'government securities information processor' means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any government security; or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term 'government securities information processor' does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organization, any bank, government securities broker, government securities dealer, or

savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), if such bank, government securities broker, government securities dealer, or association would be deemed to be a government securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, or association activities, or any common carrier, as defined in section 3(h) of the Communications Act of 1934, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 3(t) of that Act, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any government security.".

ANALYSIS OF THE GOVERNMENT SECURITIES ACT AMENDMENTS OF 1991

SECTION 1

Short Title

SECTION 2. GOVERNMENT SECURITIES REGULATORY AUTHORITY

Subsection (a) would repeal section 15c(g) of the Securities Exchange Act of 1934 (1934 Act). Section 15c(g), as added by section 101 of the Government Securities Act of 1986 (GSA) (Pub. L. 99-571), provides that the authority of the Secretary of the Treasury to promulgate regulations and issue orders under the GSA governing transactions in government securities by government securities brokers and dealers expires on October 1, 1991. The repeal of subsection (g) would permanently extend the regulatory authority of the Secretary. This amendment is necessary to preserve the current regulatory structure of the government securities market and to ensure continuity of regulatory policy.

Subsection (b) would amend section 15c(b) of the 1934 Act, as added by GSA section 101(b), which concerns rules adopted and implemented by the Secretary of the Treasury. This amendment would grant the Secretary of the Treasury discretionary authority to prescribe sales practice rules that are reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices for all government securities brokers and dealers, including financial institutions. Vesting Treasury with this authority would ensure that such rules provide comparable protection to customers of both bank and non-bank brokers and dealers. This amendment would also grant the Secretary discretionary authority to prescribe sales practice rules to promote just and equitable principles of trade applicable to government securities brokers and dealers that are financial institutions. These authorities, together with the granting of authority to registered securities associations (i.e., the National Association of Securities Dealers (NASD)) to prescribe just and equitable principles of trade for their members pursuant to section 15A(f)(2)(G) of the 1934 Act (as proposed herein), are intended to provide government securities investors with sales practice protections (e.g., prohibitions against excessive mark-ups, suitability guidelines, and customer authorization requirements) that are comparable to those available in other securities markets.

This subsection would also grant the Secretary discretionary authority, similar to the existing authority of the Securities and Exchange Commission (SEC) with respect to non-exempt securities transaction information, to regulate disclosure of and access to government securities price and volume information. The Secretary would be authorized.

To assure the prompt, accurate, reliable, and fair reporting, collection, processing, distribution, and publication of government securities transaction information and the fairness and usefulness of the form and content of such information;

To purpose and adopt rules designed to assure that all government securities information processors have access, for purposes of distributing or publishing on reasonable and nondiscriminatory terms, to government securities quotation and transaction information reported, collected, processed or prepared for distribution or publication by any processor acting in an exclusive capacity regarding such information.

To assure that all persons, including government securities brokers and dealers, and government securities information processors, as the Secretary deems appropriate, have access on reasonable and nondiscriminatory terms to quotations and transaction reports published.

This subsection also would make it unlawful for any self-regulatory organization, government securities information processor, or government securities broker or dealer to perform the functions of a government securities information processor or to purchase or sell any government security in contravention of any rules prescribed by the Secretary.

This subsection would also permit the Secretary to determine that it would be in the public interest to require the reporting of government securities quotation, purchase, or sale information by any government securities broker or government securities dealer to a government securities information processor, national securities exchange, or registered securities association, and to require recipients to make appropriate distribution and publication of the information.

Subsection (c) clarifies that information concerning any government securities broker or government securities dealer may be received from or provided to the Federal Reserve Banks as well as the Board of Governors of the Federal Reserve System.

SECTION 3. REGISTERED SECURITIES ASSOCIATIONS

This section would amend section 15A(f)(2) of the 1934 Act, which concerns rules that registered securities associations may adopt and implement with respect to members of such associations. The amendment would grant registered securities associations (i.e., the NASD) discretionary authority to prescribe government securities sales practice rules for their members, provided such rules are consistent with sales practice rules adopted by the Secretary of the Treasury under section 15C(b)(3)(A) of the 1934 Act. In adopting sales practice rules, registered securities associations should take care not to unnecessarily impair the liquidity or efficiency of the government securities market. The provision requiring consistency parallels a provision in section 19(b)(2) of the 1934 Act which requires proposed rules of self-regulatory organizations to be consistent with the requirements of the 1934 Act and the regulations thereunder. The consistency requirement is thus intended to prevent the promulgation of any rules that would require or appear to permit government securities brokers and dealers to engage in conduct that is inconsistent with the requirements of applicable Treasury rules.

When enacted, the GSA did not rescind the restriction placed on registered securities associations that prohibits them from adopting or applying sales practice rules to government securities transactions. This amendment would rescind this restriction, and is intended to enhance customer protection by facilitating the ability of registered securities associations, specifically the NASD, to enforce compliance with sales practice rules applicable to members that are government securities brokers or dealers.

SECTION 4. OVERSIGHT OF REGISTERED SECURITIES ASSOCIATIONS

This section would amend section 19 of the 1934 Act, which concerns registration, responsibilities, and oversight of self-regulatory organizations. This amendment would require the SEC to consult with and consider the views of the Secretary of the Treasury prior to approving government securities sales practice rules proposed by registered securities associations, specifically the NASD. The amendment would grant the SEC authority to approve such rules without consulting with Treasury if an emergency arose requiring expeditious or summary action. The amendment would also require the SEC to respond in writing to any written comment submitted by the Secretary relating to such proposed rules before it approves the rules.

Further, the amendment would require the SEC to consult with and consider the views of the Secretary before abrogating, adding to, and deleting any government securities sales practice rules developed by registered securities associations. The SEC would be able to abrogate, add to, and delete such sales practice rules without consulting with Treasury if an emergency warranted such action.

SECTION 5. AMENDMENTS TO DEFINITIONS

Paragraph (1) would conform section 3(a)(34)(G) of the 1934 Act, as added by GSA section 102(b) (concerning the definition of "appropriate regulatory agency"), with existing bank regulatory agency supervisory authorities.

First, the Board of Governors of the Federal Reserve System (FRB) would be designated as the appropriate regulatory agency for financial institutions that are Edge or Agreement corporations. Without this modification, supervisory responsibility for the government securities activities of these entities would continue to rest with the SEC.

Since the FRB already exercises bank regulatory and supervisory responsibilities for these entities pursuant to the Federal Reserve Act, this amendment would eliminate inefficiencies and reduce costs resulting from duplicative examinations. In addition, the transfer of supervision from the SEC to the FRB is appropriate since the FRB routinely examines financial institutions, while the SEC supervises the broker and dealer activities of institutions that are not generally financial institutions.

Second, the Federal Deposit Insurance Corporation (FDIC) would be designated as the appropriate regulatory agency for insured State branches of foreign banks (the FRB would retain jurisdiction for uninsured State branches and State agencies of foreign banks). This amendment will ensure that the FDIC, which currently examines insured State branches of foreign banks pursuant to the International Banking Act, would be responsible for the examination of government securities activities conducted by such institutions. The amendment would eliminate the costs associated with duplicative examinations.

Finally, as a technical amendment, this provision would insert a parenthetical ref-

erence to the definition of "savings association" contained in the Federal Deposit Insurance Act. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) amended clause (iv) to designate the Director of the Office of Thrift Supervision (OTS) as the appropriate regulator for savings associations. The term "savings association," however, is not defined in the Act.

Paragraph (2) would technically amend the definition of "financial institution" contained in section 3(a)(46) of the 1934 Act. Prior to FIRREA, section 3(a)(46) referenced the definition of "insured institutions" (including insured thrifts) contained in the National Housing Act (NHA). FIRREA, however, repealed the referenced NHA definition. The amendment would clarify the definition of "financial institution" by reincluding entities that were formerly insured by the Federal Savings and Loan Insurance Corporation. Consistent with FIRREA section 744(u), this provision would include savings associations insured by the FDIC and subject to supervision by the OTS within the definition of "financial institution."

Paragraph (3) would add to section 3(a) of the 1934 Act a definition of the term "government securities information processor." The term is based on the definition of a "securities information processor" found at section 3(a)(22)(A) of the 1934 Act and is defined as any person engaged in the business of collecting, processing, or preparing for distribution or publication information with respect to transactions in or quotations for any government security and also any person engaged in distributing or publishing such information on a current and continuing basis. The press and common carriers subject to the jurisdiction of the Federal Communications Commission or a State commission, would be exempted from the definition unless such carrier is engaged in the business of preparing for or coordinating the distribution or publication of such information. Self-regulatory organizations would also be exempt from the definition, as would banks, government securities brokers, government securities dealers, or saving associations if the latter four organization types would be government securities information processors merely because they engage in functions customary for such institutions.

DEPARTMENT OF THE TREASURY,
Washington, DC, June 6, 1991.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: There are transmitted herewith a draft bill, the "Government Securities Act Amendments of 1991," and an analysis thereof. We urge expeditious consideration of the draft bill by the Senate.

The draft bill would amend section 15C of the Securities Exchange Act of 1934 (1934 Act), as added by the Government Securities Act of 1986 (GSA), to extend permanently the authority of the Secretary of the Treasury to promulgate rules and issue orders pertaining to transactions in government securities effected by government securities brokers and dealers. This authority currently is scheduled to expire on October 1, 1991.

The GSA directed the Department of the Treasury, the Securities and Exchange Commission (SEC), and the Board of Governors of the Federal Reserve System to prepare a joint report evaluating the effectiveness of regulations promulgated under authority of the GSA, including a recommendation regarding the extension of the Secretary's rulemaking authority. In a report submitted to the Congress in October 1990, the three agencies jointly recommended the extension of the Secretary's rulemaking authority.

By permanently extending the regulatory authority of the Secretary of the Treasury, the draft bill will ensure the continuity of comprehensive regulations designed to prevent fraudulent and manipulative acts and practices and protect the integrity, liquidity, and efficiency of the government securities market. Moreover, the rules preclude unfair discrimination among brokers, dealers, and customers, and avoid unnecessary burdens on competition.

The draft bill also would authorize the Secretary to promulgate sales practice rules applicable to all government securities brokers and dealers and would authorize registered securities associations, subject to SEC approval, to prescribe such rules for their members. The SEC would be required to consult with Treasury before approving or altering such rules prescribed by registered securities associations. Further, the draft bill would authorize the Secretary to promulgate rules governing disclosure of and access to government securities price and volume information. Such authorities are consistent both with a GSA-mandated report issued by the General Accounting Office in September 1990, recommending that Treasury be given these rulemaking authorities, and the regulatory structure set out in the GSA that Treasury is best situated to regulate the activities of government securities brokers and dealers.

Finally, the draft bill would make several conforming and technical amendments to the 1934 Act. These amendments are explained in detail in the enclosed analysis.

It would be appreciated if you would lay the draft bill before the Senate. An identical proposal has been transmitted to the Speaker of the House of Representatives.

The Office of Management and Budget has advised that enactment of the draft bill would be consistent with the Administration's objectives.

Sincerely,

JEANNE S. ARCHIBALD,
General Counsel.●

By Mr. LAUTENBERG:

S. 1248. A bill to prevent theft of motor vehicles by establishing a national framework for a program under which law enforcement officials are authorized to stop vehicles operated under specified conditions, such as during those conditions, according to a certification signed voluntarily by the owner, establishes a reasonable suspicion that the vehicle is being operated unlawfully; to the Committee on the Judiciary.

MOTOR VEHICLE THEFT PREVENTION ACT

Mr. LAUTENBERG. Mr. President, today I am introducing legislation, the Motor Vehicle Theft Prevention Act, to address the growing national problem of motor vehicle theft.

The Motor Vehicle Theft Prevention Act would establish a national framework for what might be described as a "consent-to-stop" program, based on a program operating in various jurisdictions around the country. Under this program, law enforcement officials are authorized to stop vehicles operated under specified conditions, such as during certain night hours, when operation of a vehicle under those conditions, according to a certification signed voluntarily by the owner, establishes a reasonable suspicion that the vehicle is being operated unlawfully.

Mr. President, the problem of auto theft has exploded in recent years. According to the Uniform Crime Report, between 1985 and 1989 motor vehicle theft increased by 42 percent, to over 1.5 million offenses per year. Around the country, there is one motor vehicle theft every 20 seconds. The total value of stolen vehicles now exceeds $8 billion annually.

The motor vehicle theft problem is particularly serious in my State of New Jersey. Newark, NJ has the worst problem in the country, and several other cities are also listed in the top ten. In addition, a large number of stolen cars are being exported from New Jersey's ports.

There are many dimensions to the vehicle theft problem. To a large extent, stealing cars has developed into a full-fledged industry, run by professionals. Criminal conspirators are stealing cars, sometimes after a buyer gives them an order for a particular part, and selling the parts on the black market. Chop shops are taking in stolen cars, breaking them down, and making large profits. And increasingly, organized rings of criminals are exporting cars abroad, where they may be worth three times more than in the United States.

In many parts of the country, the problem of auto theft is primarily one of juvenile crime. Children, some not even teenagers, are stealing cars at an appalling rate. They start young; sometimes they're barely tall enough to see over the steering wheel. Unfortunately, it doesn't take long for them to become experts, able to enter and steal a car in a matter of seconds.

Beyond the costs and inconvenience to owners, and the higher insurance rates that result, auto theft is also a highway safety problem. Auto thieves, particularly juveniles, often drive recklessly, sometimes to avoid the police, and that leads to death, injuries, and destruction of property.

In Newark last year, for example, 10 persons were killed by stolen automobiles. This represents more than a quarter of all auto fatalities in the city. These were innocent bystanders, Mr. President. One victim, Karrima Sewell, was a 10-year-old girl.

Clearly, Mr. President, there's no magic formula for eliminating auto theft. Much of the responsibility rests with local and State law enforcement agencies. But auto theft is also a crime with a clear interstate dimension. So the Federal Government also has an important role.

Over the past few months, I have been studying the auto theft problem in an effort to develop possible responses. On May 1, I held a hearing in

Newark, and heard testimony from several law enforcement experts on various proposals to reduce auto theft. The Motor Vehicle Theft Prevention Act emerged as one of the most promising approaches. It focuses on prevention.

The bill is based on a concept first developed in New York City in the mid-1980's by State Senator Leonard Stavisky. New York's program allows law enforcement officials to stop the vehicles of participating owners if the vehicles are being operated between the hours of 1 a.m. and 5 a.m., the period during which most thefts are believed to occur. To participate, an owner must sign a consent form stating that the car is not normally driven during those hours. The owner then gets two decals to place on the rear and side windows, which tell the police that the car may be stopped during the designated hours. Participation is entirely voluntary.

It's a simple, inexpensive and innovative concept. And by all indications it's been extraordinarily successful.

In New York City, 2,722,615 vehicles were registered in 1990; 146,309 were stolen. Yet of the 71,663 vehicles participating in the consent-to-stop program, only 60 were stolen. Thus, the total theft rate was 5.37 percent, whereas the theft rate for vehicles with program decals was only .08 percent. In other words, cars without decals were about 65 times more likely to be stolen than cars participating in the program.

The success of the program in New York has sparked great interest among jurisdictions around the country. According to State Senator Stavisky, at least 30 municipalities have adopted the program, including Trenton, Philadelphia, St. Louis, St. Paul, and San Diego. The idea has even been adopted by Scotland Yard in London. To the best of my knowledge, the program has been well received and successful wherever it has been adopted.

As a testament to the program's effectiveness, several insurance companies have voluntarily reduced the insurance rates for vehicles that participate in the program.

The Motor Vehicle Theft Prevention Act is designed to build on the success of the program by establishing a national framework for its implementation. Under the bill, the Attorney General would be directed to develop a uniform design or designs for the decals or other identification devices that are used in the program. In addition, uniform consent forms would be established. Participation would be entirely voluntary on the part of States, localities, and vehicle owners.

There are several benefits of establishing a national framework for this program. First, it will increase participation in the program, by increasing its visibility and making it more practical and economical for jurisdictions to participate. Although the idea is spreading rapidly, many local officials remain unfamiliar with the program. At the same time, many officials, particularly those in small towns, are interested in the program, but do not believe it is cost effective to develop and produce a decal when only a small number may be needed. A uniform decal design would encourage mass production of the decals and consent forms, which would enable many more municipalities, particularly smaller towns, to participate.

Greater participation in the program should mean reduced thefts, which also means saved lives, reduced insurance costs, and lower costs of enforcement to the law enforcement and judicial systems.

The second primary benefit of establishing a national framework for the program is that it will help law enforcement officials apprehend thieves who drive stolen cars across State or city lines. Currently, if a car is stolen in one town and driven into another, law enforcement officials in the second town may be unfamiliar with the decals used in the first town and may not be in a position to stop the car. A uniform design will eliminate this problem.

I expect that some may wonder how a program like this can work, when professional auto thieves will be able, with some work, to scratch off the decals. Most officials I have talked with believe that the program works because time is of the essence to auto thieves. Many cars stolen in exposed areas. So thieves feel they cannot afford the time to get into a car, climb into the back seat, and scratch off two decals. Also, most decals are manufactured so as to be very difficult to dispose of, and many leave a mark even if they are scratched off.

The bottom line, in any case, is that the program works. The results speak for themselves. And under this bill, if State or local officials still don't believe the program will work in their jurisdiction, they are entirely free not to participate.

I would also note, Mr. President, that consent-to-stop programs are consistent with the Constitution's fourth amendment protections against unreasonable searches and seizures. Under well established constitutional law, the police may stop a vehicle if an officer has a reasonable suspicion that it is being operated unlawfully. Under this bill, a law enforcement officer will be allowed to stop a car only if the car is being operated under conditions that create such a reasonable suspicion. It is also important to again emphasize that participation in the program is entirely voluntary.

Mr. President, the problem of auto theft is of great concern to law enforcement officials and the insurance industry. This bill is supported by the Fraternal Order of Police and the Alliance of American Insurers.

I hope my colleagues will support the legislation.

I ask unanimous consent that a copy of the bill be printed in the RECORD at this point, along with a New York Times editorial and other materials related to the bill.

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

S. 1248

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 "Motor Vehicle Theft Prevention Act".

SEC. 2. MOTOR VEHICLE THEFT PREVENTION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 160. Motor vehicle theft prevention program

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Attorney General shall develop, in cooperation with the States, a national voluntary motor vehicle theft prevention program (in this section referred to as the 'program') under which—

"(1) the owner of a motor vehicle may voluntarily sign a consent form with a participating State or locality in which the motor vehicle owner—

"(A) states that the vehicle is not normally operated under certain specified conditions; and

"(B) agrees to—

"(i) display program decals or devices on the owner's vehicle; and

"(ii) permit law enforcement officials in any State to stop the motor vehicle and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner, if the vehicle is being operated under the specified conditions;

"(2) participating States and localities authorize law enforcement officials in the State or locality to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner; and

"(3) Federal law enforcement officials are authorized to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

"(b) UNIFORM DECAL OR DEVICE DESIGNS.—

"(1) IN GENERAL.—The motor vehicle theft prevention program developed pursuant to this section shall include a uniform design or designs for decals or other devices to be displayed by motor vehicles participating in the program.

"(2) TYPE OF DESIGN.—The uniform design shall—

"(A) be highly visible; and

"(B) explicitly state that the motor vehicle to which it is affixed may be stopped under the specified conditions without additional grounds for establishing a reasonable suspicion that the vehicle is being operated unlawfully.

"(c) VOLUNTARY CONSENT FORM.—The voluntary consent form used to enroll in the program shall—

"(1) clearly state that participation in the program is voluntary;

"(2) clearly explain that participation in the program means that, if the participating vehicle is being operated under the specified conditions, law enforcement officials may stop the vehicle and take reasonable steps to determine whether it is being operated by or with the consent of the owner, evne if the law enforcement officials have no other basis for believing that the vehicle is being operated unlawfully;

"(3) include an expess statement that the vehicle is not normally operated under the specified conditions and that the operation of the vehicle under those conditions would provide sufficient grounds for a prudent law enforcement officer to reasonably believe that the vehicle was not being operated by or with the consent of the owner; and

"(4) include any additional information that the Attorney General may reasonably require.

"(d) SPECIFIED CONDITIONS UNDER WHICH STOPS MAY BE AUTHORIZED.—

"(1) IN GENERAL.—The Attorney General shall promulgate rules establishing the conditions under which participating motor vehicles may be authorized to be stopped under this section. These conditions may include—

"(A) the operation of the vehicle during certain hours of the day; or

"(B) the operation of the vehicle under other circumstances or by such individuals that would provide sufficient basis for establishing a reasonable suspicion that the vehicle was not being operated by the owner, or with the consent of the owner.

"(2) MORE THAN ONE SET OF CONDITIONS.—The Attorney General may establish more than one set of conditions under which participating motor vehicles may be stopped. If more than one set of conditions is established, a separate consent form and a separate design for program decals or devices shall be established for each set of conditions. The Attorney General may choose to satisfy the requirement of a separate design for program decals or devices under this paragraph by the use of a design color that is clearly distinguishable from other design colors.

"(3) NO NEW CONDITIONS WITHOUT CONSENT.—After the program has begun, the conditions under which a vehicle may be stopped if affixed with a certain decal or device design may not be expanded without the consent of the owner.

"(4) LIMITED PARTICIPATION BY STATES AND LOCALITIES.—A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

"(e) MOTOR VEHICLES FOR HIRE.—

"(1) NOTIFICATION TO LESSEES.—Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall, prior to transferring possession of the vehicle, notify the person to whom the motor vehicle is rented or leased about the program.

"(2) TYPE OF NOTICE.—The notice required by this subsection shall—

"(A) be in writing;

"(B) be in a prominent format to be determined by the Attorney General; and

"(C) explain the possibility that if the motor vehicle is operated under the specified conditions, the vehicle may be stopped by law enforcement officials even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

"(3) FINE FOR FAILURE TO PROVIDE NOTICE.—Failure to provide proper notice under this subsection shall be punishable by a fine not to exceed $5,000.

"(f) PARTICIPATING STATE OR LOCALITY.—A State or locality may participate in the program by filing an agreement to comply with the terms and conditions of the program with the Attorney General.

"(g) NOTIFICATION OF POLICE.—As a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials throughout the State or locality are familiar with the program, and with the conditions under which motor vehicles may be stopped under the program.

"(h) REGULATIONS.—The Attorney General shall promulgate regulations to implement this section.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as are necessary to carry out this section.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The analysis for chapter 1 of title 23, United States Code, is amended by adding after the item for section 159 the following:

"160. Motor vehicle theft prevention program.".

SEC. 3. ALTERING OR REMOVING MOTOR VEHICLE IDENTIFICATION NUMBERS.

(a) BASIC OFFENSE.—Subsection (a) of section 511 of title 18, United States Code, is amended to read as follows:

"(a) Whoever knowlingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle, or motor vehicle part, or a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, shall be fined not more than $10,000 or imprisoned not more than five years, or both.".

(b) EXCEPTED PERSONS.—Paragraph (2) of section 511 of title 18, United States Code, is amended by—

(1) striking "and" after the semicolon in subparagraph (B);

(2) striking the period at the end of subparagraph (C) and inserting, "; and"; and

(3) adding at the end thereof the following:

"(D) a person who removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to Motor Vehicle Theft Prevention Act, if that person is the owner of the motor vehicle, or is authorized to remove, obliterate, tamper with or alter the decal or device by—

"(i) the owner or his authorized agent;

"(ii) applicable State or local law; or

"(iii) regulations promulgated by the Attorney General to implement the Motor Vehicle Theft Prevention Act.".

(c) DEFINITION.—Section 511 of title 18, United States Code, is amended by adding at the end thereof the following:

"(d) For purposes of subsection (a) of this section, the term 'tampers with' includes covering a program decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act for the purpose of obstructing its visibility.".

(d) UNAUTHORIZED APPLICATION OF A DECAL OR DEVISE.—

(1) IN GENERAL.—Chapter 25 of title 18, United States Code, is amended by adding after section 511 the following new section:

"§ 511A. Unauthorized application of theft prevention decal or devise

"(a) Whoever affixes to a motor vehicle a theft prevention decal or other device, or a replica thereof, unless authorized to do so pursuant to the Motor Vehicle Theft Prevention Act, shall be punished by a fine not to exceed $1,000.

"(b) For purposes of this section, the term 'theft prevention decal or devise' means a decal or other device designed in accordance with a uniform design for such devices developed pusuant to the Motor Vehicle Theft Prevention Act.".

(2) CHAPTER ANALYSIS.—The chapter analysis for chapter 25 of title 18, United States Code, is amended by adding immediately after the item for section 511 the following:

"511A. Unauthorized application of theft prevention decal or device.".

[From the New York Times, Oct. 2, 1988]

ANTIDOTE FOR AUTO THEFT

An innovative, inexpensive New York City program promises genuine relief for the epidemic of automobile thefts in American cities.

Last year, Americans reported 1.3 million stolen cars, an increase of 23 percent since 1983. Most were stolen during early morning hours, and a program called Combat Automobile Theft, conceived two years go by State Senator Leonard Stavisky of Queens, seeks to take advantage of that fact. Car owners sign a consent form that allows the police to stop the vehicle if it's being driven between the hours of 1 a.m. and 5 a.m. Bright yellow decals affixed to the car's windows put thieves on notice that the owner has enrolled.

Normally, police are prohibited under the Fourth Amendment from stopping a car without cause. Some civil libertarians question whether a car's owner can waive the privacy rights of someone else who might drive the car. But a thief would have no privacy claim, and the owner's statement creates a reasonable suspicion that a crime is in progress.

The program began in 1986 in two Queens precincts and now has been expanded to include 28 precincts city-wide. The decals have proved a remarkably successful deterrent. Of the 17,871 cars enrolled in the program citywide only 18 were stolen in two years—a rate dramatically below the city average.

The Combat Auto Theft program isn't the full answer to the nation's rising auto theft problem. But it does afford a simple, creative way for car owners to better their odds.

[From the Vending Times, Nov. 14, 1990]

STICKERS STICK IT TO CAR THIEVES

(By Leonard Stavisky)

Apart from home ownership, buying a car is the average family's largest single investment. Grand larceny/auto is also one of the fastest growing property crimes in New York state. In 1989, nearly 150,000 motor vehicles were stolen—a 21.5 percent increase above the previous year's level. The loss to consumers and insurance companies exceeded $1 billion.

Most cars are taken in the middle of the night while the owners are asleep. Constitutional safeguards against arbitrary search and seizure prevent the police from stopping a driver unless there is reason to believe that a crime has been committed. Even if an alert highway patrol officer had immediate access to a computer and punched in the license plate number of a passing vehicle, there would be no record that the automobile had been stolen. By the time the crime is reported to the authorities, the vehicle has been hidden, altered in appearance or dismantled for parts.

Car theft dramatically changes the victim's lifestyle. After the initial shock and

disorientation, the motorist is often without a replacement vehicle for days, weeks, or months. There are prolonged discussions with the police and insurance adjusters. Calls to the station house sometimes lead to gratuitous suggestions that the insurance carrier rather than the law enforcement agencies are the citizens's best hope for redress. Even if an arrest is made, district attorneys routinely plea bargain the offense down from a felony to a misdemeanor. Few car thieves are ever sent to prison. Negotiations with the insurance carriers can prove equally frustrating. The owner receives a check for the depreciated book value of the missing car rather than the replacement cost of a new automobile—a differential that could amount to $5,000 or more. To add insult to injury; some insurance companies increase the annual premium, since the motorist is now deemed a poor risk.

To help cope with this growing dilemma, Gov. Cuomo recently signed into law a statewide auto theft prevention measure enabling police to identify stolen vehicles before the crimes have been reported. The legislation is based on the Combat Auto Theft (CAT) Program, which has been operated successfully by the New York City Police Department since March 1986.

Under its provisions, the owner signs a form notifying police that the car is not normally used between 1 a.m. and 5 a.m. The document also serves as an informed consent statement authorizing police to ask for the license and registration of anyone operating the vehicle during those targeted hours. Two decals affixed to car windows signal the fact that the owner has given written approval for a check to be made.

Over the past four and a half years, 52,000 people have signed up for the New York City CAT Program. In all that time, only 84 of these automobiles have been stolen. Last year alone, 134,000 vehicles not participating in the program were taken from the streets of the city. Official records indicate that cars not registered with the police are 40 times more likely to be stolen than those bearing the decals. Thieves have admitted that they leave the CAT cars alone because they do not want to waste time scraping off decals after breaking into unattended vehicles.

The program has now been copied by police departments throughout the U.S. In addition to New York City and Yonkers, the plan has spread to East Brunswick and Trenton, N.J.; Philadelphia and Pittsburgh, Pa.; West Palm Beach, Fla.; St. Louis, Mo.; New Orleans, La.; Macomb County, a suburb of Detroit, Mich.; Dallas, University Park, a suburb of San Antonio, and Houston, Texas; Memphis, Tenn.; Tulsa, Okla.; as well as San Diego and San Bernardino County, Calif. It is operational in Arizona under the auspices of the Arizona Automobile Association. Scotland Yard has also implemented the CAT Program in London.

New York's new law directs the Commissioner of Motor Vehicles, in consultation with the Superintendent of State Police, to establish a motor vehicle theft prevention program that will involve the participation of motor vehicle investigators and policy offices throughout the state. The Commissioner and Superintendent are empowered to devise an informed consent statement and application to be available at all motor vehicle offices and state police headquarters. The state officials will also approve the decal format to be used by local police in municipalities that agree to implement the program within their respective jurisdictions. When registering a car, the motorist will submit the application and proof of ownership to the local police who will then record the decal number assigned to each vehicle.

The CAT law enjoyed broad bipartisan sponsorship in both houses of the Legislature. Editorials backing this antitheft program came from WNBC-TV, WCBS, WPIX-TV, the New York Times, and the New York Post. Articles appeared in periodicals ranging from New York Motorist to Good Housekeeping magazine. Memos of support were submitted by the New York State Automobile Association (AAA) and the Ford Motor Co. Eight insurance companies doing business in New York state endorsed the program and filed for rate reduction in insurance premiums for policy holders who register their vehicles in the program. These included GEICO, Travelers, Fireman's Fund, CNA, Utica, New York Casualty, General Accident, and Metropolitan Property and Casualty. For an individual car owner, this could mean a savings of $25 to $30 a year. The new law is not a panacea, but, as The New York Times editorially observed, this is "an innovative, inexpensive program that promises genuine relief for the epidemic of automobile thefts in American cities."

[From the Journal of Commerce, Mar. 6, 1989]

AUTO INSURERS SUPPORT NY ANTI-THEFT PROGRAM

NEW YORK.—Several auto insurers are prepared to offer discounts to car owners who participate in a anti-theft program called Combat Auto Theft.

In prepared statements, Fireman's Fund Insurance Cos., Novato, Calif., CNA Insurance Cos., Chicago, Ill., and Travelers Cos., Hartford, Conn., said they would offer 5% discounts on comprehensive coverage for New York City area participants.

Under the program, developed about three years ago by New York State Sen. Leonard P. Stavisky, car owners sign a consent form that allows the police to stop the vehicle if it's being driven between the hours of 1 a.m. and 5 a.m. Bright yellow decals affixed to the car's windows tell thieves that the owner has enrolled in the program, which began in Queens.

The program is already available in 48 police precincts throughout the five boroughs of New York City and is also available to motorists in Yonkers, N.Y., East Brunswick, N.J. and Philadelphia.

ALLIANCE OF AMERICAN INSURERS,
Washington, DC, April 26, 1991.

Hon. FRANK R. LAUTENBERG,
U.S. Senate,
Washington, DC.

Dear Senator Lautenberg: The Alliance of American Insurers is a national trade assocation representing 170 property and casualty insurers. As such, we are quite concerned about automobile theft and fully support your legislation, the Motor Vehicle Theft Prevention Act. (MVTPA).

Several cities have adopted "consent-to-stop" programs, whereby the vehicle owner agrees that his car can be stopped if it is being operated during certain times or by certain age groups. These programs are showing significant success and should be encouraged in other jurisdictions. Your legislation will aid the formation of these programs and will provide some uniformity as the list of participating jurisdictions increases.

We appreciate the opportunity to participate in discussions on this and other auto issues. If we can be of any assistance, please let me know.

Sincerely,

SARA F. CLARY,
Assistant Vice President, Federal Affairs.

By Mr. KENNEDY (for himself, Mr. BIDEN, Mr. LEVIN, Mr. SIMON, Mr. PACKWOOD, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. JEFFORDS, Mr. ADAMS, Mr. AKAKA, Mr. CRANSTON, Mr. GLENN, Mr. HARKIN, Mr. KERRY, Mr. PELL, and Ms. MIKULSKI):

S. 1249. A bill to amend title 28 of the United States Code to prohibit racially discriminatory capital sentencing; to the Committee on the Judiciary.

RACIAL JUSTICE ACT

• Mr. KENNEDY. Mr. President, I am pleased to join with my colleagues Senators BIDEN, LEVIN, SIMON, PACKWOOD, MOYNIHAN, METZENBAUM, JEFFORDS, ADAMS, AKAKA, CRANSTON, GLENN, HARKIN, KERRY, PELL, and MIKULSKI in introducing the Racial Justice Act. This legislation is identical to S. 1696, introduced in the 101st Congress, and section 207 of S. 618, the Violent Crime Control Act of 1991, introduced by the chairman of the Judiciary Committee, Senator BIDEN.

Race discrimination is unacceptable everywhere, and it is particularly unacceptable in capital punishment—the awesome decision by a free society of those whom government can legally kill. If that decision is to be made at all, it must be made without racial bigotry.

There is compelling evidence that race discrimination infects capital sentencing decisions in jurisdictions throughout the country.

In study after study, experts have found that defendants who kill whites are more likely to receive the death penalty than those who kill blacks, and that black defendants are more likely to be given a death sentence than white defendants.

A recent example is the evidence in McCleskey versus Kemp, decided by the Supreme Court in 1987. Warren McCleskey, the defendant in that case, was a black man charged with murder for killing a white police officer in Fulton County, GA.

In challenging his death sentence, McCleskey placed into evidence two studies conducted by teams led by Prof. David Baldus of the University of Iowa College of Law, which analyzed over 2,400 homicide cases in Georgia between 1973 and 1979. From official State records, the Baldus studies collected data about more than 500 factors in each case such as the characteristics of the defendant and the victim, the circumstances of the crime, the strength of the evidence, and a range of mitigating and aggravating factors in each case. Using sophisticated statistical techniques, the studies took account of the effects of up to 230 nonracial sentencing factors.

The conclusions of that study are striking. Those who killed whites were 4.3 times more likely to receive the death penalty than killers of blacks.

The five members of the Supreme Court who voted to affirm McCleskey's death sentence and rejected the statistical evidence of discrimination did not dispute the accuracy of the Baldus studies. They admitted that statistical evidence of the kind contained in the studies would be sufficient to prove intentional race discrimination in other areas, such as housing and jury selection.

But the majority concluded that the death penalty is "different," because juries and prosecutors make capital punishment decisions on the basis of individual defendants, not on the basis of statistics, and because it would be inappropriate to require States to call on their juries and defendants to rebut showings of discrimination.

I believe that the McCleskey decision is a mistake. The compelling evidence that McCleskey's sentence was affected by racial considerations should have been sufficient to set aside his sentence. In its zeal to expedite proceedings in capital cases, the Court failed to recognize a glaring injustice that Congress should not tolerate, even if five Justices of the Supreme Court are willing to permit it.

This pattern of racial discrimination in sentencing is repeated in jurisdiction after jurisdiction around the country:

In Florida, a study published in the Stanford Law Review found that defendants convicted of killing whites were eight times more likely to receive a death sentence than those convicted of murdering blacks. Another study found that blacks who kill whites received the death penalty 22 percent of the time, while whites who kill whites received the death penalty only 4.6 percent of the time.

In Georgia, blacks who kill whites received the death penalty 16.7 percent of the time, while whites who killed whites received the death penalty only 4.2 percent of the time.

In Illinois, that same study found that killers of whites were six times as likely to receive a death sentence as killers of blacks.

In Maryland, defendants convicted of murdering whites received the death sentence eight times more frequently than killers of blacks.

In Ohio, a 1980 study found that blacks who kill whites received the death penalty 25 percent of the time, while whites who kill whites received the death penalty only 4.6 percent of the time.

In Texas, a 1980 study found that killers of whites were 20 times more likely to receive a death sentence than killers of blacks, while a 1985 study found that they were over 4 times more likely to do so. Blacks who kill whites received the death penalty 8.7 percent of the time, while whites who killed whites received the death penalty only 1.5 percent of the time.

This pattern also appears in California and Pennsylvania, and nationally as well. A 1985 study of capital sentencing conducted by a Dallas newspaper found that killers of whites were nearly three times more likely to receive the death sentence than killers of blacks.

Race discrimination is pervasive in capital punishment. The facts are irrefutable, and they should be unacceptable to each and every Member of the Senate.

I oppose the death penalty in all cases, but that is not the issue here. The Members of the Senate have the authority, and the responsibility, to ensure that racial disparities do not occur in State or Federal death penalty cases.

The Racial Justice Act is intended to meet that responsibility. The act prohibits the imposition of the death penalty under State or Federal law if the sentence is part of a racially discriminatory pattern.

If such a pattern exists—if a defendant can establish that the race of defendants or victims is playing a role in sentencing—then the government must show by clear and convincing evidence that the racial disparities are not the result of discrimination, but reflect nonracial factors, such as the presence or absence of mitigating or aggravating circumstances.

For example, if a defendant offers statistical evidence demonstrating that blacks receive death sentences in a particular State at a rate higher than whites, and the defendant shows that the death sentence was imposed in furtherance of this racially discriminatory pattern, then the State must show by clear and convincing evidence that the statistical disparity results from other, nonracial factors, such as differences in the nature of the crimes or in the conviction records of the defendants.

If the government cannot meet that burden, the death sentence must be vacated. If we are serious about ending race discrimination in capital sentencing, no other result is acceptable.

By permitting statistical evidence of a pattern of racial disparities to be used to establish a claim of race discrimination, the act makes the standard of proof in capital sentencing cases analogous to that under other Federal antidiscrimination statutes.

In order to ensure that adequate data are available to determine whether or not race discrimination exists, the amendment also requires jurisdictions which have the death penalty to collect and maintain data about the nature of crimes for which the death penalty may be imposed, the details of those crimes, and the demographic characteristics of the victims and the defendants.

The mere fact that blacks may receive the death penalty more frequently than whites would not create a prima facie case of discrimination under the act. To establish a prima facie case, a defendant must show, for example, that blacks receive the death penalty with a frequency that is disproportionate to their representation among those arrested, or charged with, or convicted of capital crimes. Even if a prima facie case is established, the government can rebut such a claim by showing by clear and convincing evidence that any disparity is the result of nonracial factors. The act is simply intended to eliminate racism in capital sentencing.

The Racial Justice Act is supported by a number of leading organizations, including the American Bar Association, the Leadership Conference on Civil Rights, and Amnesty International.

If we are to live up to our responsibility to fulfill the Constitution's promise of equal protection of the laws, we must ensure that race discrimination in capital punishment is eliminated. The Racial Justice Act is a practical step to achieve the goal of making our system of justice worthy of the name.

I ask unanimous consent that the text, the Racial Justice Act, may be printed in the RECORD.

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

S. 1249

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 "Racial Justice Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) section 5 of the fourteenth amendment of the United States Constitution calls upon Congress to enforce the Constitution's promise of equality under law;

(2) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the determination of whether and when to administer the ultimate penalty of death;

(3) the death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime was committed, influences the likelihood that the defendant will be sentenced to death;

(4) the Constitution's guarantee of equal justice for all is jeopardized when the death penalty is imposed in a pattern in which the likelihood of a death sentence is affected by the race of the perpetrator or of the victim;

(5) the United States Supreme Court has concluded that the Federal judiciary is institutionally unable to eliminate this jeopardy to equal justice in the absence of proof that a legislature, prosecutor, judge, or jury acted with racially invidious and discriminatory motives in the case of a particular defendant;

(6) the interest in ensuring equal justice under law may be harmed, not only by deci-

sions motivated by explicit racial bias, but also by government rules, policies, and practices that operate to reinforce the subordinate status to which racial minorities were relegated in our society;

(7) the institutional need of courts to identify invidiously motivated perpetrators is not shared by Congress, which is empowered by section 5 of the fourteenth amendment to take system-wide, preventive measures not only to eliminate adjudicated instances of official race discrimination but also to eradicate wide-scale patterns and practices that entail an intolerable danger that persons of different races would be treated differently; and

(8) the persistent racial problems pervading the implementation of the death penalty in many parts of this Nation require the Government of the United States to counteract the lingering effects of racial prejudice in order to enforce the constitutional guarantee of equal justice for all Americans.

SEC. 3. AMENDMENT TO TITLE 28.

(a) PROCEDURE.—Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 177—RACIALLY DISCRIMINATORY CAPITAL SENTENCING

"Sec.
"2921. Definitions.
"2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern.
"2923. Data on death penalty cases.
"2924. Enforcement of the chapter.
"2925. Construction of chapter.

"§ 2921. Definitions

"For purposes of the chapter—

"(1) the term 'a racially discriminatory pattern' means a situation in which sentences of death are imposed more frequently—

"(A) upon persons of one race than upon persons of another race; or

"(B) as punishment for crimes against persons of one race than as punishment for crimes against persons of another race,

and the greater frequency is not explained by pertinent nonracial circumstances;

"(2) the term 'death-eligible crime' means a crime for which death is a punishment that is authorized by law to be imposed under any circumstances upon a conviction of that crime;

"(3) the term 'case of death-eligible crime' means a case in which the complaint, indictment, information, or any other initial or subsequent charging paper charges any person with a death-eligible crime; and

"(4) the term 'Federal or State entity' means any State, the District of Columbia, the United States, any territory thereof, and any subdivision or authority of any of these entities that is empowered to provide by law that death be imposed as punishment for crime.

"§ 2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern

"(a) PROHIBITION.—It is unlawful to impose or execute sentences of death under color of State or Federal law in a racially discriminatory pattern. No person shall be put to death in the execution of a sentence imposed pursuant to any law if that person's death sentence furthers a racially discriminatory pattern.

"(b) ESTABLISHMENT OF A PATTERN.—To establish that a racially discriminatory pattern exists for purposes of this chapter—

"(1) ordinary methods of statistical proof shall suffice; and

"(2) it shall not be necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution.

"(c) PRIMA FACIE SHOWING.—(1) To establish a prima facie showing of a racially discriminatory pattern for purposes of this chapter, it shall suffice that death sentences are being imposed or executed—

"(A) upon persons of one race with a frequency that is disproportionate to their representation among the numbers of persons arrested for, charged with, or convicted of, death-eligible crimes; or

"(B) as punishment for crimes against persons of one race with a frequency that is disproportionate to their representation among persons against whom death-eligible crimes have been committed.

"(2) To rebut a prima facie showing of a racially discriminatory pattern, a State of Federal entity must establish by clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain the observable racial disparities comprising the pattern.

"§ 2923. Data on death penalty cases

"(a) DESIGNATION OF AGENCY.—Any State or Federal entity that provides by law for death to be imposed as a punishment for any crime shall designate a central agency to collect and maintain pertinent data on the charging, disposition, and sentencing patterns for all cases of death-eligible crimes.

"(b) RESPONSIBILITIES OF CENTRAL AGENCY.—Each central agency designated pursuant to subsection (a) shall—

"(1) affirmatively monitor compliance with this chapter by local officials and agencies;

"(2) devise and distribute to every local official or agency responsible for the investigation or prosecution of death-eligible crimes a standard form to collect pertinent data;

"(3) maintain all standard forms, compile and index all information contained in the forms, and make both the forms and the compiled information publicly available;

"(4) maintain a centralized, alphabetically indexed file of all police and investigative reports transmitted to it by local officials or agencies in every case of death-eligible crime; and

"(5) allow access to its file of police and investigative reports to the counsel of record for any person charged with any death-eligible crime or sentenced to death who has made or intends to make a claim under section 2922 and it may also allow access to this file to other persons.

"(c) RESPONSIBILITY OF LOCAL OFFICIAL.—(1) Each local official responsible for the investigation or prosecution of death-eligible crimes shall—

"(A) complete the standard form developed pursuant to subsection (b)(2) on every case of death-eligible crime; and

"(B) transmit the standard form to the central agency no later than 3 months after the disposition of each such case whether that disposition is by dismissal of charges, reduction of charges, acceptance of a plea of guilty to the death-eligible crime or to another crime, acquittal, conviction, or any decision not to proceed with prosecution.

"(2) In addition to the standard form, the local official or agency shall transmit to the central agency one copy of all police and investigative reports made in connection with each case of death-eligible crime.

"(d) PERTINENT DATA.—The pertinent data required in the standard form shall be designated by the central agency but shall include, at a minimum, the following information:

"(1) pertinent demographic information on all persons charged with the crime and all victims (including race, sex, age, and national origin);

"(2) information on the principal features of the crime;

"(3) information on the aggravating and mitigating factors of the crime, including the background and character of every person charged with the crime; and

"(4) a narrative summary of the crime.

"§ 2924. Enforcement of the chapter

"(a) ACTION UNDER SECTIONS 2241, 2254, OR 2255 OF THIS TITLE.—In any action brought in a court of the United States within the jurisdiction conferred by sections 2241, 2254, or 2255, in which any person raises a claim under section 2922—

"(1) the court shall appoint counsel for any such person who is financially unable to retain counsel; and

"(2) the court shall furnish investigative, expert or other services necessary for the adequate development of the claim to any such person who is financially unable to obtain such services.

"(b) DETERMINATION BY A STATE COURT.—Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 2922 shall be presumed to be correct unless—

"(1) the State is in compliance with section 2923;

"(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim which were substantially equivalent to those provided by subsection (a); and

"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

"§ 2925. Construction of chapter

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 2922.".

(b) AMENDMENT TO TABLE OF CHAPTERS.—The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

"177. Racially Discriminatory Capital Sentencing ..... 2921.".

SEC. 4. ACTIONS PRIOR TO THE DATE OF ENACTMENT.

No person shall be barred from raising any claim under section 2922 of title 28, United States Code, as added by this Act, on the ground of having failed to raise or to prosecute the same or a similar claim prior to enactment of the Act, nor by reason of any adjudication rendered prior to its enactment.•

By Mr. SIMON (for himself and Mr. BIDEN):

S. 1250. A bill to require court clerks to report the posting of bail in an amount exceeding $10,000 in certain criminal cases, and for other purposes; to the Committee on the Judiciary.

ILLEGAL DRUGS PROFITS ACT OF 1991

• Mr. SIMON. Mr. President, I rise today with the chairman of the Judiciary Committee, Senator BIDEN, to introduce important legislation sug-

gested by Mayor Richard M. Daley of Chicago at a recent Judiciary Committee hearing—legislation that will give this Nation's law enforcement agencies a new weapon in our efforts in the war against drugs and crime.

Mr. President, we all know only too well that our Nation is faced with a terrible crisis. While government studies report a decrease in casual drug use, there are more people using dangerous drugs like cocaine, and its derivative, crack, in greater quantities than ever before. The ravaging effects of illegal drug use do not discriminate between young and old, rich and poor, black and white. We, as a nation, are all victims.

The manufacture, distribution, and use of illegal drugs are pervasive problems which have a substantial and damaging effect on the health and general welfare of the American people. The prospect of illegal and untaxed profits from the manufacture and distribution of drugs is a substantial incentive to such activity and contributes greatly to this national tragedy.

While over the past few years Congress has passed a number of initiatives to help end this tragedy, much more needs to be done. We must constantly seek out new ideas. We cannot let down our guard until we have solved the problem.

As Mayor Daley suggested, one way to do this is by tracking down the illegal cash in the drug system.

Individuals owe taxes on earned income, from whatever source—even criminal drug enterprises. But criminals rarely pay taxes on illegal profits, and often attempt to launder illegal revenues through legitimate businesses. We need the highest possible scrutiny of drug traffickers, and others who facilitate the transfer of illegal drug profits. Such scrutiny of the financial operations of major drug trafficking organizations is a vital part of the battle to take our streets back from the drug dealers.

But how will the IRS identify the individuals and organizations to scrutinize? As Mayor Daley pointed out in his testimony before the Judiciary Committee on April 23 of this year, every day of the year alleged drug offenders or their friends walk into court and post bail with enormous amounts of cash—cash which might well come from the very crimes of which they are accused—cash which may represent illegal and untaxed drug profits—cash which may well represent the devastation of more American lives. The drug dealers have been telling us in our State and Federal courts who among them have the real money, but we haven't been listening.

This legislation Senator BIDEN and I are introducing today will help us listen to major drug dealers as they identify themselves. Our bill requires clerks in both State and Federal courts to inform the Internal Revenue Service of all incidents in which an alleged drug offender or money launderer or racketeer posts a substantial bail in cash. The IRS will be able to use this information to identify and investigate major drug dealers and other powerful criminals and use the civil and criminal tax penalties of the Internal Revenue Code to cut down their financial empires.

We already have laws which require honest American businesspeople to report large cash transactions between them and their clients and customers. This has been one of our tools in identifying the flow of illegal cash into legitimate businesses. If we put this requirement on honest Americans, isn't it time we got at the large amounts of cash held by the drug dealers?

Mr. President, the fight against drugs is for the health and future of all Americans, and we need all the help we can get in this battle. I thank Senator BIDEN and Mayor Daley for their help in crafting this important legislation, and I urge my colleagues to join me and Senator BIDEN in adding this potent weapon to our arsenal.●

● Mr. BIDEN. Mr. President, today, I am joining Senator SIMON to introduce legislation to give prosecutors another weapon to attack the financial underpinnings of drug trafficking and organized crime.

Simply put, this legislation will require Federal and State courts to notify the Internal Revenue Service [IRS] whenever a defendant charged with drug trafficking, racketeering or other serious crimes is able to post large amounts of cash to meet bail.

Every year, the drug trade generates billions of dollars in illicit profits. Last month, in testimony before a hearing that I chaired, Mayor Richard Daley of Chicago expressed frustration—a frustration shared by prosecutors across the country—when big-time drug dealers are able to post tens of thousands of dollars in cash to meet bail.

Undoubtedly, much of this cash represents the proceeds from illegal activities, yet there is no effective means to monitor suspicious cash bail payments.

This legislation gives law enforcement authorities a means to track suspicious cash bail payments. Under this proposal, whenever a defendant in Federal or State court posts $10,000 or more in cash bail, court officials must notify the IRS. These reports are similar to the currency transaction reports [CTR] and currency and monetary instruments reports [CMIR] that must be filed under the Federal money laundering laws.

The potential impact of this new law enforcement tool is best illustrated by the fact that Al Capone, the famous Chicago gangster, went to prison not for racketeering, but for tax evasion. Drug dealers—modern day Al Capones—frequently violate tax laws when they fail to report or pay taxes on their illicit profits. This legislation will open a new front in the fight against the illegal drug trade, enabling Federal authorities to use the criminal tax laws to bust drug dealers and take away their ill-gotten gains.

I want to thank Senator SIMON for his work on this legislation and Mayor Daley, who initially raised this issue when he testified before the Judiciary Committee.●

By Mr. BREAUX:

S. 1251. A bill entitled the Disaster Assistance Act of 1991; to the Committee on Agriculture, Nutrition, and Forestry.

DISASTER ASSISTANCE ACT OF 1991

● Mr. BREAUX. Mr. President, I rise to introduce legislation, the Disaster Assistance Act of 1991.

Farmers throughout the State of Louisiana have been devastated by heavy rains and flooding over the last several months. Fully half of the parishes in Louisiana have been declared Federal disaster areas.

The Louisiana Cooperative Extension Service of the Louisiana State University Agricultural Center estimates growers' financial losses at more than $173 million. This figure will probably go higher because it is too early to estimate the extent of losses to Louisiana sugarcane growers.

In 49 parishes, 11,333 homes and businesses have been flooded; 1,517,265 acres of crop and pasture land have been flooded. For many weeks farmers were unable to get into their fields because of flooding. Fields are so wet in many places that planting and cultivating are impossible. Much of the rice crop in north Louisiana has already been lost. Cotton planting is behind schedule. Thousands of acres of sugarcane are under water. Winter wheat crops are lost or damaged. Aquaculture production is threatened with huge losses and livestock feed supplies have been lost.

The bill that I am introducing today would provide disaster assistance to producers of all 1991 crops affected by damaging weather throughout the United States. It would provide reduced yield and prevented planting disaster payments to producers of program crops—such as wheat, corn, cotton, and rice—who lose 35 percent or more of their crop. Program participants in this category would be eligible for payments at a rate of 65 percent of the target price for that crop. Non-participants would be eligible for payments at a rate of 65 percent of the loan rate for that crop.

This legislation would provide payments to producers of peanuts, sugar beets, sugarcane and tobacco at a rate of 65 percent of the price support level on losses greater than 35 percent. Producers of soybeans and other nonprogram crops would be eligible for

payments at a rate of 65 percent of the average producer market price for the last 5 years on losses greater than 35 percent. It would reauthorize emergency livestock feed assistance and provide cost sharing for the reseeding of pastures. Finally, it would authorize payments for reduced quality of crops caused by damaging weather.

In order to be eligible for disaster assistance, producers would have to agree to obtain crop insurance for the 1992 crop where available. Producer eligibility will be determined by the quantity of the commodity that the producer is able to harvest. Further, the legislation would provide loan guarantees to rural businesses impacted directly and indirectly by damaging weather.

Mr. President, the problems caused by weather conditions in my State of Louisiana and in other parts of the country are very serious. I hope that my colleagues will join me in supporting this badly needed relief for disaster-stricken farmers. I yield the floor.

By Mr. MURKOWSKI (for himself, Mr. BURNS, and Mr. CRAIG):

S. 1252. a bill to amend the National Park Foundation Act (16 U.S.C. 19e through 19n, Public Law 90-209 (Dec. 18, 1967)); to the Committee on Energy and Natural Resources.

NATIONAL PARK FOUNDATION ACT AMENDMENTS

• Mr. MURKOWSKI. Mr. President, I rise today to introduce legislation to amend Public Law 90-209, the National Park Foundation Act.

There are several issues which cause me concern about recent events—especially the sale of the Yosemite Park and Curry Co., from MCA, Inc., to the National Park Foundation. I am not convinced that the rationale for the sale nor the specific agreement is in the best interest of the Government, taxpayer and/or park visitor.

The Secretary of the Interior announced a new policy initiative based on the principles of protecting the resource, providing quality visitor services at a reasonable cost, providing park concessionaires with a reasonable opportunity for profit, and providing for a fair return on fees, investments and services to the Government.

Mr. President, there are laudable goals. In fact, they are almost identical to those enacted by Congress with the passage of Public Law 89-249, the National Park Service Concessions Policy Act. What the Interior Department apparently overlooks was the basic decision by the Congress that the private sector, not federally chartered foundations, were to provide those services.

It was when Interior's goals were translated into his specific policy directions that we found ourselves on the *Titanic*. All we are doing is rearranging the deck chairs. Make no mistake, Mr. President—should we stay the course, we will certainly sink.

When the parent company of Yosemite Park and Curry Co., Music Corporation of America, was purchased by a foreign firm, Matsushita of Japan, it generated sensational headlines, rather than a true and accurate portrayal of the situation.

The complexities of the concession industry have become trivialized by some in Congress and the administration because they decided to judge the issue based on catchy slogans—"No foreign ownership of our national treasures" is a good example of that. Somehow Interior thinks the hamburger stand is the national treasure, rather than the park itself. Interior has completely ignored the legal and contractual relationship between a concessioner and the park.

Service in favor of an ill-informed and only marginally catchy press release. In the process, Interior has altered the objectives of the Park Foundation and opened the door for those who want to eliminate all concessions in an effort to prevent visitors from entering the national parks.

If anyone thinks that is not the objective, they should only look at the policy of visitor access. An example is the 5 acres of the Anchorage zoo get more visitation than the entire interior portion of Denali, and the zoo does not have an armed ranger to keep visitors out. Two of the parks in Alaska have more entry and exit by Park Service personnel than they do visitors.

No one addressed the positive aspects or the potential benefits that Yosemite may have had with the ties to Matsushita. Senators WALLOP and SEYMOUR and myself have recently begun discussing a monorail system of some sort for Yellowstone, Denali and Yosemite National Parks—certainly a 21st century mode of transportation. Matsushita might have had some innovative ideas.

I do not want to dwell on the Japanese bashing that has taken place, for it will serve no purpose to those who possess such a narrow view of the world.

Mr. President, through the negotiations between the Department and MCA and the National Park Foundation, Interior is attempting to dismantle the National Park Service Concessions Policy Act, by eliminating the concepts of possessory interest, preferential right of renewal, preferential right to additional services and long-term contracts. Interior appears to violate its responsibility to faithfully administer the laws as intended under the Park Foundation.

Congress never meant to establish the National Park Foundation to operate concessions in the National Park System. The Park Foundation lacks the expertise and experience, without the current Curry Co., management team, to even qualify as a responsible bidder for a National Park concession.

There are those who make a case that the Foundation is merely the stockholder under the potential agreement—notwithstanding the fact that the Foundation will appoint two members to the Board of Directors of Yosemite Park and Curry Co., that the chairman of the Park Foundation is the Secretary of the Interior, and now it is my understanding that the Park Foundation is attempting to formulate a subsidiary not-for-profit organization to deal with these matters.

I fear that with the Yosemite agreement, the Department of the Interior is sending the wrong signal to other concessionaires—and they are saying to the American public we may no longer be concerned with reasonable prices and quality service, but instead want to only maximize the return to the Treasury, which in this case will probably not occur. It appears to me that if one considered the amount of money the Foundation will have to expend in their first year of the buy-out, as well as the potential profits the concessioner will need to make over a 1-year period, there may be a serious shortfall in the ability of the Foundation to pay their debt. This is notwithstanding the fact that no one has taken into consideration that a major fire, snowstorm or any other natural disaster which has the potential to close the park for a period of time will also impact the earnings capability of the concessioner.

I don't like what the Interior Department is doing—it doesn't serve the public and it certainly doesn't serve the parks. A concessioner with no possessory interest, no preferential right, a short-term contract and a high fee will be forced to cut corners on design, construction, operation and maintenance, if they operate at all. Necessarily, we will almost always operate for the short term with as little deference to the resource as is possible.

A stable concessioner with incentive to make long-term investments and plan for continuity of operation helps to protect the resource. A long-term investor is able to plan, design and build environmentally sensitive facilities as directed by the National Park Service. Further, he is able to operate and maintain these facilities with long-term tenure in mind and thus in accord with the environmental sensitivity necessary in national parks.

The same factors are true to providing service to the visitor. A concessioner looking to the long-term will provide high quality service at reasonable prices. Further, he will be able to enhance the visitor experience by making the concessioner facilities an extension of the park. He will be able to provide such additional free services as interpretive lectures, guided hikes, and other extensions of the park.

It may be argued that resource protection and service to the visitor could be achieved by National Park Service regulation, but, in fact, the current partnership system has proven to work far better than any regulatory scheme. Thus, the system which Congress created has worked well and should not be destroyed by whim.

Mr. President, it is in this spirit that I feel compelled to introduce this legislation to amend the National Park Foundation Act, which would preclude the Foundation from operating or owning directly or indirectly or participate in transactions or activities directly or indirectly in the management or ownership of a park concession.

Mr. President, I would ask unanimous consent to print in the RECORD an editorial from the February 15, 1991, copy of Science, entitled "The Saving of Yosemite"; an April 2, 1991, article from the San Jose Mercury News, entitled "Yosemite's Fate in Hands of Obscure Group"; and a copy of a letter written by George E. Capsen, Jr., of Fort Sumter Tours, a park concessioner, who compiled a factsheet entitled "The Situation," which I believe adequately reflects the position and thinking of many of our park concessioners.

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

[From Science Magazine, Feb. 15, 1991]

THE SAVING OF YOSEMITE

(By Daniel E. Koshland, Jr.)

The news recently carried stories of the Secretary of the Interior's success in thwarting a Japanese firm from taking control of Yosemite National Park. The Secretary, by some timely Japan-bashing, got the Japanese corporation to sell back its rights at a very reduced fee. Elation was expressed by some over this great victory.

The action of the Secretary of the Interior was clearly prophetic. Anyone with half a brain would know what the Japanese had in mind. They would certainly remove Yosemite, rock by rock, tree by tree, waterfall by waterfall, and mountain by mountain to Japan, and there, nestled at the foot of Mount Fuji, it would create one of the great tourist attractions of all time. Global sightseers would no longer even be interested in coming to the United States, and tourism, like television sets, cameras, and binoculars, would become another Japanese monopoly.

This kind of situation had to be avoided at all costs, and extreme measures were probably needed. On the other hand, there are those, like this editor, who feel the cost was very high. The idea that the Japanese, with a noted record of efficiency in management, long-range point of view, and high quality of merchandise, would take over from the Yosemite Park and Curry Company (which had in general done a good job) was indeed attractive. The park organization might actually run like a Japanese car—low maintenance, high efficiency, and excellent service. The average visitor to the park would only note that it was running well and would not realize that the profit was going to a Japanese corporation instead of to the who-cares-about-profits-we're-just-acting-for-the-national-good U.S. corporation. Therein, of course, lies the rub. The Japanese corporation would probably make a lot of money, and some people would resent that, but again, the conventional wisdom may be wrong.

If the Japanese made a lot of money at Yosemite, they might think that they could make money in other operations of the U.S. government, and one of the first that comes to mind is the U.S. Postal Service. A Japanese takeover of the Postal Service might be the last chance for the American people to get their mail on time or even at all. The postal rates are going up again, racing ahead of the cost of living index by leaps and bounds, at the same time that mail delivery services keep going down. This inverse correlation probably has its origin in the wonderful managerial practices of the U.S. government. The chairman of the commission that sets postal rates was asked whether or not there had been an examination of the efficiency of the Postal Service before the current hikes were approved, and he replied that his commission was not authorized to investigate efficiency. Their job was to look at the figures and say whether the actual expenses justified the increase. Separating those who are paying the bills from those who are running the operation is a management device that I am sure would send shivers up the spine of any intelligent Japanese businessman, but it fits in perfectly with the savings and loan fiscal policy of the U.S. government.

The only hope for the average American who wants to receive anything but junk mail on time is for a selfish Japanese corporation to assume responsibility and make "unconscionable" profits. Thus a reversal of the Yosemite decision might lure the Japanese into running the Postal Service, and they might even be encouraged to take over the Internal Revenue Service, where the inefficiencies are probably even more glaring than at the Postal Service. Alas, the Yosemite episode is likely to deter the Japanese from trying any further to make sense out of U.S. government operations. The most obvious solution to the Yosemite mess is to compensate the Japanese for our insulting behavior by giving them the Postal Service and letting them run it with their usual management skills. If the Japan-bashers win, there is still perhaps one last desperate way out of this situation. The Yosemite Park and Curry Company must have much less to do than it ever had, and it has an organization of appreciable size that has actually made money in a bureaucratic atmosphere. Therefore, if worse comes to worst, it is conceivable that the Postal Service and the Internal Revenue Service can be turned over to the Yosemite Park and Curry Company. The average postal worker would probably prefer to work for an efficient corporation of any nationality but politically, conservatism and provincialism will always triumph over innovation and magnanimity.

[From the San Jose (CA) Mercury News, Apr. 2 1991]

YOSEMITE'S FATE IN HANDS OF OBSCURE GROUP

(By Tom Philp]

When MCA Inc. agreed in January to the historic sale of its Yosemite tourist business to the National Park Foundaton, many park activists first cheered. Then wondered. Who is the National Park Foundation?

The foundation is the wild card in Yosemite's future, and so far it isn't showing its hand. Perhaps, it says, it will take over the lucrative concession business itself when the contract comes up for bid again in 1993. Perhaps it will leave Yosemite to others. The only sure thing is that the turbulent fishbowl of Yosemite politics is an odd place to find a tiny foundation with no experience in anything this big or important.

"They didn't do a great deal," said William Pehn Mott Jr., director of the National Park Service during half of the Reagan administration, of the foundation's '80s track record. "The board enjoyed trips to the various parks for their board meetings and things of that sort."

Congress created the foundation in 1967 to raise money and buy land for the park service—things big government bureaucracies have trouble doing. It has 23 members on its board of directors, mostly corporate executives who earn no stipend or salary. President Alan Rubin, who oversees an office of only three employees, makes $120,000—more than James Ridenour, who leads the 12,000-strong National Park Service.

The foundation started with more than $1.1 million in seed money from the Rockefeller family, and spent its early years arranging land donations—for Grand Teton National Park, for Virgin Islands National Park, and for Georgias Cumberland Island National Seashore, But by the '80s, with the Reagan administration stressing "privatization" of public lands, the foundation lowered its profile.

Maybe too low.

"They are a mystery to us," said Joan Reiss, West Coast director of the Wilderness Society, which is a partner in a group which may bid for the concessions. "They have us very concerned."

Audits, annual reports and interviews with former foundation employees reveal an organization with a scattered resume that is heavier on museum and arts projects than activities in the parks.

Its only Yosemite project, a $500,000 film focusing on the park's controversial history, was sanitized to the point that it was "frivolous and factually incorrect," according to its creator.

Its big project for the 1980s, when park interpretation programs suffered from Reagan budget cuts, was a museum at the base of Wall Street in Manhattan. The museum was never a priority of the park service.

A sister organization created by Congress, the National Fish and Wildlife Foundation, has managed to raise seven times as much money in one-fifth the time.

Still, Interior Secretary Manmel Lujan in January made the foundation a key player in Yosemite when, acting in his role as foundation chairman, he dropped the Yosemite Park and Curry Co.—the MCA subsidiary which actually runs the park concessions—in its lap.

WHO'S WHO ON THE BOARD

Here is a partial list of board members on the National Park Foundation:

John Fery, chairman and chief executive officer, Boise Cascade Corp, Boise Idaho.

Neil Harlan, former chairman, McKesson Corp., San Francisco.

Richard Madden, chairman and chief executive officer, Potlatch Corp., San Francisco.

Phoebe Hearst Cooke, philanthropist, Woodside.

John Gavin, Los Angeles.

Gilbert M. Grosvenor, president, National Geographic Society, Washington, DC.

James Harvey, chairman, Transamerica Corp., San Francisco.

Marian Heiskoll, director of the New York Times Co., New York.

Roger Staubach, former Dallas Cowboys quarterback, Dallas.

Source: 1989 foundation annual report.

CAMPSEN & CAMPSEN,
ATTORNEYS AT LAW,
Charleston, SC, May 21, 1991.

Hon. FRANK H. MURKOWSKI,
U.S. Senator from Alaska, ranking Republical member Subcommittee on Public Lands, National Parks and Forests.
(Attention of Mr. Jim O'Toole).

DEAR SENATOR MURKOWSKI: I have been an active trial lawyer for over thirty years. I am also President of Fort Sumter Tours, Inc., a family-owned enterprise, which has, pursuant to a concessions contract with the National Park Service, provided public boat transportation to Fort Sumter National Monument since 1962. I am also a member of the Board of Directors of the Conference of National Park Concessioners.

The national parks and monuments in our great nation are one of our finest accomplishments and are enjoyed by millions of our citizens each year. Since our system began, visitor goods and services have been provided by private sector business men and women, known as concessioners, under strict supervision and control of the Department of the Interior, acting through the National Park Service. It is felt that the excellence of service provided by the private sector contributes greatly to the gratifying experience of visitors to our national park areas.

An effort is presently underway which would dramatically change and ultimately destroy the national park concession system as it presently exists. You have been furnished a copy of a document entitled "The Situation". It is felt that this document properly identifies and discusses the important issues involved. A copy of same has been furnished to each member of the Board of Directors of the Conference of National Park Concessioners, and it is felt that the discussions contained therein expresses the position of all concessioners.

It is hoped that you and others in authority will prevent the destruction of a system which has withstood the test of time, and has provided outstanding goods and services to the millions of visitors to our national park areas.

Faithfully yours,
GEORGE E. CAMPSEN, Jr.

THE SITUATION

(The following are current issues or questions, national in scope, which have developed because of the announced policy goals of Manual Lujan, Jr., the present Secretary of the Interior, regarding the role of private sector concessioners in our national park areas.)

What type services and facilities are needed in National Park areas?

For over a century, our citizens who visit national park areas have shown a strong desire and need for quality food, beverages, transportation, lodging, souvenirs, recreational opportunities and other family type comfort conveniences, determined by the National Park Service to be necessary and appropriate for proper enjoyment of park areas.

Who are National Park concessioners?

Concessioners are private enterprise business men and women who are independent contractors for the National Park Service, and whose private business function is to provide the goods and services as deemed by the National Park Service to be necessary and appropriate for park visitors. They are subject to, and pay, federal, state and other taxes. They are responsible for hiring, training, paying, disciplining and firing their own employees.

Are concessioners regulated or controlled by any governmental agency?

Concessioners are totally regulated and controlled by concession contracts with the National Park Service, under the Department of the Interior, all as authorized and directed by Congress.

"THE SITUATION"

Each of the following concession business operations are now, and have been for decades, regulated and controlled by the Secretary of the Interior, acting through the National Park Service:

(a) Every service and item offered for sale to park visitors must first be approved by the Service.

(b) The price charged the public for such service and items also must be approved.

(c) The type and amount of insurance any concessioner maintains must be approved.

(d) The Service reserves the right to fire any employee of any concessioner.

(e) The Service reserves the right to inspect all concessioner equipment to make certain it is appropriate for its purpose and maintained to the satisfaction of the Service.

(f) Any investment in buildings or equipment in the park, to be made at concessioner's expense, must be approved as to its need, type, design and function.

(g) All of concessioner's daily operating procedures and practice must be approved.

(h) Any and all advertising used by concessioner must be approved.

(i) The scheduling and duration of all concession-executed events must be approved.

(j) The uniform or dress of all concessioner employees must be approved.

(k) The operating hours of all concession activities must be approved.

(l) The color, decorations and appearances of all concession equipment must be approved.

(m) The size, shape, design and location of all concession employee housing must be approved.

(n) Franchise fees, building use fees (rent) payable by concessioner to Service must be approved.

(o) Extent and type of audit of concessioner's business operation, which is required annually by Service must be approved.

(p) The method and type of business accounting maintained by concessioner must be approved.

(q) Concessioner's compliance with all federal, state and local regulations are subject to review by Service for compliance.

Will competition between more than one concessioner offering services in a park benefit the visitor or the Park Service?

All business operations in the USA are regulated and controlled to some extent. For instance, the Food and Drug Administration, the Federal Communication Authority, the Internal Revenue Service, Wage and Hour requirements, Civil Rights Legislation, the Interstate Commerce Commission, the Anti-Trust Laws, etc., etc. After these type controls, we generally support a free economy, where competition among businesses serves as a regulating factor for business efficiency, quality of performance and opportunity for profit, without further control by government. However, there is another type of business operations which are essential, and wherein competition would be totally destructive, and experience has demonstrated that regulated monopolistic practice best serves the public interest. This type business primarily involves the area of public service, such as public transportation, utility companies, and national park concessioners. The beneficial goal in terms of public interest, in these type business operations, is satisfactory public service at reasonable prices. Obviously, in these situations, this cannot be accomplished through open competition. Imagine, if you would, the chaos, economic disaster and poor services, which would be rendered if we had numerous businesses competing for our residential electrical services and water system, with multiple distribution electrical lines and pipes, and multiple concessioners and their equipment, competing to provide goods and services to visitors within each of our national park areas.

Obviously, in these areas, competition would be most undersirable and unworkable. But experience has also taught us that because of the inherent greed of all men, a business producing unique or monopolistic goods and services, must be restrained and controlled in their pricing, and quality of service. Something controlling must be present to serve the otherwise valuable function, and take the place of "competition". Therefore, in PL 89-249, the Congress mandated that since national park concessioners are not subject to regulation through competition, the prices they charge, and the quality and type of services they offer, shall be regulated and controlled by the Secretary of the Interior, acting through the National Park Service.

The historic record of concession operations will show that through many decades of trial and error, the Park Service, the Congress and all previous Secretaries of the Interior concluded that open and sometime bitter competition, within the park, by numerous concessioners for the park visitors' dollars, is not beneficial, but detrimental, to the visitor and the Park Service.

Accordingly, the Congress, in PL 89-249, authorized the Secretary to contract with one responsible concessioner who would be rigidly regulated, rather than allowing an atmosphere of bitter competitive commercialism to develop in park areas. This system has worked well . . .

Would the visitor or the service benefit from more concession competition for contract renewals?

Based upon many decades of trial and error experience, in PL 89-249, approved October 9, 1965, the Congress made a factual finding that the public interest would be best served by private concessioners, rather than government, providing goods and services to park visitors, and directed the Secretary of the Interior to encourage private concessioners to provide the facilities and services needed in the parks. Also, Congress found, as a fact, the continuity of satisfactory concession operations were in the public interest, and directed the Secretary to grant a preference in the negotiations and renewal of contracts, or permits, to all concessioners who have performed their obligations under prior contracts to the satisfaction of the Secretary. This right has been interpreted as a right to match any competing proposal. It is important to realize that concessioners the Secretary deems unsatisfactory are not entitled to any preference, but are subject to immediate termination . . . The question is—should satisfactory service be continued?

Should concessioners be replaced routinely without regard for the quality or efficiency of their performance?

The present Secretary of the Interior is openly advocating short term contracts, and

routine replacement of concessioners only for the purpose of change.

Presently in this country, there are literally hundreds of thousands of employees of private sector park concessioners, who have committed their careers to providing the goods and services needed by park visitors. Obviously, as with the civil service, union contracts, and all businesses in this country who have employees, each must be able to attract and maintain quality type personnel. This job attraction is only accomplished through benefits, such as long term pension plans, hospital insurance, vacations and perhaps most importantly, the opportunity for continued employment or tenure in exchange for satisfactory performance. It is also important and necessary for park concessioners to specially train their employees in terms of conservation park resources, park ethics, customs and courtesies, etc., all of which takes considerable time to locate and develop a desirable cadre of outstanding career employees, and once accomplished, should not be scrapped every five years. The present Secretary has announced his desire and intentions to limit most concessions contracts to a five year period, and encourages routine replacement of concessioners. It should be obvious that such practice would disrupt, if not destroy, career opportunities for all the talented and highly qualified persons, who desire to work for and with private concessioners in serving visitors within our national parks. Human nature being what it is, a "get it while you can" quest for money would surely evolve by all such short term concessions. What would motivate them to do anything else? Who would this benefit?

Thankfully, our Congress in 1965 adopted P.L. 89-249 and directed all Secretaries of the Interior to "encourage continuity of concession operations, facilities and services within the parks". The announced intention and policy of the present Secretary—to disrupt "continuity" is contrary to the "expressed will" of Congress. It should be remembered that it was the Congress of the Unites States which created and established the national park system, and then merely delegated the authority to carry out the "will of Congress" to the Secretary of the Interior.

Should franchise fees charged concessioners be used as a revenue source for the Federal Government and to reduce concession profits?

Absolutely not. The Congress, in P.L. 89-249, provided that such fees shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract. The value is defined as "the opportunity for net profit in relation to both gross receipts and capital invested". The Congress gave specific directions to the Secretary regarding the amount and purpose of franchise fees, when it stated—"Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates". Obviously, any demand by the Secretary that franchise fees be increased, merely to produce more revenue for the federal government, is also contrary to the stated intention of the Congress and, when abused by the Secretary, a means of drastically reducing concession incentive, and ultimately destroying the entire system nationwide.

Unfortunately, to many in positions of authority in government, "profit" is a bad word, and symbolizes an evil empire of entrepreneurs. This is most regrettable and presently one of the great challenges to our free market system. It should be obvious that in order for any salaries and taxes to be paid, or anything good economically to happen, it is first necessary that some private enterpreneur be given an opportunity to make an honest profit. If those in authority destroy this incentive, we will surely follow the path of Russia and Eastern Europe into economic chaos.

Should a concessioners have some security for, or possessory interest buildings and improvements which the park service directs a concessioner to produce at its expense, for public use on Federal lands in the park?

At the request and requirement of the Secretary of the Interior, acting through the National Park Service, private sector concessioners have invested hundreds of millions of dollars in buildings and improvements upon federal lands for the enjoyment of park visitors. Is it not proper that such investments be reasonably secure? These large investments require borrowed funds from banking institutions, which require such loans to be collateralized by mortgages and other security documents. To deprive a concessioner of this possessory interest would promptly end private concession investments, and would deny the park visitor the use and enjoyment of all concession financed improvements, or require additional federal money to finance such improvements. Again, the Congress, in P.L. 89-249, denied the Secretary this authority, by requiring that a concessioner who, at its expense, finance any structure, fixture or improvement upon park lands, at the request of the Secretary or Park Service, "shall" have a possessory interest therein. The Act then defines possessory interest and mandates that the value thereof shall equal "sound value", defined as "replacement cost, less depreciation, but not to exceed fair market value." This Secretary wants to destroy that concept!!

Should the Secretary be granted the authority to define "reasonable profit" concessioners would be permitted to earn? Are profitable concessioners detrimental to park visitors or the Secretary of the Interior?

Absolutely not. Again, the Congress, in PL 89-249 mandated that the Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit. The Congress has granted the Secretary no authority to directly regulate or control "profit opportunities" of concessioners. Nor is the concessioner granted any insulation or protection from a business loss, even though such losses may be due to acts of God, civil commotion, war or other events beyond the control of concessioners. In accordance with the free enterprise philosophy, after accepting reasonable regulation and control by the Secretary, including approval of charges made, concessioners have been properly granted the opportunity to make whatever profit legally available, and likewise be subjected to any risk of business losses. Experience has shown that this system works well. It should not be changed!!

In any private business, "profit" is a necessary component of a lasting business relationship, including the partnership, as mandated by Congress, which presently exists between park concessioners and the Secretary. Surely, the internal collapse of worldwide communism should teach us all that the free enterprise, "profit" motivated business climate, is the only successful system. After the Service and the Secretary have assured quality service and reasonable prices through rate approval, etc., it is hard to envision how the federal government or park visitors would be better off by diminishing the "profit opportunity" of private concessioners. The economically healthy concession business is the only kind that can survive and respond to visitor needs and large investments in needed park facilities. Fortunately, under our free economy, businesses must determine in the "market place", whether they can be profitable, and the government should not attempt to control profits. Such an experiment was tried in Russia and Eastern Europe—and was a miserable failure. It is called Communism!!

The Congress gave the Secretary of the Interior substantial regulatory authority over concession operations, but fell far short of granting him authority to regulate profits. This Secretary wants to diminish "profit opportunity" by increasing franchise fees, in order to raise additional revenue for the U.S. Treasury. In essence, a type of additional federal income tax, especially for park concessioners. This is fraught with the great danger of allowing the Secretary, in his discretion, to impose higher franchise fees, even to the extent of breaking the financial backs of concessioners. Such practice has never been authorized by Congress and its implementation, over time, will surely eliminate private concessioners in our parks, requiring that the necessary goods and services be provided by the federal government. Is this in the best interest of the park visitor?

When a private concessioner decides to sell his business, should the Secretary of the Interior have a right to determine the sales price?

For over a quarter of a century the Secretary has possessed the right to approve the business qualifications of any prospective purchaser of a concessioner's business interest. This is justified upon the grounds that the Park Service should have the right to judge the acceptability of its "new partner", and make a judgment concerning its ability to continue to satisfactorily perform the obligations of the concessions contract. However, the monetary terms and conditions of the sale heretofore has been left exclusively to the judgment of the willing seller and purchaser, involved in an arms length business tranaction. Now, the Secretary has declared that he will not approve any sale he, in his sole discretion, feels will result in windfall profits to the seller, which he has described as "blue sky". With all due respect, isn't this unnecessary meddling into the business judgment of two private contracting parties? The ability to determine the "true value" of any business enterprise is a very technical procedure requiring the professional abilities of business brokers, attorneys, accountants and other consultants. What are the qualifications of "government" in this area? Furthermore, what difference should it make to the Secretary, or anyone else—what a willing buyer and seller agree upon as—"true value"? Upon the sale of any business, including concession operations, many will often claim the sales price was too high and others will say it was too low. Historically, such negotiations have been an important and private part of American business, and should stay that way, and not be dominated by the Secretary of the Interior, merely because a park concessioner happens to be the seller.

Has the spirit and intent of PL 89-249 created a good working concession system or not?

Private concessioners, under contract with the federal government, have been providing visitor goods and services in park areas since

the establishment of our very first national park, Yellowstone, in 1872. Since that time and during the expansion of our park system, through trial and error experience, the Congress continually monitored many, if not all, of the possible circumstances of providing visitor services, for the purpose of finding a method which would best serve park visitors. After evaluating such experiences for almost a century, the Congress conducted extensive and numerous hearings and finally selected those policies and procedures which, through time and application, had proved to be the best, and codified them into Public Law 89-249.

An assault upon these policies and procedures is now being conducted by the Secretary of the Interior, even though he openly acknowledges that private concessioners generally have produced outstanding goods and services for park visitors at reasonable prices.

Our national parks are a model for the world . . . The system is not broken—and does not need fixing. Hopefully, the Congress and others in authority will not allow a proven system to be destroyed.●

By Mr. ROCKEFELLER (for himself, Mr. AKAKA, Mr. KERRY, Mr. BRADLEY, Mr. CRANSTON, Mr. BUMPERS, Mr. DASCHLE, Mr. JEFFORDS, Mr. BENTSEN, Mr. BYRD, and Mr. MITCHELL):

Senate Joint Resolution 157. A resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week"; to the Committee on the Judiciary.

HIRE A VETERAN WEEK

● Mr. ROCKEFELLER. Mr. President, it is with great pride that I rise today to introduce a joint resolution to designate the week beginning November 10, 1991, as "Hire A Veteran Week."

I believe this is a timely and appropriate resolution. This weekend, people from around our country will gather in Washington, DC, to celebrate the return of our troops. It will be a time of elation and joy, a time of both relief and pride.

Nevertheless, as we celebrate and honor our veterans, we must also be aware of the concerns that veterans and their families will face after the parade ends and as they must begin to make the transition from military service into civilian life.

Employment is a major issue for all veterans, especially in our present economy.

As a member of the Senate Veterans' Affairs Committee, I have been proud to work on legislation designed to strengthen our benefit programs for all veterans, including those who served bravely in Operation Desert Storm.

Training and employment assistance play a vital role, but the bottom line is our veterans need a job. Unfortunately, the latest employment statistics from the Department of Labor indicate that more than 667,000 veterans are unemployed, and many others are underemployed.

West Virginia alone has 6,000 unemployed veterans and this number unfortunately may rise as men and women from my State return from the Persian Gulf and others leave military service. In West Virginia, we have committed professionals at the Veterans Employment Service who are working to help veterans develop the skills they need for interviews. My State also works to encourage employers to consider veterans for job opportunities—but they would welcome a national initiative.

Every State should do more to tell employers about the tremendous advantages of hiring veterans.

Men and women who served in the military have gained unique experiences that are also beneficial in civilian careers as well. Military training fosters leadership skills and encourages teamwork. It brings veterans in contact with the latest equipment and the most modern technologies. Veterans receive training in a variety of specialized fields ranging from medicine to electronics. Moreover, because of the Armed Forces' structure and discipline, veterans are frequently better trained and better suited for all employment opportunities.

"Hire A Veteran Week" seeks to focus national attention on these issues. Under the resolution, Federal agencies, State governments, labor organizations, employers, and veterans' organizations would be asked to support and assist veterans seeking jobs. Several States already sponsor similar initiatives. However, I believe we should have a national "Hire A Veteran Week." Promoting public awareness through a national recognition week focusing on hiring veterans is a basic, but effective, way to remind employers to consider veterans for job opportunities.

Veterans have helped defend freedom; it is time we help them. Let us take this simple step to truly welcome home our troops.

I urge my colleagues to join me in supporting this simple but important resolution for all veterans.

Mr. President, I ask unanimous consent that the resolution be printed in the RECORD following my statement.

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

S.J. RES. 157

Whereas the people of the United States have a deep appreciation and respect for the men and women who serve the United States through service in the Armed Forces;

Whereas many veterans possess special qualities and skills that make them ideal candidates for employment;

Whereas many veterans encounter difficulties in securing employment despite these special qualities and skills; and

Whereas the Department of Veterans Affairs, the Department of Labor, the Office of Personnel Management, and many State and local governments administer veterans programs and have veterans employment representatives to ensure that veterans receive the services to which they are entitled and to promote employer interest in hiring veterans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning November 10, 1991, is hereby designated as "Hire a Veteran Week", and the President is authorized and requested to issue a proclamation calling upon employers, labor organizations, veterans' service organizations, and Federal, State, and local governmental agencies to lend their support to the campaign to increase employment of the men and women who have served the United States through service in the Armed Forces.●

ADDITIONAL COSPONSORS

S. 24

At the request of Mr. MOYNIHAN, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 24, a bill to amend the Internal Revenue Code of 1986 to make permanent the exclusion from gross income of educational assistance provided to employees.

S. 50

At the request of Mr. SYMMS, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 50, a bill to ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible.

S. 190

At the request of Mr. GRAHAM, the names of the Senator from Oklahoma [Mr. BOREN] and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 190, a bill to amend section 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 Oregon [Mr. HATFIELD] 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. 210

At the request of Mr. SASSER, his name was added as a cosponsor of S. 210, a bill to establish the United States Enrichment Corporation to operate the Federal uranium enrichment program on a profitable and efficient basis in order to maximize the long-term economic value to the United States, to provide assistance to the domestic uranium industry and to provide a Federal contribution for the reclamation of mill tailings generated pursuant to Federal defense contracts

at active uranium and thorium processing sites.

S. 239

At the request of Mr. SARBANES, the names of the Senator from Oregon [Mr. PACKWOOD] and the Senator from Arkansas [Mr. BUMPERS] 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. 323

At the request of Mr. CHAFEE, the names of the Senator from Georgia [Mr. FOWLER], the Senator from Nebraska [Mr. KERREY], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors 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. 327

At the request of Mr. BOREN, the names of the Senator from Idaho [Mr. CRAIG] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 327, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war.

S. 447

At the request of Mr. THURMOND, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Ohio [Mr. GLENN], and the Senator from New Hampshire [Mr. RUDMAN] were added as cosponsors of S. 447, a bill to recognize the organization known as The Retired Enlisted Association, Incorporated.

S. 504

At the request of Mr. HARKIN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 504, a bill to amend the Standing Rules of the Senate to require that reports accompanying each bill involving public health that is reported by a Senate committee contain a prevention impact evaluation, to establish a Task Force on Disease Prevention and Health Promotion, and for other purposes.

S. 510

At the request of Mr. HARKIN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 510, a bill to amend the Older Americans Act of 1965 to expand the preventive health services program to include disease prevention and health promotion services, and for other purposes.

S. 518

At the request of Mr. GRAHAM, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 518, a bill to amend title XVIII of the Social Security Act to expedite the payment of claims under such title by increasing the level of interest paid on late payments to providers under such title, and for other purposes.

S. 596

At the request of Mr. MITCHELL, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 596, a bill to provide that Federal facilities meet Federal and State environmental laws and requirements and to clarify that such facilities must comply with such environmental laws and requirements.

S. 649

At the request of Mr. BREAUX, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 649, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury tax on boats.

S. 694

At the request of Mr. HARKIN, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 694, a bill to amend title VII of the Public Health Service Act to increase the support provided to programs for the training of medical rehabilitation health personnel, to establish an Advisory Council on Allied Health, and for other purposes.

S. 717

At the request of Mr. SYMMS, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 717, a bill to amend title XVIII of the Social Security Act to provide for the exclusion of all rural areas from medicare payment reductions for the services of new physicians provided in such areas.

S. 765

At the request of Mr. BREAUX, the names of the Senator from Florida [Mr. MACK], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 765, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer social security taxes on cash tips.

S. 773

At the request of Mr. CHAFEE, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 773, a bill to amend title XIX of the Social Security Act to create a new part under such title to provide access to services for medically underserved populations not currently served by federally qualified health centers, by providing funds for a new program to allow federally qualified health centers and other qualifying entities to expand such centers' and entities' capacity and to develop additional centers.

S. 803

At the request of Mr. REID, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 803, a bill to amend the Family Violence Prevention and Services Act to provide grants to States to fund State domestic violence coalitions, and for other purposes.

S. 832

At the request of Mr. GORTON, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 832, a bill to authorize the Secretary of Commerce to develop and expand new national markets for recycled paper and other commodities; and to carry out a program requiring Federal departments to procure and use recycled paper and paper products in carrying out their functions.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Rhode Island [Mr. PELL] was added as cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 879, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of certain amounts received by a cooperative telephone company indirectly from its members.

S. 880

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 880, a bill to amend title XVIII of the Social Security Act to provide for improved reimbursement of clinicial social worker services covered under medicare.

S. 881

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 881, a bill to amend title VII of the Public Health Service Act to provide educational support for individuals pursuing graduate degrees in social work, and for other purposes.

S. 909

At the request of Mr. LEAHY, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 909, a bill to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities.

S. 922

At the request of Mr. DASCHLE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 922, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income payments made by electric utilities to customers to subsidize the cost of energy conservation services and measures.

S. 1009

At the request of Mr. COATS, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1009, a bill to amend the Internal

Revenue Code of 1986 to increase the amount of the exemption for dependent children under age 18 to $4,000, and for other purposes.

S. 1010

At the request of Mr. INOUYE, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1010, a bill to amend the Federal Aviation Act of 1958 to provide for the establishment of limitations on the duty time for flight attendents.

S. 1121

At the request of Mr. WARNER, the names of the Senator from Arkansas [Mr. BUMPERS] and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 1121, a bill to authorize funds for construction of highways, for highways safety programs, for mass transportation programs, and for other purposes.

S. 1141

At the request of Mr. PELL the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 1141, a bill to help the Nation achieve the National Education Goals by supporting the creation of a new generation of American schools in communities across the country; rewarding schools that demonstrate outstanding gains in student performance and other progresss toward the National Education Goals; creating academies to improve leadership and core-course teaching in schools nationwide; supporting State and local efforts to attract qualified individuals to teaching and educational administration; providing States and localities with statutory and regulatory flexibility in exchange for greater accountability for student learning; encouraging, testing, and evaluating educational choice programs; increasing the potential usefulness of the National Assessment of Educational Progress to State and local decisionmaking; expanding Federal support for literacy improvements; and for other purposes.

S. 1226

At the request of Mr. JEFFORDS, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 1226, a bill to direct the Administration of the Environmental Protection Agency to establish a small community environmental compliance planning program.

SENATE JOINT RESOLUTION 39

At the request of Mr. THURMOND, the names of the Senator from Nevada [Mr. REID], and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of Senate Joint Resolution 39, a joint resolution to designate the month of September 1991, as "National Awareness Month for Children with Cancer."

SENATE JOINT RESOLUTION 57

At the request of Mr. THURMOND, the names of the Senator from Louisiana [Mr. JOHNSTON], the Senator from Louisiana [Mr. BREAUX], the Senator from Oregon [Mr. PACKWOOD], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of Senate Joint Resolution 57, a joint resolution to designate the month of May, 1991, as "National Foster Care Month."

SENATE JOINT RESOLUTION 72

At the request of Mr. SPECTER, the name of the Senator from Georgia [Mr. NUNN] was added as cosponsor of Senate Joint Resolution 72, a joint resolution to designate the week of September 15, 1991, through September 21, 1991, as "National Rehabilitation Week."

SENATE JOINT RESOLUTION 73

At the request of Mr. SPECTER, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of Senate Joint Resolution 73, a joint resolution designating October 1991 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 96

At the request of Mr. RIEGLE, the names of the Senator from North Carolina [Mr. SANFORD], the Senator from Virginia [Mr. WARNER], the Senator from Tennessee [Mr. SASSER], the Senator from Alabama [Mr. HEFLIN], the Senator from Mississippi [Mr. LOTT], the Senator from Oklahoma [Mr. NICKLES], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 96, a joint resolution to designate November 19, 1991, as "National Philanthropy Day."

SENATE JOINT RESOLUTION 115

At the request of Mr. MOYNIHAN, the name of the Senator from Maine [Mr. COHEN] was added as a consponsor of Senate Joint Resolution 115, a joint resolution to designate the week of June 10, 1991, through June 16, 1991, as "Pediatric AIDS Awareness Week."

SENATE JOINT RESOLUTION 121

At the request of Mr. DECONCINI, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Joint Resolution 121, a joint resolution designating September 12, 1991, as "National D.A.R.E. Day."

SENATE JOINT RESOLUTION 125

At the request of Mr. SIMON, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Alabama [Mr. HEFLIN], the Senator from Hawaii [Mr. INOUYE], the Senator from Vermont [Mr. JEFFORDS], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Wisconsin [Mr. KOHL], the Senator from Vermont [Mr. LEAHY], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Ohio [Mr. METZENBAUM], the Senator from South Dakota [Mr. PRESSLER], the Senator from Maryland [Mr. SARBANES], the Senator from Alabama [Mr. SHELBY], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 125, a joint resolution to designate October 1991 as "Polish American Heritage Month."

SENATE JOINT RESOLUTION 136

At the request of Mr. RIEGLE, the names of the Senator from Alabama [Mr. SHELBY], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of Senate Joint Resolution 126, a joint resolution to authorize the display of the POW-MIA flag on flagstaffs at the national cemeteries of the United States, and for other purposes.

SENATE JOINT RESOLUTION 138

At the request of Mr. SPECTER, the names of the Senator from Colorado [Mr. BROWN], the Senator from Georgia [Mr. NUNN], and the Senator from Hawaii [Mr. INOUYE] 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 147

At the request of Mr. LEAHY, the names of the Senator from Maryland [Mr. SARBANES], the Senator from South Dakota [Mr. DASCHLE], the Senator from North Dakota [Mr. BURDICK], the Senator from Virginia [Mr. WARNER], the Senator from North Dakota [Mr. CONRAD], the Senator from Hawaii [Mr. INOUYE], the Senator from New York [Mr. D'AMATO], the Senator from Delaware [Mr. BIDEN], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Washington [Mr. ADAMS], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of Senate Joint Resolution 147, a joint resolution designating October 16, 1991, and October 16, 1992, as "World Food Day."

SENATE JOINT RESOLUTION 151

At the request of Mr. RIEGLE, the names of the Senator from Nebraska [Mr. EXON], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Illinois [Mr. SIMON], the Senator from South Carolina [Mr. THURMOND], the Senator from Washington [Mr. ADAMS], the Senator from Alaska [Mr. MURKOWSKI], the Senator from South Dakota [Mr. PRESSLER], the Senator from Connecticut [Mr. DODD], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Maryland [Ms. MIKULSKI], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Maryland [Mr. SARBANES], the Senator from Kansas [Mr. DOLE], the Senator from New Jersey [Mr. BRADLEY] the Senator from Rhode Island [Mr. CHAFEE], the Senator from Wisconsin [Mr. KASTEN], the Senator from Montana [Mr. BURNS], the Senator from Missouri [Mr. BOND], the Senator from Alaska [Mr. STEVENS], the Senator from Indiana [Mr. COATS], the Senator from Rhode Island [Mr. PELL], the Senator from Vermont [Mr. JEFFORDS], the Senator from California [Mr. CRANSTON], the Senator from Hawaii [Mr. AKAKA], the Senator from Alabama [Mr. HEFLIN], the Senator

from Tennessee [Mr. GORE], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of Senate Joint Resolution 151, a joint resolution to designate October 6, 1991, and October 6, 1992, as "German-American Day."

SENATE JOINT RESOLUTION 154

At the request of Mr. DECONCINI, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from Missouri [Mr. BOND] were aded as cosponsors of Senate Joint Resolution 154, a joint resolution to designate August 1, 1991, as "'Helsinki Human Rights Day."

SENATE CONCURRENT RESOLUTION 40

At the request of Mr. D'AMATO, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of Senate Concurrent Resolution 40, a concurrent resolution expressing the sense of the Congress that the Federal Republic of Germany and the Republic of Austria should take all applicable steps to halt the distribution of neo-Nazi computer games and prosecute anyone found in possession of these materials to the full extent of the law.

SENATE RESOLUTION 116

At the request of Mr. ROTH, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of Senate Resolution 116, a resolution to express the sense of the Senate in support of Taiwan's membership in the General Agreement on Tariffs and Trade.

SENATE RESOLUTION 138—EXPRESSING THANKS TO THE EXCHANGE CLUB OF MURFREESBORO, TN

Mr. SASSER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 138

Whereas the Exchange Club of Murfreesboro, Tennessee, was chartered on June 5, 1951, and will be celebrating its 40th Anniversary this June; and

Whereas the members of the Exchange Club of Murfreesboro have served their community these past 40 years, actively participating in the Programs of Service of The National Exchange Club, such as Crime Prevention, "One Nation Under God," and the Freedom Shrine, as well as others: Now, therefore, it is

Resolved, That the Senate of the United States of America recognizes and acknowledges the selfless contributions of service made by the members of the Exchange Club of Murfreesboro. It is further

Resolved, That the United States Senate expresses its most sincere thanks and appreciation to the members of the Exchange Club of Murfreesboro, Tennessee, for all the contributions made in the true spirit of Exchange to the betterment of their community and, as a result, to the Nation.

• Mr. SASSER. Mr. President, I am pleased to submit today a resolution to recognize the Exchange Club of Murfreesboro, TN, which celebrates its 40th anniversary this June.

Members of this outstanding organization have served their community over the past four decades and have actively participated in the many service programs of the National Exchange Club, including a program in crime prevention and one honoring the freedom shrine. The Exchange Club of Murfreesboro has made countless contributions to the community and, indeed, the entire Nation.

Mr. President, I join my fellow Tennesseans in congratulating the Exchange Club of Murfreesboro on its 40th anniversary and expressing our deep appreciation for its years of leadership and civic commitment to the middle Tennessee area and the entire State of Tennessee.•

SENATE RESOLUTION 139—MAKING A MINORITY PARTY APPOINTMENT TO THE SPECIAL COMMITTEE ON AGING

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 139

Resolved, That the following Senator shall be added to the minority party's membership on the Special Committee on Aging for the One Hundred Second Congress or until their successors are appointed:

Mr. Specter.

AMENDMENTS SUBMITTED

SURFACE TRANSPORTATION EFFICIENCY ACT

SIMON (AND GRAHAM) AMENDMENT NO. 291

(Ordered to lie on the table.)

Mr. SIMON (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by them to the bill (S. 1204) to amend title 23, United States Code, and for other purposes, as follows:

At the end of the bill, add the following new title:

TITLE—HIGH-SPEED RAIL AND HIGHWAY TRAFFIC SAFETY PROGRAM OF 1991

SEC. 01. SHORT TITLE.

This title may be cited as the "High Speed Rail and Highway Traffic Safety Program of 1991".

SEC. .02. FINDINGS.

The Congress makes the following findings:

(1) An efficient and safe highway and street network is essential to assure the welfare of its citizens and the economic vitality of the United States.

(2) A Federal role in highway safety and high-speed rail development is vital if the Nation is to live up to its responsibility of providing for the public convenience and necessity in transportation, long a component of Federal jurisdiction.

(3) Highway infrastructure in the United States is benefiting from a major public works improvement and expansion program, yet it alone cannot adequately meet future demands for travel between the largest urban areas, and development of high-speed train systems is in the public interest.

(4) Transportation safety data indicates an inordinate number of Americans suffer fatal or incapacitating injuries while traveling, and safer methods and alternative systems should be pursued.

(5) In particular, cumulative automobile fatalities are expected to reach three million by 1994, with more than 90 million Americans having suffered disabling injuries due to auto accidents. In all, Americans who have died violent deaths on the Nation's highway represent more than four times the 641,691 Americans killed in World War I, World War II, Korea, and Vietnam combined. The Nation must contribute to the general welfare by providing for improvements at and elimination of rail-highway grade crossings as well as a safer form of transport through the provision of improved passenger train service.

(6) The Federal government has been inactive regarding high-speed ground transportation and it is time for Federal efforts to assist State governments as they plan such systems.

(7) Transport demand in the States is met through multi-faceted programs, and any one Federal program that supports greater safety while simultaneously improving the prospects for high-speed train service is a wise use of government resources.

(8) The Department of Transportation has been charged historically with jurisdiction over highway safety as well as high-speed ground transportation systems, and it remains the most logical agency to improve highway safety as well as to assist development of high-speed ground transportation systems.

(9) It is necessary for Federal efforts to be intensified if high-speed ground transportation systems are to serve the many travel, business, employment, environmental, energy, and safety needs of the United States, and, therefore, the Department of Transportation shall consult with the State departments of transportation or equivalent agencies to establish effective programs.

SEC. 03. HIGH-SPEED RAIL AND HIGHWAY TRAFFIC SAFETY PROGRAM.

In order to provide a safer highway system, to expedite safe and efficient passenger and freight service, and to facilitate future high-speed rail service, the Secretary of Transportation (hereafer referred to as the "Secretary") is authorized to establish and carry out a program designed to encourage and financially assist the States to carry out projects for the construction, improvement, and elimination of rail-highway crossings.

SEC. 04. SELECTION OF RAIL CORRIDORS.

(a) PROCEDURES.—In establishing such program, the Secretary shall include procedures pursuant to which the Governor of a State may submit recommendations, developed in cooperation with appropriate State and local governmental agencies in consultation with appropriate railroads, for the selection by the Secretary of rail corridors eligible for assistance under such program.

(b) SELECTION.—After consideration of such recommendations and the completion of planning studies pursuant to section ___05(d), the Secretary shall select not less than 8 nor more than 10 corridors where projects authorized in section ___04 are eligible for financial assistance under such program. Selections by the Secretary under this section shall be made with a view to assuring

that the completion of proposed improvements within the corridor will increase the safety of highway and rail traffic in major surface transportation corridors, and will expedite safe and efficient passenger and freight service therein.

(c) PREFERENTIAL CONSIDERATIONS.—In making selections under this section, the Secretary shall give preferential consideration to those rail corridors—

(1) with substantial rail and highway use;

(2) which do not exceed 400 miles in length;

(3) which provide rail-passenger service;

(4) for which States have demonstrated commitment to improving the corridor through State funds and which show promise of future commitment including public and private sector funding;

(5) which show a potential for high speed rail transportation therein; and

(6) for which a State has demonstrated its ability to close a significant number of railway/highway crossings and which have a substantial number of additional crossings.

SEC. 05. GRANTS: APPROVAL OF PROJECTS.

(a) GRANTS.—In carrying out the program established pursuant to this title, the Secretary is authorized to make grants to States to assist such States in carrying out projects approved by the Secretary pursuant to subsection (b) of this section. A grant for such a project shall be in an amount equal to 90 percent of the cost of such project. Grants made pursuant to this section shall be made at such time or times, and subject to such condition or conditions, as the Secretary shall determine. Funds expended for the elimination of private at-grade crossings shall be credited toward the non-Federal share of the cost of any such project.

(b) APPROVED PROJECTS.—The Secretary is authorized to approve any project, within any rail corridor selected in accordance with this title, that improves safety at rail-highway crossings on any public road, and expedites safe and efficient rail passenger and freight service. Eligible projects may include, among others—

(1) the construction or reconstruction of rail-highway grade separation structures;

(2) the installation of automated devices to separate train and highway traffic that reduce potential conflict;

(3) other methods of eliminating train-vehicle conflicts, such as crossing closure, rail consolidation, and street closure and rerouting;

(4) adequate warning systems and surfacing where positive separation is not feasible or cost effective; and

(5) systems and devices that reduce the potential for train-vehicle collisions in innovative ways.

(c) PROJECT APPROVAL CONDITIONS.—In the approval of projects submitted by the States for funding under subsection (a), the Secretary shall consider the degree to which the project will contribute to a completed corridor plan, the expected reduction accidents, the participation in this and other projects within the corridor from other than Federal funds, and improvement to rail operations provided. The Secretary shall not approve any project under this section until—

(1) he determines that it is based on a comprehensive corridor planning process being carried out cooperatively between the State or States, their political subdivisions, and the railroads involved;

(2) he determines that the public or private entities identified to construct maintain, and operate the improvement have the authority and capability, including the closure of crossings;

(3) he determines that employees subject to collective bargaining agreements covering the type of work and railroad property involved in the project will be provided the opportunity to perform the construction and maintenance work involved.

(4) he determines that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of grants under subsection (a) will be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, and that required labor standards will be maintained upon the construction work; and

(5) he has entered into an agreement governing the financing,, maintenance, and operation of the project or projects with such States, political subdivisions, agencies, or other entities to insure that the benefits of such improvements are fully realized and which shall contain terms determined by the Secretary of Labor to provide fair and equitable protection of the interests of any employees of carriers by railroad affected by such project or projects, including such terms as may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions with respect to their employment;

(D) assurances of employment to employees of affected carriers by railroad and priority of reemployment of employees terminated or laid off; and

(E) paid training or retraining programs and which in no event provide benefits less than those established pursuant to section 11347 of title 49, United States Code; and

(6) he determines that any grant made under subsection (a) will be used by the recipient or recipients thereof in compliance with applicable Buy America provisions.

(d) PLANNING GRANTS.—In addition to the grants authorized in subsection (a), the Secretary is authorized to pay up to 100 percent of the cost of engineering and economic surveys or other investigations necessary for the identification and development of improvement plans for corridors to be approved by the Secretary under section——04. At the request of the Governor of a State that has submitted an application for corridor designation and selection under section ——04, a grant may be made under this subsection by the Secretary to reimburse such State for the costs of such surveys and investigations, including direct personnel and materials costs of participating public and private entities. In making grants under this subsection, the Secretary is authorized to prescribe those surveys, investigations, plans, and agreements that are necessary in connection with the final selection of corridors under section ——04. No grant under this subsection shall exceed $200,000.

SEC. 06. AUTHORIZATIONS.

There are authorized to be appropriated out of the Highway Account of the Trust Fund not to exceed $5,000,000 for fiscal year 1992 for the purposes of planning grants under subsection (d) of section ——05, and not to exced $300,000,000 for each of fiscal years 1993, 1994, 1995, and 1996 for the purposes of grants under subsection (a) of section ——05.

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold a hearing entitled Trade in Conventional Weapons: The International Arms Bazaar.

This hearing will take place on Wednesday, June 12, 1991, at 9:30 a.m. in Room 342 of the Dirksen Senate Office Building. For further imformation, please contact Daniel F. Rinzel, chief counsel of the subcommittee's minority staff at 224-9157.

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Mr. LEAHY. Mr. President, I wish to announce that the Committee on Agriculture, Nutrition, and Forestry will hold a hearing on the nomination of Ann Veneman of California, to be Deputy Secretary of Agriculture, on Wednesday, June 12, 1991, at 10 a.m. in SR-332.

For further information please contact Bill Gillon of the committee staff on 224-5207.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, June 6, 1991, at 9 a.m., to consider the nomination of Nancy Patricia Dorn to be Assistant Secretary of the Army [Civil Works].

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the full Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., June 6, 1991, to receive testimony from John Schrote, nominee for Assistant Secretary of the Interior for Program, Budget, and Administration, and Mike Hayden, nominee for Assistant Secretary of the Interior for Fish and Wildlife and Parks.

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

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Thursday, June 6, 1991, at 2 p.m., to hold a hearing on "Cramdowns of Residential Real Estate Mortgages in Chapter 13 Bankruptcies."

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

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. MITCHELL. 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 Thursday, June 6, beginning at 9:30 a.m., to conduct a hearing on recycling under the Resource Conservation and Recovery Act.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. MITCHELL. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a meeting to markup health, education, and Court of Veterans Appeals legislation and the Committee's fiscal year 1992 medical construction resolution on Thursday, June 6, 1991, at 9:30 a.m., in SR-418.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 6, at 10:30 a.m., to hold a hearing on Middle East arms transfer policies.

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

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 6, at 2 p.m., to hold a hearing on "The Soviet Crisis and the U.S. Interest: Future of the Soviet Military."

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate on Thursday, June 6, 1991, at 10:30 a.m., to conduct a markup of S. 1194, the Federal Transit Act of 1991.

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

COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, June 6, 1991, at 9:30 a.m., to hold a hearing on the twin problems of access to health insurance and the affordability of health care.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, June 6, 1991, at 10:30 a.m., to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, June 6, 1991, at 9:30 a.m., to hold a hearing on Enforcement and Administration of the Foreign Agents Registration Act [FARA].

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

ADDITIONAL STATEMENTS

THE LESSONS OF TIANANMEN SQUARE

• Mr. RIEGLE. Mr. President, a banner draped from a Beijing University dormitory last Wednesday declared, "We will never forget June 4." Unfortunately, it appears, that the Bush administration has forgotten that fateful day which transpired only 2 years ago. In announcing that he will unconditionally extend most-favored-nation trading status to China, President Bush has given America's tacit approval to human rights violations and other abuses by the Chinese Government.

On June 4, 1989, in Tiananmen Square, the Chinese Army squelched peaceful demonstrations aimed at changing their authoritarian, Communist state into a representative republic. The brutal crackdown by China's octogenarian leaders earned themselves the label—"The Butchers of Beijing."

Although the United States imposed a range of sanctions upon China immediately following the crackdown, those sanctions were, unfortunately, short-lived. President Bush, a former Ambassador to Beijing, felt that maintenance of normal diplomatic and economic relations with China was more important than demonstrating American outrage at continuing human rights violations. He discontinued sanctions early, renewed MFN, and sent National Security Advisor Brent Scowcroft to Beijing on two occasions to revitalize United States-Chinese relations.

Two years after the crackdown, the results of the President's policy are in. Despite the administration's steps to use American diplomatic and economic leverage to coax the Government of China to pursue less violent policies, repression in China continues unabated.

Two recent reports by the respected human rights watch-dog organization, Asia Watch, provide frightening examples of the continuing abuses. On April 19, Asia Watch revealed that the use of prison-labor is widespread in China. "The Government of China," Asia Watch reported, "is systematically exploiting the labor of prisoners in the vast Chinese gulag to produce cheap products for export." And, only last week the organization released a 150-page report uncovering evidence that "China's prisons and labor camps hold more political prisoners than at any time since Deng Xiaoping's rise to power in the late 1970's."

Chinese human rights violations do not end at the borders of territorial China. In a recent visit to the Congress, the Dalai Lama, the spiritual leader of the Tibetan people, informed the United States that over 1 million people have died as a result of the harsh and illegal Chinese occupation of Tibet.

While China did not oppose the United States in the United Nations Security Council during the Persian Gulf conflict, America and China are far from working hand-in-hand around the globe. In fact, China's actions in several regions of the world are diametrically opposed to American interests and international peace and security. In Indochina, as the world struggles to resolve the Cambodian conflict, China continues to supply the murderous Khmer Rouge—which killed 1 to 1½ million people in the 1970's—with the military resources to carry on their campaign of terror. And, with Chinese support, more and more nations have acquired unconventional weaponry, including ballistic missiles and nuclear technology.

America must not encourage China to continue on the course it has pursued in the wake of the Tiananmen Square tragedy. Rather than promoting reconciliation between Chinese authorities and the Chinese people, the United States Government, through its passivity, risks further encouraging the Chinese authorities to pursue their heavy handed, inhumane policies.

Now, the administration has decided, once again, to renew most-favored-nation trade advantages to the Chinese Government. The United States should not unconditionally reward Beijing with trade benefits while it continues to repress its citizens. It sends the completely wrong message. In continuing to conduct business as usual, we embolden the hard-liners by giving the appearance of international support for their policies. America should think twice before subordinating the lasting values of freedom and democracy to short term economic interests.

Any attempt to gain good will from China's aged leaders by granting MFN is bound to backfire. Because Premier Li Peng and Deng Xiao Ping have

reached the twilight of their lives, any political benefit President Bush could possibly extract will necessarily be fleeting.

America is properly concerned with the impact of a denial of MFN upon the future of United States-Chinese economic relations. Nevertheless, we must realize that unconditionally granting MFN is an expression of tacit support for Beijing's failed economic policies which have cursed China with social and industrial stagnation for so many years. Moreover, it seems inappropriate to passively condone the 20 percent increase in Chinese exports to the United States when so many of the goods are allegedly produced through illegal prison labor.

The situation in China may appear calm and orderly on the surface, but we know that the Chinese people are anything but calm. The memory of the tragedy of 2 years ago is still vivid in China. While the flame of freedom and democracy still burns within the hearts and minds of China's youth, America must not let them down. The United States must do more than simply carry on business as usual.●

TRIBUTE TO SPANISH FOODS, INC., PRODUCTOS MOLINERA

● Mr. GRAHAM. Mr. President, I rise today to join the Spain-United States Chamber of Commerce Gala Dinner in honoring Spanish Foods, Inc., Productos Molinera as Company of the Year.

Attending this festive occasion will be Mr. Francisco Hernandez Perez, president of Molinera in Spain and many other Spanish dignitaries, including Mr. Carlos Gonzalez Rivero, Mr. Tomas Munoz, and Mr. Rafel Ruiz.

Spanish Foods, Inc., was established in Miami, FL, in 1987 by Lilliam Martinez and Fausto Diaz Oliver, Jr. Thanks to these visionaries, Spanish Foods, Inc., has become a great success story.

Spanish Foods, Inc., has been involved in improving the welfare of the south Florida community by developing a well grounded reputation for community involvement and philanthropic endeavors.

Mrs. Martinez and Mr. Diaz Oliver are to be commended for bringing to the State of Florida a new and innovative source of employment.

In addition, they have served as a shining example of what can be achieved when Americans of Hispanic descent reach out to their heritage and build new bridges of culture and commerce.

Mr. President, I am pleased to recognize this great Florida company for being named "Company of the Year" by the Spain-United States Chamber of Commerce and wish them many more years of success.●

HARKIN GUATEMALA BILL

● Mr. CRANSTON. Mr. President, I rise today to commend my good friend the distinguished Senator from Iowa [Mr. HARKIN] on this important effort to promote democracy and human rights in Guatemala.

The Senator's cutting edge leadership on these issues has been well-known to all of us for more than two decades.

Whether the issue was United States-funded tiger cages in Vietnam, or the important battles on human rights legislation in the 1970's, or the efforts to bring a modicum of sanity to United States Central American policy in the 1980's, the Senator from Iowa has always been there, in the thick of it, tilting the bow of the American Ship of State on a more humane course.

And today he has turned his prodigious skills to the sorry case of Guatemala.

Mr. President, I cannot say I lend my support to this effort happily, although I certainly do so vigorously. Guatemala—a lovely land rent by more than three decades of massive political violence—is a premier victim of United States cold war strategy.

In 1954, a CIA-organized coup overthrew a reformist leftwing government there, setting the stage for a dismal parade of military dictatorships. In the 1960's and early 1970's, our counterinsurgency efforts in Guatemala gave aid and comfort to far-right sectors in the oligarchy and the military. The result was tens of thousands of dead—many of those poor, Indian, and completely unconnected to violent leftwing groups.

Since the human rights crusade of President Jimmy Carter, the United States has more or less disengaged from Guatemala. Our voice was loud and clear during the Carter administration, but to their credit Presidents Reagan and Bush also made important efforts to promote democratization there.

Yet, the cold war is over but Guatemala is still bleeding.

Mr. President, a few days ago I received in my office an official high level delegation sent by newly elected President Serrano to talk about the situation there. As you know, Mr. Serrano is the first freely elected civilian to receive the reins of power from another freely elected civilian President in more than four decades.

The case put to me was eloquent on several points.

President Serrano has made a courageous good faith effort to bring peace to his country through negotiations with Guatemala's small but persistent guerrillas.

He has also taken several administrative steps that may result in important changes in the human rights situation later on.

And finally, he has not been in office long enough so that proof of his determination might be found in concrete results.

Despite these arguments, all of which are true, I must support this bill.

I do so, Mr. President, because the issue is not President Serrano, who I believe we can all agree is a true patriot who knows the fundamental importance of national reconciliation.

The issue, rather, is the role of Guatemala's military in a democratizing society and the fact that its vicious counterinsurgency continues unabated, bringing to mind Argentine storyteller Jorge Luis Borges' famous dictim about his own country's military-led state terror: "They pretended to end cannibalism by eating the cannibals."

Mr. President, the rape of Sister Ortiz and the murder of Michael Devine, both American citizens, had nothing to do with guerrilla activity. Rather these acts have everything to do with military impunity.

Their cases, like those of tens of thousands of other equally innocent Guatemalans, have not been resolved even though their killers are well-known. Even since President Serrano has taken office these killings continue to be committed with impunity. The United States cannot afford, for the love of mercy, to be associated with such an anthropophagous military, even indirectly.

To President Serrano, I wish the best, sincerely. We will all be watching for the first signs of breakthrough so that we might aid him in his noble venture.

But for now, we must only watch—and wait.●

CENTRAL AMERICAN DEMOCRACY AND DEVELOPMENT ACT

● Mr. KERRY. Mr. President, last week, we passed the Central American Democracy and Development Act by a vote of 87 to 9. This act establishes that, among other things, "it is the policy of the United States to encourage and support the Central American countries in the efforts to * * * establish respect for human rights." To my great dismay and disappointment, however, Guatemala has not made much effort to stop widespread human rights abuses there. As a result, if we are to carry out the policy agreed upon last week in this Chamber, we must persuade Guatemala to do more on the human rights front. This is the purpose of the bill offered by my distinguished colleague from Iowa, and I am proud to be an original cosponsor.

This legislation, known as the Promotion of Democracy and Respect for Human Rights in Guatemala Act of 1991, both prohibits the resumption of United States military assistance to Guatemala and restricts United States economic and food assistance to that

country, unless the Guatemalan Government meets certain human rights conditions.

At his inauguration in January of this year, newly elected President Jorge Serrano Elias stated his "solemn commitment to make every possible effort to fully reestablish human rights in Guatemala." In the months since his inauguration, President Serrano has taken steps to fulfill this commitment. He has appointed a civilian, and former deputy human rights ombudsman, as Minister of the Interior; he has reactivated and reinforced the Presidential Commission on Human Rights; and he has increased efforts to solve outstanding cases of human rights abuses. President Serrano deserves credit for these actions, and also should be commended on his initiative for total peace, which recently accepted by the insurgents and has greatly enhanced the prospects for peace in Guatemala.

Despite President Serrano's efforts, however, I remain deeply concerned about Guatemala's human rights record. I had hoped that the suspension of United States military aid to Guatemala last December would bring about greater progress in this area. In February, however, three native human rights activists were shot near their village, and two of them died. The survivor identified two of the assailants as former civil patrol chiefs who had repeatedly threatened the victims and other activists. In addition, Guatemalan police continue to be involved in the murder and disappearance of street children and those who help them. And although security forces have been responsible for numerous human rights abuses, no member of the armed forces has yet been convicted of a serious human rights violation.

It is because of these continued human rights abuses and the failure to adequately address those that have occurred in the past that we must go beyond the suspension of military aid and restrict economic assistance to Guatemala as well. Promises to end human rights violations, and even preliminary steps to stop them, are no longer sufficient for the United States to continue providing assistance to the Government of Guatemala. We must see results. We have given Guatemala the benefit of the doubt too many times in the past, only to see the human rights situation deteriorate further.

The legislation offered by the Senator from Iowa, therefore, is intended to make it clear that we expect Guatemala to meet certain minimal human rights standards before it can receive most kinds of aid. Given the major role that the security forces have played over the years in committing human rights abuses, this bill requires that more be done before the prohibition on military assistance is lifted than must be done before the restrictions on economic and food aid are removed. However, in neither case are the conditions that onerous.

For over a decade, too much attention was focused on the military situation in Central America without addressing the underlying causes of conflict. With the tremendous changes that have occurred in the region over the last 2 years, there is great hope for a new order there. By clearly establishing our expectations of Guatemala in the area of human rights, the bill introduced today will serve to promote the fundamental liberties of all people in that country and the rest of Central America that are essential to achieving this new order.•

CHINA MOST-FAVORED-NATION

• Ms. MIKULSKI. Mr. President, I cannot understand President Bush's determination to provide China with trade benefits despite the People's Republic of China's dismal record of human rights violations and unfair trade practices.

Especially puzzling is the double standard which the President applies to the family planning issue. On the one hand, the President vetoes funding for the U.N. Population Fund [UNFPA] because it maintains an office in a country—China—where forced abortions and sterilization have allegedly taken place. On the other hand, he is anxious to extend trade benefits to this same country.

In effect, President Bush is rewarding China in spite of these horrible violations while punishing the rest of the developing world for China's behavior.

This thinkng is inconsistent, and it is callous.

When Senator MITCHELL'S MFN legislation comes to the floor, I intend to propose an amendment adding another condition before MFN trade status can be granted to China: President Bush must certify that it is not the policy of the Chinese Government to permit forced abortions or sterilizations.

I do not see how anyone can object to this condition, and I expect a unanimous vote.

Some background: The United States was the prime force behind the establishment of the UNFPA and until 1985 was its principal contributor.

Then in 1985 the United States suddenly decided to end its contributions. The reason given was that UNFPA, which maintains a small office in the People's Republic of China, was participating in a program of forced abortions and sterilizations.

China had been trying to rein in its freightening population growth and had provided incentives for a one-child family. Unfortunately, horrible reports of forced abortions and sterilizations reached the West. These activities are repugnant to all of us, and naturally the United States wanted to distance itself from these gross violations.

But what did this have to do with UNFPA? Nothing. UNFPA does not fund abortions—forced or voluntary. It does not provide abortion services or equipment. Its four-person China office carriers out demographic research, and provides maternal and child health services, better contraceptives, and family planning services and education.

Nonetheless, the President has refused to fund UNFPA, thus punishing the rest of the developing world for China's actions.

The population explosion in the Third World has resulted in starvation, poverty, environmental degradation, and death and disease to women and children. Family planning is the key to solving the development crisis. UNFPA is the best governmental delivery service. It is in virtually every country and has the infrastructure and expertise to get the job done.

What it needs is more money. The U.S. contribution is important in itself and is critical to attracting funds from other governments. The United States has a responsibility to be a leader in international family planning.

So how should the United States help provide family planning services while condemning the bloody Chinese practices?

I proposed the following: The United States should fund UNFPA, but the UNFPA must keep United States funds in a separate account and allow none of those funds to go to China. If any United States funds found their way to China, or if the United States contribution led to an increase in UNFPA funding for China, the UNFPA would be required to return the entire United States contribution. Further, my provision prohibited the use of any funds for abortion and required that all family planning activities be in accord with internationally recognized human rights standards. All U.S. foreign aid legislation contains explicit prohibitions on the use of U.S. funds for abortion.

The Senate passed this provision. The House passed this provision. The President vetoed the bill over this provision.

In his veto message, he paid lip service to the antiabortion cause. Ironically, however, any cuts in family planning services result in more abortions, not fewer.

The Bush policy is riddled with inconsistencies:

Apparently, it is not OK for UNFPA to provide maternal and child health care, but it is OK for China to compete in the international market with goods produced by slave labor.

Apparently, it is not OK for UNFPA to conduct demographic studies, but it is OK for China to murder political dissidents.

Apparently, we give trade benefits to governments which physically force

their women to undergo abortion and sterilization, but we cut family planning services to governments which do not.

Mr. President, maybe you can figure out the logic behind this position. I cannot.

I urge the Senate to support my amendment and the Mitchell bill.

I ask that the amendment be printed in the RECORD.

The amendment follows:

On p. 8, line 17 insert the following:

(8) the Government of the People's Republic of China does not support or participate in the management of a program of coercive abortion or involuntary sterilization.

TRIBUTE TO DR. ALVARO CASTILLO

• Mr. GRAHAM. Mr. President, on Friday, June 7, 1991, the Nicaraguan American Bankers and Businessmen Association will honor Dr. Alvaro Castillo. I rise today to join in recognition of this outstanding citizen.

Dr. Castillo was born in Managua, Nicaragua. He pursued his academic endeavors in the United States achieving a double degree in economics and Spanish literature as well as a law degree from Georgetown University.

This young lawyer rapidly stood out, not only because of his professionalism and aptitude as a leader, but also for his dedication in helping the needy.

Mr. Castillo was the driving force behind the scholarship program of the Nicaraguan American Bankers and Businessmen Association which helps Nicaraguans with little economic resources. His efforts to get work permits for Nicaraguan refugees has been relentless.

Mr. Castillo was the founding president of the Latin-American Lawyer's College, as well as founder of the Guatemalan-American Chamber of Commerce. He is currently the president of the NABBA.

Mr. Castillo has been one of the most inspiring supporters of the move to request temporary protective status for Nicaraguans living in the United States. He has been instrumental in mustering country-wide support for this effort.

Recently, I had the privilege of appointing Mr. Castillo to serve as the newest member of the National Advisory Board to the U.S. Senate Hispanic Task Force to represent the State of Florida.

Mr. President, it is a great honor to join the Nicaraguan American Bankers & Businessmen Association and recognize the many outstanding contributions of Mr. Castillo before you and my colleagues here in the U.S. Senate.

I would like to thank Mr. Castillo for all he has done on behalf of the Nicaraguan community in exile and south Florida.•

NEW JERSEY POLLUTION PREVENTION AWARDS

• Mr. LAUTENBERG. Mr. President, the Congress has been working hard to reduce the level of pollution to which we are subjected. But industrial and citizen efforts are essential if we are to rid our society of toxic pollution.

That is why I am pleased to inform my colleagues that Hoffman-La Roche, the AT&T Engineering Research Center in Princeton, and the New Jersey Environmental Federation recently received New Jersey Gov. Jim Florio's Awards for Outstanding Achievement in Pollution Prevention.

Hoffman-La Roche, headquartered in Nutley, NJ, was selected because of its efforts to minimize waste and employ source reduction methods at its New Jersey facilities. The company developed a system to measure and track hazardous substances. As a result, Hoffman-La Roche was able to reduce its inventory of stored chemicals. The company also eliminated the use of bromine, phosgene, and benzene, all toxic chemicals, from its production facilities and eliminated the use of solvents in its tablet coating operation. Hoffman-La Roche also has made significant progress towards its goal of reducing air emissions from its Nutley and Belvidere manufacturing facilities by 90 percent by the end of 1992.

AT&T Engineering in Princeton was selected because of its efforts to eliminate CFC's in its production process. The company developed a low solids fluxer which provides electronics manufacturers an accurate and reliable method of applying fluxes to printed circuit board. This process leaves little residue eliminating the use of CFC's to clean the boards. The technology has reduced AT&T's CFC emissions by 50 percent. AT&T has a goal of total elimination of CFC's by 1994.

The actions of Hoffman-La Roche and AT&T, two of our Nation's most successful companies, clearly shows that protecting our Nation is consistent with successful business operations.

The New Jersey Environmental Federation, one of the Nation's most effective environmental organizations, was selected for its educational campaign about how the public can help curb the use of toxics. The federation developed an environmental shoppers campaign to teach consumers how to shop with the environment in mind when making purchases.

I commend Hoffman-La Roche, AT&T and the New Jersey Environmental Federation for their efforts to protect our environment. The programs they have developed set a high standard for business and citizen group environmental programs. I urge other business and citizen groups to strive to attain the success achieved by Hoffman-La Roche, AT&T, and the New Jersey Environmental Federation.•

CONGRATULATIONS TO MONSIGNOR COBURN

• Mr. LAUTENBERG. Mr. President, I rise today to congratulate Msgr. Vincent Paul Coburn on the 50th anniversary of his entry into priesthood.

Monsignor Coburn has a distinguished record of public service. He has worked with Archdiocesan Catholic Youth Organization and his theses on "Marriages of Conscience" was a published work. During the Second Vatican Council Monsignor Coburn served as an observer for archdiocese. Since 1968 until his retirement in 1985, he was the Pastor of St. Thomas the Apostle in Bloomfield, NJ. Currently, the Monsignor resides at the rectory of the parish of St. Rosa and is available when needed by the pastor of the church.

Monsignor Coburn should be commended for his commitment. In order to open up doors for minorities, he taught in both Spanish and in English. The life of a priest is demanding and requires a selfless dedication. The monsignor has served as an adviser, friend and role model for generations of New Jerseyites and I thank him for his positive influence in his community.

Mr. President, Monsignor Coburn's accomplishments and contributions over the last 50 years have been many and I commend him for reaching this milestone.•

THE HIGHER EDUCATION ACT OF 1965—S. 1150

• Mr. PELL. Mr. President, on May 23 I introduced S. 1150, the Higher Education Act. I now ask that the full text of S. 1150 be printed in the RECORD, because it was inadvertently not printed on May 23.

The bill follows:

S. 1150

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

SECTION 1. PROGRAM AND PLANNING GRANTS.

Section 115 of the Higher Education Act of 1965 (hereafter in this Act referred to as the "Act") (20 U.S.C. 1015) is amended by striking "1987" and inserting "1992".

SEC. 2. NATIONAL PROGRAMS.

Section 122 of the Act (20 U.S.C. 1016a) is amended by striking "1987" and inserting "1992".

SEC. 3. STUDENT LITERACY CORPS.

Section 146 of the Act (20 U.S.C. 1018e) is amended by striking "1991" and inserting "1992, and such sums as may be necessary for each of the 4 succeeding fiscal years".

SEC. 4. ACADEMIC LIBRARY INFORMATION TECHNOLOGY ENHANCEMENT.

Subsection (b) of section 201 of the Act (20 U.S.C. 1021) is amended—

(1) in paragraph (1), by striking "1987" and inserting "1992";

(2) in paragraph (2), by striking "1987" and inserting "1992";

(3) in paragraph (3), by striking "1987" and inserting "1992";

(4) in paragraph (4), by striking "1987" and inserting "1992"; and

(5) in paragraph (5)—

(A) by striking "1988" and inserting "1992"; and

(B) by striking "3" and inserting "4".

SEC. 5. INSTITUTION AID.

Subsection (a) of section 360 of the Act (20 U.S.C. 1069f(a)) is amended—

(1) in paragraph (1), by striking "1987" and inserting "1992";

(2) in paragraph (2)—

(A) in subparagraph (A), by striking "1987" and inserting "1992";

(B) in subparagraph (B), by striking "1987" and inserting "1992"; and

(3) in paragraph (3), by striking "1987" and inserting "1992".

SEC. 6. BASIC EDUCATIONAL OPPORTUNITY GRANTS.

Clause (v) of section 411(b)(2)(A) of the Act (20 U.S.C. 1070a(b)(2)(A)(v)) is amended by striking "year 1991-1992" and inserting "years 1991-1997".

SEC. 7. SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS.

Subsection (b) of section 413A of the Act (20 U.S.C. 1070b(b)) is amended by striking "1987" and inserting "1992".

SEC. 8. AGREEMENTS WITH INSTITUTIONS.

Subparagraph (C) of section 413C(a)(2) of the Act (20 U.S.C. 1070b-2(a)(2)(C)) is amended by striking "year 1991" and inserting "years 1991 through 1997".

SEC. 9. GRANTS TO STATES FOR STATE STUDENT INCENTIVES.

Subsection (b) of section 415A of the Act (20 U.S.C. 1070c(b)) is amended by striking "1987" and inserting "1992".

SEC. 10. SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS.

Subsection (c) of section 417A of the Act (20 U.S.C. 1070d(c)) is amended by striking "1987" and inserting "1992".

SEC. 11. SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK.

Subsection (g) of section 418A of the Act (20 U.S.C. 1070d-2(g)) is amended—

(1) in paragraph (1), by striking "1987" and inserting "1992"; and

(2) in paragraph (2), by striking "1987" and inserting "1992".

SEC. 12. ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM.

Section 419K of the Act (20 U.S.C. 1070d-41) is amended by striking "1987" and inserting "1992".

SEC. 13. VETERANS EDUCATION OUTREACH PROGRAM.

Subsection (a) of section 420A of the Act (20 U.S.C. 1070e-1(a)) is amended by striking "1987" and inserting "1992".

SEC. 14. SPECIAL CHILD CARE SERVICES FOR DISADVANTAGED COLLEGE STUDENTS.

Subsection (c) of section 420B of the Act (20 U.S.C. 1070f(c)) is amended by striking "1987" and inserting "1992".

SEC. 15. WORK STUDY PROGRAMS.

Subsection (b) of section 441 of the Act (20 U.S.C. 2751(b)) is amended by striking "1987" and inserting "1992".

SEC. 16. INCOME CONTINGENT DIRECT LOAN DEMONSTRATION PROJECT.

Subsection (b) of section 452 of the Act (20 U.S.C. 1087b(b)) is amended by striking "1987" and inserting "1992".

SEC. 17. DIRECT LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION.

Subsection (b) of section 461 (20 U.S.C. 1087aa(b)) is amended—

(1) in paragraph (1), by striking "1987" and inserting "1992"; and

(2) in paragraph (2)—

(A) by striking "1991" and inserting "1992"; and

(B) by striking "five" and inserting "4".

SEC. 18. EDUCATOR RECRUITMENT RETENTION AND DEVELOPMENT.

Section 502 of the Act (20 U.S.C. 1101a) is amended—

(1) in subsection (a), by striking "1987" and inserting "1992";

(2) in subsection (b), by striking "1987" and inserting "1992";

(3) in subsection (c)—

(A) in paragraph (1), by striking "1987" and inserting "1992"; and

(B) in paragraph (2), by striking "1987" and inserting "1992";

(4) in subsection (d)—

(A) in paragraph (1), by striking "1987" and inserting "1992"; and

(B) in paragraph (2), by striking "1987" and inserting "1992"; and

(5) in subsection (e), by striking "1987" and inserting "1992".

SEC. 19. PERIODICALS PUBLISHED OUTSIDE THE UNITED STATES.

Section 607 of the Act (20 U.S.C. 1125a) is amended—

(1) by striking "609" and inserting "610"; and

(2) by striking "1987" and inserting "1992".

SEC. 20. INTERNATIONAL EDUCATION PROGRAMS.

Section 610 of the Act (20 U.S.C. 1127) is amended by striking "1987" and inserting "1992".

SEC. 21. BUSINESS AND INTERNATIONAL EDUCATION PROGRAMS.

Section 614 of the Act (20 U.S.C. 1130b) of the Act is amended—

(1) in subsection (a), by striking "1988" and inserting "1992"; and

(2) in subsection (b), by striking "1987" and inserting "1991".

SEC. 22. CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES.

Section 702 of the Act (20 U.S.C. 1132a-1) is amended—

(1) in paragraph (3) of subsection (a), by striking "4" and inserting "9"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "1987" and inserting "1992";

(B) in paragraph (2), by striking "1987" and inserting "1992"; and

(C) in paragraph (3), by striking "1987" and inserting "1992".

SEC. 23. AGRICULTURE, STRATEGIC METALS, MINERALS, FORESTRY AND OCEANS COLLEGE AND UNIVERSITY RESEARCH FACILITIES AND INSTRUMENTATION MODERNIZATION PROGRAM.

Subsection (h) of section 795 of the Act (20 U.S.C. 1132j(h)) is amended—

(1) by striking "1988" and inserting "1992"; and

(2) by striking "3" and inserting "4".

SEC. 24. COOPERATIVE EDUCATION.

Subsection (a) of section 801 of the Act (20 U.S.C. 1133(a)) is amended by striking "1987" and inserting "1992".

SEC. 25. GRADUATE PROGRAMS.

Section 971 of the Act (20 U.S.C. 1132u) is amended—

(1) in subsection (a), by striking "1987" and inserting "1992";

(2) in subsection (b), by striking "1987" and inserting "1992";

(3) in subsection (c), by striking "1987" and inserting "1992";

(4) in subsection (d), by striking "1987" and inserting "1992";

(5) in subsection (e), by striking "1987" and inserting "1992"; and

(6) in subsection (f), by striking "1987" and inserting "1992".

SEC. 26. POSTSECONDARY IMPROVEMENT PROGRAMS.

Section 1005 of the Act (20 U.S.C. 1135a-3) is amended by striking "1987" and inserting "1992".

SEC. 27. MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAM.

Section 1047 of the Act (20 U.S.C. 1135d-6) is amended—

(1) in subsection (a), by striking "1987" and inserting "1992"; and

(2) in subsection (c)—

(A) by striking "1988" and inserting "1992"; and

(B) by striking "3 succeeding" and inserting "4 succeeding".

SEC. 28. INNOVATIVE PROJECTS FOR COMMUNITY SERVICE AND STUDENT FINANCIAL INDEPENDENCE.

Subsection (a) of section 1063 of the Act (20 U.S.C. 1135e-2(a)) is amended by striking "1987" and inserting "1992".

SEC. 29. PARTNERSHIP FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE.

Section 1122 of the Act (20 U.S.C. 1138a) is amended by striking "1987" and inserting "1992".

SEC. 30. GENERAL PROVISIONS.

Paragraph (5) of section 1211 of the Act (20 U.S.C. 1145e(5)) is amended by striking "year 1991" and inserting "years 1992 through 1997".●

SUMMARY OF NATIONAL ENERGY SECURITY ACT—S. 1220

● Mr. JOHNSTON. Mr. President, the National Energy Security Act of 1991 was reported on June 5. I ask that a summary of S. 1220 be printed in the RECORD.

The summary follows:

SUMMARY—S. 1220—THE NATIONAL ENERGY SECURITY ACT OF 1991

(As reported by the Senate Committee on Energy and Natural Resources) (S. Rept. No. 102-72)

TITLE I—FINDINGS AND PURPOSES

Subtitle A.—Findings and Purposes

Subtitle B.—Goals, Least-Cost Energy Strategy, and Director of Climate Protection

Goals and Policies.—Sets forth the goals of the subtitle, which are addressed by the least-cost energy strategy required under the subtitle and contains a non-exclusive list of the kinds of policies to be considered by the Secretary of Energy (the Secretary) in developing the strategy. This section also sets forth guidelines for United States policy with respect to an international framework convention on global climate change.

Least-Cost National Energy Strategy.—Requires the National Energy Plans to include a "Least-Cost National Energy Strategy" designed to meet the aforementioned goals. The Strategy is intended to outline policies and assign priorities among the energy resources that the Secretary determines to be the most cost-effective, taking into consideration the impact of the production and use of these energy resources on global climate change, and the economic, energy, social, and environmental consequences.

Director of Climate Protection.—Requires the Secretary to appoint a Director of Climate Protection to serve as the Depart-

ment's representative on all interagency and multilateral policy discussions regarding global climate change.

Repeal.—Repeals title III of the Energy Security Act, which requires the Secretary to transmit to Congress targets for energy consumption, production and imports.

TITLE II—DEFINITIONS

TITLE III—CORPORATE AVERAGE FUEL ECONOMY

New Standards.—Directs the Secretary of Transportation to adopt new corporate average fuel economy (CAFE) standards. Separate standards would be set for each manufacturer, each vehicle class (cars, light trucks, or class of trucks), and for two periods—model years (MY) 1996-2001 and MY 2002 and each year thereafter. Each standard would require the manufacturer's vehicle class to achieve "maximum feasible" CAFE.

How New Standards Are Set.—The Secretary of Transportation is to determine the maximum feasible CAFE by assuming that vehicles in each class:

Will use all known fuel-saving technologies that can be expected to be applied;

Will maintain MY 1990 performance levels;

Will maintain the MY 1990 size mix and interior volume;

Will meet applicable emission requirements; and

Will meet applicable safety standards.

The Secretary must then determine the percentage increase in the MY 1990 CAFE of all vehicles in the class necessary to achieve the maximum feasible CAFE for the entire class for each period, and apply that percentage to each manufacturer.

Credit Trading.—Credits for exceeding CAFE standards under current law are made tradable among manufacturers and among vehicle classes. Beginning with credits earned in MY 1996, credit can be carried forward until used, instead of just three years under current law.

Excessive Fuel Consumption Fee.—Manufacturers are assessed an excessive fuel consumption fee if they fail to meet CAFE standards. The amount of the fee is determined by multiplying $20 (increased from $5 in current law) by: (i) the number of tenths of miles per gallon the applicable CAFE standard exceeds the manufacturer's actual CAFE; and (ii) the number of vehicles of the class made by the manufacturer during the applicable model year. Existing law is modified so that exceeding CAFE standards is no longer "unlawful," but the fee for exceeding the standards is quadrupled starting in 1996.

Scrappage Programs.—Funds from the excessive fuel consumption fee may be appropriated to fund State programs designed to take pre-1980 cars off the road. Excess funds may be appropriated for other energy conservation programs.

TITLE IV—FLEETS AND ALTERNATIVE FUELS

Subtitle A.—Alternative Fuel Fleets

Federal Fleets—Requires all Federal agencies, regardless of the number of vehicles in their fleets or the location of the fleets, to begin acquiring alternative fuel vehicles in 1995. By 2000, nine out of every ten fleet vehicles acquired by a Federal agency must be an alternative fuel vehicle.

State Fleets.—Requires States that have at least 50 fleet vehicles statewide and at least one fleet of 20 or more vehicles in a metropolitan statistical area with a 1980 Census population of 250,000 or more to begin acquiring alternative fuel vehicles for fleets in such areas beginning in 1995. By 2000, nine out of every ten fleet vehicles acquired by a State for use in such areas must be an alternative fuel vehicle.

Municipal and Private Fleets.—Requires municipalities and private companies that have at least 50 vehicles and at least one fleet of 20 or more vehicles in a metropolitan statistical area with a 1980 Census population of 250,000 or more to begin acquiring alterntive fuel vehicles for fleets in such areas beginning in 1998. By 2000, seven out of every ten fleet vehicles acquired by a municipality or a private firm for use in such areas must be an alternative fuel vehicle.

Qualifying Fuels and Vehicles.—Defines alternative fuel to include methanol, ethanol, alcohol mixtures with less than 15 percent gasoline, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, and electricity. Vehicles may be either dedicated to run only on alternative fuel or capable of running on both an alternative fuel and gasoline or diesel.

Exempt Vehicles.—Excludes rental cars, car dealers' stock, test vehicles, police cars, ambulances, firetrucks, military combat vehicles, farm vehicles, construction vehicles, trucks weighing more than 26,000 pounds, and vehicles garaged at a personal residence.

Other Exemptions.—Directs the Secretary of Energy to exempt fleet operators if alternative fuel vehicles meeting the fleet operator's needs or alternative fuel supplies are not available. Fuel supplies are considered unavailable only if they are not sold commercially and the cost of installing refueling capacity for the fleet is prohibitive.

Fuel Use Requirement.—Requires flexi-fuel vehicles to use alternative fuel except when operating in an area where alternative fuel is not available.

Diesel Trucks.—Permits fleets containing diesel trucks to maintain the percentage of diesel trucks on the date of enactment.

Subtitle B.—Electric and Electric-Hybrid Vehicle Demonstration, Infrastructure Development, and Conforming Amendments

Electric Vehicle and Electric-Hybrid Vehicle Demonstration.—Directs the Secretary to conduct a program for the demonstration of electric and electric-hybrid vehicles, and the associated equipment.

Electric Vehicle and Electric-Hybrid Vehicle Infrastructure Development.—Authorizes the Secretary to issue guidelines for use by States and localities in the development of infrastructure plans for electric and electric-hybrid vehicles. This section also authorizes the Secretary to enter into as many as five cost-shared joint ventures with the private sector for research, development, and demonstration of infrastructure projects and systems for electric and electric-hybrid vehicles.

Amendment to the Alternative Motor Fuels Act.—Amends the Energy Policy and Conservation Act to expand the type of vehicles that may be acquired under the Alternative Motor Fuels Act to include electric vehicles, electric-hybrid vehicles, and vehicles fueled by liquefied petroleum gas including propane.

Amendment to the Motor Vehicle and Information Cost Saving Act.—Amends the Motor Vehicle and Information Cost Saving Act to allow vehicles using liquefied petroleum gas to qualify for Corporate Average Fuel Economy credits.

Subtitle C.—Alternative Fuels

Replacement and Alternative Fuel Program.—Directs the Secretary of Energy to establish a program to promote the development and use of domestically produced replacement and alternative fuels. Defines "replacement" fuels as motor vehicle fuels that can be mixed with gasoline, and "alternative" fuels as those that cannot be. Defines "domestic" to include Canada.

Demand Estimates.—Requires the Secretary to estimate annually the demand for alternative fuels and providers of replacement and alternative fuels to certify how much of each such type of fuel they plan to produce.

Voluntary Supply Commitments.—Directs the Secretary to seek voluntary supply commitments from providers of domestic replacement and alternative fuels sufficient to meet public demand for such fuels.

Standby Authority.—Directs the Secretary to prepare, in the event of a shortage of any replacement or alternative fuel, a plan to require providers of the fuel for which there is a shortage to make adequate domestic supplies available to the public. Such plan is to be prepared in consultation with the providers of the fuel and is to lay before Congress for sixty days before it is implemented.

Subtitle D.—Mass Transit and Training

Mass Transit Program.—Provides for cooperative agreements and financial assistance to municipal, county, or regional transit authorities in large urban areas to demonstrate the feasibility of using natural gas or other alternative fuel as fuels for mass transit.

Training Program.—Establishes a Department of Energy training and certification program for technicians who install equipment that converts gasoline or diesel powered vehicles to those vehicles capable of running on natural gas or other alternative fuels.

TITLE V—RENEWABLE ENERGY

Subtitle A.—CORECT and COEECT

Committee on Renewable Energy Commerce and Trade (CORECT) and Committee on Energy Efficiency Commerce and Trade (COEECT).—Amends the Energy Policy and Conservation Act to designate additional duties for CORECT in order to foster policies that will enhance economic development in lesser-developed countries and promote the United States manufacture and export of renewable energy technologies. This section also establishes a complementary interagency working group—the Committee on Energy Efficiency Commerce and Trade (COEECT)—for the promotion and export of energy efficient technologies. Directs the Secretary of Commerce to expand the comprehensive data base and information dissemination system in order to provide information on country specific technical and energy needs. Establishes renewable energy and energy efficiency industry outreach offices in the Pacific Rim and Caribbean basin.

Subtitle B.—Renewable Energy Initiatives

Joint Ventures for Renewable Energy Development for Oil Displacement and Technology Export Training.—Expands the joint venture program under the Renewable Energy and Energy Efficiency Technology Competitiveness Act to include biofuels energy systems, high-temperature and low-temperature geothermal energy systems, solar water heating technologies, photovoltaic and wind energy systems, biomass direct combustion or gasification technologies, fuel cell technologies, and utility-scale photovoltaic systems. In addition, this section directs the Secretary to conduct a joint venture for energy technology export training and grants authority to the Secretary to "buy-down" or subsidize interest rates on private bank loans in order to leverage long-term financing for the solar, biomass, and wind industries.

Report on Waste Minimization Technologies in Industry.—Requires the Sec-

retary to undertake a report evaluating opportunities to minimize waste outputs from production processes in United States industry.

Amendments to the Energy Policy and Conservation Act.—Amends existing law to encourage the development and implementation of renewable energy and energy efficiency projects at the State and local level.

Spark Matsunaga Renewable Energy and Ocean Technology Center.—Establishes a facility for cooperative research and development in Keahole Point, Hawaii.

Renewable Energy Technical Achievement Award.—Establishes a program at the Department of Energy, in consultation with the National Academy of Sciences, for awarding cash prizes for technical achievement in the following technologies: solar thermal; photovoltaics; windpower; sustainable biomass; and geothermal.

Subtitle C.—Hydropower

Streamlining of Federal Power Act Regulation.—Removes certain mandatory conditioning powers of Federal land managers under section 4(e) of the Federal Power Act in favor of the comprehensive licensing process added to the Act by the Electric Consumers Protection Act of 1986 (ECPA).

Environmental Studies and NEPA Compliance.—Requires the Federal Energy Regulatory Commission (FERC) to give hydroelectric license applicants earliest practicable notice of studies that will be required to accompany a license application. Provides for a single consolidated NEPA review of project licensing; authorizes the setting of time limits for agency participation; and makes FERC the lead agency for purposes of NEPA compliance activities associated with hydroelectric licensing.

State Licensing Jurisdiction Over Small Projects.—Subject to certain conditions, generally allows States to take over the licensing of hydroelectric projects having a capacity of 5 megawatts or less, upon certification of the relevant Governor that the State has assessed its river resources in a comprehensive way and has in place an appropriate regulatory system.

Study of Hydropower Potential at Existing Federal Projects.—Authorizes the Secretary of Energy to identify cost effective opportunities to increase hydropower production at existing Federal water project facilities.

Water Use Efficiency at Federal Reclamation Projects.—Directs the Secretary of the Interior to study and implement water use efficiency measures at Federal reclamation projects for purposes of increasing hydropower production, making more efficient use of project power, and providing more water for fish and wildlife.

Miscellaneous Matters.—Removes Federal licensing jurisdiction over hydroelectric projects on fresh waters in Hawaii; removes Federal licensing jurisdiction over two hydroelectric projects in Alaska; extends time for project development for two projects in Arkansas.

TITLE VI—ENERGY EFFICIENCY

Subtitle A.—Industrial, Commercial and Residential

Building Energy Efficiency Standards.—Requires the Secretary of Energy to issue a Federal building energy code to assure that all new Federal buildings include energy efficiency measures that are technically feasible and economically justified. Also requires all buildings receiving Federal mortgages to meet or exceed the Federal code. Finally, the section requires the Secretary to support and participate in the upgrading of the voluntary industry building energy codes, and authorizes incentive funding to States and localities which adopt energy building codes at least as stringent as the voluntary industry code.

Residential Energy Efficiency Rating and Mortgages.—Directs the Secretary to issue voluntary guidelines to be used by States, local organizations and others to develop energy rating systems for residential buildings. Authorizes technical assistance to encourage the adoption of rating systems. Finally, the section encourages the use of energy efficient mortgages to maintain housing affordability by authorizing a requirement that homebuyers be notified of the availability of energy efficient mortgages at the time of mortgage application.

Manufactured Housing Efficiency.—Requires the Secretary to make recommendations to the National Commission on Manufactured Housing regarding energy efficiency improvements to manufactured housing. Also requires the Commission to make such recommendations to the Secretary of HUD who has the authority to set energy standards. Finally, the section requires the Secretary to test the performance of manufactured housing built to the established standards.

Improving Efficiency in Energy-Intensive Industries.—Directs the Secretary to pursue a research and development program and joint venture program to improve efficiency in energy-intensive industries and industrial processes.

Report.—Directs the Secretary to give energy efficiency high priority in the areas of planning, research and development, private assistance, and Federal procurement. The Secretary is directed to prepare a report which evaluates energy efficiency policies and their potential to decrease overall United States energy use and oil consumption per unit of GNP.

Voluntary Guidelines for Industrial Plants.—Requires the Secretary, in cooperation with utilities and major industrial energy consumers, to establish voluntary guidelines for the conduct of energy audits, and for the installation of insulation, in industrial facilities for purposes of identifying cost-effective options for reducing energy use.

Energy Efficiency Labeling for Windows and Window Systems.—Requires the Secretary to provide financial assistance to support the voluntary development of a nationwide program to develop energy ratings and labels for windows and window systems. The section further requires the Federal Trade Commission to develop such a program if it is not developed voluntarily within two years.

Energy Efficiency Information.—Directs the Administrator of the Energy Information Administration to expand the scope and frequency of data collection under the National Energy Information System in order to improve the ability of the Department of Energy to evaluate the effectiveness of energy efficiency policies and programs.

Energy Efficiency Labeling for Lamps and Luminaires.—Requires the Secretary to provide financial and technical assistance to support the voluntary development of a labeling program for lamps and luminaires. The section further requires the Federal Trade Commission to develop such a program if it is not developed voluntarily within two years.

Commercial and Industrial Equipment Efficiency.—Adds lamps, commercial air conditioning, and heating equipment, and utility distribution transformers to the appliance energy efficiency program, and requires the Secretary to conduct a study of the potential benefits of upgrading utility distribution transformers at the time of their routine maintenance. Finally, this section requires the Secretary to provide support for the development of a voluntary labeling system for commercial office equipment, or directs the Federal Trade Commission to develop such a program if one is not developed voluntarily within two years.

Energy Efficiency of Showerheads.—Establishes a maximum flow rate of 2.5 gallons per minute at 80 psi for showerheads manufactured after July 1, 1992 unless ANSI publishes a different standard before March 1, 1992, in which case the ANSI standard shall apply. Requires the adoption of any future ANSI standard if it is more stringent than the existing standard, and preempts all prospective state and local showerhead flow rate standards. Finally, the section requires uniform national labeling requirements consistent with ANSI.

Subtitle B.—Federal Energy Management

Federal Energy Management Amendments.—Requires Federal agencies to install energy efficiency improvements with payback periods of 10 years or less and establishes a Federal Energy Efficiency Project Fund for DOE to encourage agencies to undertake energy efficiency improvements in Federal facilities. Directs agencies to take advantage of utility energy efficiency incentive programs. Directs the General Services Administration (GSA) to identify the energy cost-effectiveness of items listed in the GSA product schedule, and directs the Administrator of the GSA to consider fuel efficiency when purchasing government vehicles. Finally, this section authorizes the Secretary to provide bonuses of up to $5,000 to Federal facility managers for success in saving energy.

Plan Regarding Demonstration of New Technology.—Requires the Secretary to submit a plan to Congress for the demonstration in Federal facilities, or by Federal agencies, of energy efficiency technologies that have received Federal assistance for research and development and which the Secretary has determined are ready for commercialization.

Study of Federal Purchasing Power.—Directs the Secretary to report on the potential of using Federal purchasing power to encourage the development and commercialization of new energy efficient products.

Subtitle C.—Utilities

State Consideration of New Ratemaking Standards.—Required State commissions to consider decoupling regulation of utility profits from sales for purposes of removing disincentives for utilities to pursue demand side management and energy efficiency resources; requires State commissions to consider requiring utilities to engage in integrated resource planning (IRP).

Grant Program.—Establishes grant program for purposes of encouraging consideration by State commissions of demand side management and energy efficiency resources as means of meeting future electricity demand.

Integrated Resource Planning by the Southwestern Power Administration (SWPA) and the Southeastern Power Administration (SEPA).—Requires SWPA and SEPA to consider requiring nonregulated utility customers to implement IRP as a condition of future power contracts with each power marketing administration.

Integrated Resource Planning by the Tennessee Valley Authority (TVA).—Requires

TVA to employ IRP in exercising its functions.

Subtitle D.—Used Oil Energy Production

Used Oil Energy Production.—Amends EPCA to promote the collection, refining, rerefining, and reprocessing of used lubricating oil into fuel for transportation and other petroleum products through market incentives and the removal of legal disincentives.

Subtitle E.—State, Local, Insular and Tribal Energy Assistance

Insular Areas Energy Assistance Program.—Provides direction to the Secretary, under existing authorization, for providing financial assistance to Insular area governments, for the purposes of encouraging the adoption of energy efficiency and renewable energy measures.

State Building Energy Incentive Fund.—Authorizes the Secretary to provide up to $1 million to States to capitalize a State revolving fund to undertake energy efficiency projects in State and local government buildings in those States which have demonstrated a commitment to improve building energy codes.

Private Sector Investments in Low-Income Weatherization.—Authorizes supplemental grants to Weatherization Program grant recipients to cover the costs of arranging private sector contributions to the program, and the costs of training and education activities between program grant recipients.

Training of Building Designers and Contractors.—Authorizes existing State energy Conservation Programs to use Federal funds to assist in training building designers and contractors in energy system, energy efficiency, and renewable energy technologies.

Energy Education and Teacher Training.—Authorizes supplemental funding under the existing State Energy Conservation Programs to increase public understanding of energy issues or to provide teacher training in energy education.

Tribal Government Assistance Program.—Sets forth guidelines for the Secretary to provide financial assistance to tribal governments to plan and implement energy efficiency and renewable energy projects.

State Energy Conservation Plan Requirement.—Requires State Energy Conservation Plans to provide for vehicles to turn left from a one-way street onto a one-way street at a red light as a condition for receipt of Federal SECP funding.

Subtitle F.—LIHEAP Options Pilot Program

LIHEAP Futures Pilot Program.—Directs the Secretary of HHS to report to Congress on the advantages and disadvantages of using futures and options contracts for fuel as a means of protecting LIHEAP funds from large price increases in fuels, and authorizes the Secretary of HHS, in consultation with the Secretary of Energy, to conduct a pilot program.

TITLE VII—OIL AND GAS LEASING IN THE ARCTIC NATIONAL WILDLIFE REFUGE

Leasing Program.—Authorizes a competitive oil and gas leasing program for the Coastal Plain of the Arctic National Wildlife Refuge, Alaska (ANWR).

No Significant Adverse Effect Standard.—Requires the Secretary of the Interior to implement such a program (through regulations and lease stipulations) so as to result in no significant adverse effect on fish and wildlife, their habitat, or the environment of the Refuge, and to require the application of the best commercially available technology for oil and gas exploration, development and production.

Lease Sales.—Requires the Secretary of the Interior to promulgate regulations to carry out the leasing program no later than 9 months after the date of enactment of the Act; to conduct the first lease sale within 18 months after the issuance of these regulations; and to conduct the second lease sale 36 months after the first sale.

Environmental and Reclamation Provisions.—Provides for site-specific environmental and mitigation measures; land reclamation requirements; and environmental monitoring and enforcement provisions.

Energy Security Fund.—Provides that the Federal share (50 percent) of any revenues from ANWR is deposited in a special fund in the Treasury—the Energy Security Fund—to be used, subject to appropriation, by the Secretary of Energy to fund energy-related programs and projects designated to enhance the Nation's energy security and reduce reliance on imported oil.

Export Prohibition.—Prohibits export of oil produced from ANWR, except under specified limited circumstances.

Outer Continental Shelf Leasing Moratorium.—Prohibits leasing and preleasing activities under the Outer Continental Shelf Lands Act offshore California and New Jersey until the year 2000.

TITLE VIII—ADVANCED NUCLEAR REACTOR COMMERCIALIZATION

Five-Year Program Plan for Commercialization of Advanced Reactor Technologies.—Directs the Secretary to carry out an advanced nuclear reactor research, development, and demonstration program that will lead to commercialization of advanced reactor technologies after 1995. The Secretary is required to prepare and submit to Congress a five-year program plan for commercialization of these advanced technologies.

Advanced Light Water Reactor Technology.—Establishes a 1995 goal for completion of research and development and certification of standardized designs for the near-term technologies, primarily advanced light water reactors, that will not require a technology demonstration. Directs the Secretary to conduct a program of technical and financial assistance to encourage and support development and certification of advanced reactor designs. Authorizes the Secretary to enter into cooperative agreements with private parties and to support through cost-shared agreements the engineering and research and development necessary to achieve certification of advanced reactor designs.

Advanced Reactor Technologies, Other than Advanced LWRs.—Establishes a 1995 goal for completion of necessary research and development for the more advanced technologies, such as high-temperature gas-cooled reactors and liquid metal reactors, to support selection of one or both of these technologies for prototype demonstration after 1995. Requires the Secretary to make a recommendation to Congress no later than January 31, 1996 on whether to build one or more full-scale prototype demonstration reactors utilizing one or more of the advanced technologies. Any prototype demonstration proposed to be built using the authority under this section would be cost-shared with the private sector with no less than 50 percent of the total cost provided by non-Federal sources.

TITLE IX—NUCLEAR REACTOR LICENSING

Combined Licenses.—Amends the Atomic Energy Act to clarify the Nuclear Regulatory Commission's (NRC) authority to issue combined licenses authorizing both construction and operation of a nuclear power plant. The NRC would be required to hold a public hearing before issuing a combined license. The combined license would have to set forth all the inspections, tests, analyses, and acceptance criteria necessary to establish that the plant, once built, is safe to operate. Once the NRC is satisfied that all such inspections, tests, and analyses are completed and all the acceptance criteria are met, the plant would be allowed to operate.

Post-construction Hearings on Combined Licenses.—Provides an opportunity for a public hearing on questions of whether the completed plant meets the requirements of its combined license if a showing is made that the plant has not met the requirements of its combined license and that, as a result, public health and safety could be compromised. Questions raised after issuance of the combined license about the adequacy of the license itself would be treated as petitions to modify the license.

Operation Pending a Hearing.—Permits the NRC to allow a plant to operate under a combined license before completing a post-construction hearing unless it appears unsafe to do so.

Informal Hearing Procedures.—Provides that any post-construction hearing on a combined license will use informal hearing procedures unless the NRC determines the formal, trial-type procedures are needed to resolve factual disputes.

Combined License Amendments Pending a Hearing.—Permits the NRC to amend a combined license and allow a plant to operate under the amended license before completing a hearing on the amendment if the amendment does not raise significant safety issues. The NRC already has this authority with respect to amendments to operating licenses.

TITLE X—URANIUM

Subtitle A.—Uranium Enrichment

Establishment of Corporation.—Establishes the United States Enrichment Corporation as a wholly-owned government corporation for purposes of taking over the uranium enrichment enterprise operated by the Department of Energy (DOE). The Corporation is established as an agency and instrumentality of the United States and directed to (1) perform uranium enrichment and sell this service to the Department of Energy and qualified persons; (2) conduct research and development; and (3) operate as a commercial enterprise on a profitable and efficient basis in order to maximize its long-term economic value. The Corporation would be run by an Administrator, appointed by the President and confirmed by the Senate, and would have a five-member part-time Corporate Board appointed by the President.

Transfer of Property to the Corporation.—Transfers to the Corporation all DOE property related to uranium enrichment except the Gaseous Division Plant in Oak Ridge, Tennessee and facilities related to the Gas Centrifuge Enrichment Program. The Oak Ridge Gaseous Diffusion Plant will be transferred to the Corporation at the time of decontamination and decommissioning but not earlier than 2000. Facilities related to research and development of the Advanced Vapor Laser Isotope Separation technology are not transferred, but the Corporation is provided access to them for research and development purposes.

Initial Debt.—Sets the initial debt of the Corporation at $364 million and requires that this amount be recovered with interest from enrichment customers over a 20-year period.

This amount represents the difference between revenues and appropriations, with interest, from 1969 when the commercial enrichment program began through the end of 1986.

Repeal of Section 161v. of the Atomic Energy Act.—Repeals section 161v. of the Atomic Energy Act of 1954, which contains the current pricing requirements applicable to the uranium enrichment enterprise. Requires the Corporation to set prices for products, materials, and services that recover over the long-term the costs of performing and maintaining corporate functions including research and development; depreciation of assets; repayment of the initial $364 million debt and future borrowing; decontamination, decommissioning, and remedial action costs; and reasonable profit.

Decontamination and Decommissioning.—Provides for sharing the costs of decontamination and decommissioning and remedial action for uranium enrichment equipment between commercial customers and DOE on the basis of separative work that has been performed with such equipment for the benefit of either group. A decontamination and decommissioning fund is established, with annual payments into the fund by the Corporation.

Subtitle B.—Uranium

Voluntary Overfeed Program.—Directs the Corporation to establish a voluntary overfeeding program for a period of not less than five years to be made available to enrichment services customers. Overfeeding is the use of additional uranium in the enrichment process, the effect of which is to reduce power costs otherwise incurred by the enrichment enterprise. Under this program, customers supplying additional uranium would be credited with the value of reduced power costs. The overall effect of the overfeeding program should be to produce a modest increase in the demand for domestic uranium.

National Strategic Uranium Reserve.—Establishes a National Strategic Uranium Reserve consisting of 50,000,000 pounds of uranium. Use of the reserve is restricted to military and government research purposes. The amount of uranium provided for the reserve is approximately the same as the amount of uranium which is in current stockpiles and allocated to DOE's national defense activities.

Federal Responsibilities.—Restricts Federal Government purchases of uranium to that which is of domestic origin and is purchased from domestic uranium producers. Establishes a continuing responsibility of the Secretary of Energy for the viability of the domestic uranium industry, including a responsibility to encourage export of domestic uranium.

Remedial Action Program.—Creates a program to reimburse licensees of uranium and thorium mill sites for the costs of reclamation of uranium and thorium mill tailings generated as a result of sales to the Federal Government for defense purposes.

Imports from Non-market Economy Countries.—Requires the Secretary of Energy, the United States Enrichment Corporation, and the International Trade Commission to take actions to protect domestic sources of uranium, enriched uranium, and uranium enrichment services from foreign sources selling uranium or enrichment services at prices below production costs.

TITLE XI—NATURAL GAS

Optional Certificate Procedures.—Amends Natural Gas Act (NGA) section 7 to authorize an optional certificate (OC) procedure for the construction and operation of interstate pipelines. Directs FERC to issue OCs without a hearing if applicants are willing to accept certain terms and conditions attached to the certificate, including a prohibition on the recovery of OC facility costs in the rates for other facilities or services. A special complaint procedure would supplant rate review under NGA section 4 and 5 procedures. If OC construction would result in the displacement of sales or transportation service being provided by a local distribution company (LDC), the proposed construction would be considered by FERC under traditional NGA section 7 certificate procedures.

Transportation of Natural Gas Under the NGPA.—Amends Natural Gas Policy Act (NGPA) section 311(a) to: (1) remove limitations with respect to shippers on whose behalf natural gas may be transported under section 311; (2) authorize specifically the construction of interstate pipeline facilities under section 311; and (3) provide that if section 311 construction would result in the displacement of sales or transportation service being provided by an LDC, the proposed construction would be considered by FERC under traditional NGA section 7 certificate procedures.

NEPA Compliance.—Amends NGA section 7(c) to provide that for purposes of NEPA, and other applicable environmental laws, FERC's issuance of a certificate is the only Federal action that may be considered a major Federal action requiring the preparation of an environmental impact statement (EIS). Authorizes FERC to set time limits for other Federal and State agencies' participation in the NEPA process, and directs FERC to permit contractors selected from a FERC-approved list and paid by an applicant to prepare environmental documents (i.e., environmental assessments and EISs) required for FERC to comply with its NEPA obligations.

Rates and Charges.—Amends NGA section 4 to provide a 60-day posting requirement for rate change filings (current law provides 30 days); and authorization for interstate pipelines to file joint tariffs for sequential transportation of natural gas. Confirms FERC's authority under NGA section 4 to authorize pipelines to recover the Gas Research Institute surcharge in jurisdictional rates, including expenditures for natural gas vehicle and emissions control research. Directs FERC to report to Congress within 6 months of enactment regarding a variety of natural gas regulatory issues. Directs the Secretary of Energy to delegate to FERC NGA section 3 authority to authorize imports and exports of natural gas; requires FERC to condition approval of natural gas imports to redress any anticompetitive impacts on domestic natural gas producers; and directs the Department of Justice, in consultation with FERC, DOE and USTR, to report to Congress within 6 months of enactment regarding authority to address and remedy regulatory advantages that may be conferred on imported natural gas.

Utilization of Rulemaking Procedure.—Amends DOE Organization Act section 403(c) to state that FERC shall have authority to utilize rulemaking procedures for certificate proceedings under NGA section 7. Section 403(c) currently applies to proceedings to establish rates and charges under the NGA and Federal Power Act and is silent as to certificate proceedings.

Review of Commission Orders.—Amends NGA section 19, NGPA section 506 and Federal Power Act section 313 to provide that FERC must take final action on an application for rehearing of a FERC order within 60 days of the filing of such application, but may, for extraordinary cause, extend the period for rehearing for an additional 90 days (or 120 days in a rulemaking proceeding). Also shortens the period for seeking judicial review of a FERC order from 60 days to 30 days and requires an appellant's petition for review to state with specificity the grounds for review.

Limited Antitrust Relief for Independent Producer Cooperatives.—Provides limited antitrust relief for cooperatives formed by independent producers for the purposes of pooling natural gas to enable effective bargaining for the sale of such gas. An independent producer is defined as one whose production does not exceed 6 million cubic feet per day and excludes interstate pipelines, intrastate pipelines, LCDs, and their affiliates.

Vehicular Natural Gas Jurisdiction.—Confirms that certain activities related to the sale and distribution of vehicular natural gas (VNG) will not cause entities that are currently exempt from NGA jurisdiction to forfeit such exemptions; provides that persons not otherwise public utilities may sell or transport VNG without coming subject to economic regulation pursuant to State laws in effect prior to January 1, 1989; and provides that VNG activities alone will not cause a company to become a gas utility company under PUHCA or change the status of companies already registered as such.

Streamlined Certificate Procedures.—Amends NGA section 7(c) streamline procedures for the issuance of certificates of public convenience and necessity; includes provisions regarding repair and replacement facilities, unopposed applications, evidence of need, and phased consideration of certificate applications.

Gas Delivery Interconnection.—Amends NGA section 7(a) to authorize the FERC to order an interstate pipeline to interconnect with a production or gathering facility, or an intrastate or OC pipeline in the production area.

Deregulation of Pipeline Sales Service.—Amends NGA section 4 to authorize FERC, after a hearing, to exempt natural gas cost component of a pipeline's rates from NGA regulation based on a finding that the pipelines provided comparable transportation service and served a competitive market.

Commission Policy Making.—Amends DOE Organization Act section 401 to clarify that general policy discussions by all members of the FERC do not constitute a "meeting" for purposes of the Government in the Sunshine Act.

TITLE XII—OUTER CONTINENTAL SHELF

Coastal State and Community OCS Impact Assistance.—Provides impact aid to coastal States and communities affected by OCS leasing and development in the amount of 37.5 percent of "new" OCS revenues, as defined by the legislation. States are eligible for funding based on a formula modeled after the formula formerly used in the Coastal Energy Impact Program under the Coastal Zone Management Act. Impact assistance would be based on the amount of newly leased OCS acreage offshore a State, the amount of OCS oil and gas produced offshore a State, and the amount of OCS oil and gas first landed in the State. Under the formula, no State could receive more than 37.5 percent of the amounts appropriated annually for OCS impact assistance.

Report on Availability of the Outer Continental Shelf for Leasing.—Requires the President to submit report containing infor-

mation on OCS potential, the extent to which OCS production could offset United States dependence on foreign oil, a proposal regarding current OCS leasing and post-leasing procedures, and an analysis of OCS lease cancellation compensation criteria.

TITLE XIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIALIZATION ACTIVITIES

Energy Research, Development, Demonstration, and Commercialization Priorities.—Directs the Secretary to set priorities and prepare a management plan for research, development, demonstration, and commercialization activities consistent with the purposes of the Act.

Natural Gas End-Use Technologies.—Authorizes the Secretary to carry out a program to promote the commercialization on a cost-shared basis, of natural gas utilization technologies including stationary source emissions control and efficiency improvements, natural gas storage, transportation fuels, and fuel cells.

Natural Gas Supply Enhancement.—Authorizes the Secretary to carry out a program, on a cost-shared basis, of research, development and demonstration to increase the recoverable natural gas resource base, including efforts in the following areas: increased recovery from discovered conventional resources, economic recovery of unconventional natural gas resources, surface gasification of coal, and recovery of methane from biofuels.

High Efficiency Heat Engines.—Directs the Secretary to carry out a program of research, development, demonstration, and commercialization on high efficiency heat engines including advanced gas turbine cycles.

Applied Research on Eastern Oil Shale.—Directs the Secretary to carry out a research and development program on oil shale that includes applied research on eastern oil shale and that is conducted in cooperation with universities and the private sector.

Western Oil Shale.—Directs the Secretary to carry out a research, development, and demonstration program on western oil shale and to consider establishment and utilization of at least one field test center. Requires private sector cost-sharing for any demonstration project.

High-Temperature Superconducting Electric Power System.—Directs the Secretary to carry out a program of research, development, and demonstration of a high-temperature superconducting electric power system. Requires private sector cost-sharing for any demonstration project.

Renewable Energy Research and Development.—Amends the Renewable Energy and Energy Efficiency Technology Competitiveness Act to remove the authorization limitation for renewable energy research and development programs.

Energy Efficiency Research and Development.—Amends the Renewable Energy and Energy Efficiency Technology Competitiveness Act to remove the authorization limitation for energy efficiency research and development programs.

Natural Gas and Electric Heating and Cooling Technologies.—Directs the Secretary to expand the program of research, development, and demonstration for natural gas and electric heating and cooling technologies for residential and commercial buildings. Requires private sector cost-sharing for any demonstration project.

Fusion Research, Development, and Demonstration.—Directs the Secretary to 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. Requires private sector cost-sharing for any demonstration project.

Electric Vehicle Research and Development.—Directs the Secretary to conduct a program of research and development on techniques related to improving electric vehicles, electric-hybrid vehicles, and battery technology. Requires private sector cost-sharing for these programs.

Advanced Oil Recovery Research, Development, and Demonstration.—Directs the Secretary to carry out a program of research, development, and demonstration to increase the economic recoverability of domestic oil resources that includes both advanced secondary oil recovery and tertiary oil recovery. The Secretary is authorized to enter into cooperative agreements for activities under this section. Requires private sector cost-sharing for any demonstration project.

Tar Sands.—Requires the Secretary, in consultation with the Secretary of the Interior, to submit a study to Congress within one year. The study shall identify and evaluate the development potential of sources of tar sands in the United States (including eastern and western sources).

Study of Telecommuting.—Directs the Secretary, in consultation with the Secretary of Transportation, to conduct a study of the potential costs and benefits of telecommuting. Telecommuting would allow people to work from home on a computer or telephone rather than commuting to a central workplace.

Study of Minimization of Nuclear Waste.—Directs the Secretary to conduct a study of the potential for minimizing the volume and toxic lifetime of nuclear waste.

Nuclear Waste Management Plan.—Directs the Secretary to submit to Congress a report on whether the current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 are adequate for the 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.

Math and Science Education.—Directs the Secretary to enter into agreements with qualified entities to provide post-secondary programs for the promotion of mathematics and science education for low-income and first generation college students.

TITLE XIV—COAL, COAL TECHNOLOGY AND ELECTRICITY

Subtitle A.—Coal and Coal Technology

Coal Research, Development and Demonstration Program.—Directs the Secretary to carry out a research, development and demonstration program for advanced coal-based technologies that will achieve greater control of NOx, SO2, and air toxics; will be capable of converting coal into cost-competitive transportation fuels; will be capable of converting coal into synthetic gaseous, liquid, and solid fuels; will achieve greater energy efficiency; and will be commercially available by 2010.

Non-fuel Use of Coal.—Requires the Secretary to submit a research, development, and demonstration plan and implement a program for technologies for the non-fuel use of coal. Such technologies include the production of coke, carbon-based chemical intermediates, and coal treatment processes.

Coal Refining Program.—Directs the Secretary to carry out a research, development, demonstration, and commercialization program for coal refining technologies. Directs the Secretary to solicit proposals for cost-shared demonstration projects of coal refining processes and authorizes the Secretary to enter into agreements with non-Federal entities to undertake these projects.

Underground Coal Gasification.—Directs the Secretary to carry out a research, development and demonstration program for underground coal gasification technology. Directs the Secretary to solicit proposals and authorizes the Secretary to provide financial assistance for at least one demonstration project of underground coal gasification technology.

Low-Rank Coal Research.—Requires the Secretary to pursue a program of research and development with respect to the technologies needed to expand the use of low-rank coals. Authorizes the Secretary to enter into contracts, cooperative agreements, and jointly sponsored research programs with, and provide grants to, qualified persons in order to carry out this program.

Magnetohydrodynamics.—Requires the Secretary to carry out a proof-of-concept program in magnetohydrodynamics. In carrying out this program, the Secretary is directed to solicit proposals from the private sector and seek to enter into an agreement that provides for cost-sharing with non-Federal entities.

Coal-Fired Locomotives.—Directs the Secretary to conduct a research, development and demonstration program for utilizing "ultra-clean coal-water slurry" in diesel locomotive engines.

Coal Exports.—Requires the Secretary to submit to Congress a plan for expanding the export of coal from the United States.

Clean Coal Technology Export Coordinating Council.—Establishes a Clean Coal Technology Export Coordinating Council to facilitate and expand the export and use of clean coal technologies, with a priority on such transfer and use in lesser-developed countries. Requires the Council to develop a data base and information dissemination system relating to clean coal technologies.

Coal Fuel Mixtures.—Requires the Secretary to prepare a report on technologies for combining coal with other materials, such as oil or water fuel mixtures.

National Clearing House.—Directs the Secretary to establish a national clearing house for exchange and dissemination of technical information relating to coal and coal-derived fuels.

Utilization of Coal Combustion Byproducts.—Directs the Secretary to conduct a comprehensive study on the institutional, legal, and regulatory barriers to increased utilization of coal combustion byproducts, such as ash, slag, and flue gas desulfurization.

Data Base and Report on Coal Transportation.—Requires the Secretary to establish a data base and prepare a report regarding coal transportation rates and distribution.

Subtitle B.—Electricity

Applicability of New Source Review to Existing Electric Utility Steam Generating Units (WEPCo).—Addresses the so-called WEPCo issue concerning EPA's interpretation of new source performance standards (NSPS) and new source review (NSR) in cases of physical changes at existing powerplants. Exempts pollution control projects from NSR and NSPS and prescribes standards for assessing whether other physical changes at existing powerplants trigger NSPS and NSR.

Excess Capacity Study.—Requires the Secretary to submit report on physical impediments to transfer of excess electrical energy from regions with surpluses to regions with shortages.

Calculation of Avoided Cost.—This section states that State regulatory authorities are not required to base calculations of avoided cost, under the Public Utility Regulatory Policies Act (PURPA), on the rates for or the costs of demonstration projects under the Department's clean coal technology program.

Regulatory Incentives for Clean Coal Technologies.—Sets out a process for establishing Federal regulatory incentives for clean coal technologies and encourages State regulatory authorities to consider similar incentives for these technologies. Requires the Secretary to report to Congress on progress made in encouraging States to provide these incentives.

TITLE XV—PUBLIC UTILITY HOLDING COMPANY ACT REFORM

Creation of EWGs.—Allows for the creation of exempt wholesale generators (EWGs): corporate entities who are engaged exclusively in the business of wholesale electric generation and who are completely exempt from corporate organizational restrictions under the Public Utility Holding Company Act of 1935 (PUHCA). Entities who are currently subject to PUHCA (registered utility holding companies and exempt utility holding companies) and entities who are not currently subject to PUHCA (non-utilities and non-holding company utilities) are permitted to own EWGs without limitation.

Maintenance of SEC Jurisdiction with Respect to Relationships Between a Registered Holding Company and an EWG.—Requires Securities and Exchange Commission (SEC) approval for financing of EWGs by a registered utility holding company or service, sales and construction contracts between a registered holding company and an EWG.

Prevention of Sham Wholesale Transactions and Stranded Investment.—Prohibits sale of electricity by EWGs where the purchaser is merely a broker interposed for purposes of making possible "cherry picking" (i.e., an indirect sale to an industrial customer or other desirable retail load). Prevents sale of electricity by EWGs where a State commission would use the purchase of such electricity as the basis for not permitting recovery of existing capital investment by the purchasing utility.

Protection Against Abuse of Affiliate Relationships.—Prohibits the gaining of any "undue advantage" from the existence of an affiliate relationship between an EWG and a utility purchaser.

Clarification of State and Federal Jurisdiction Over Wholesale Power Transactions.—Except in certain instances involving allocation of power costs within registered utility holding company systems, gives State commissions acting in accordance with State law the general right to review the prudence of wholesale purchases by their jurisdictional utilities. In instances involving purchase of power from EWGs, the right to review prudence is conferred even within a registered holding company system.

Consideration of Capital Structure and Fuel Adequacy Issues.—Requires States commissions to analyze the effects on reliability and utility purchasers of the use of leveraged capital structures by wholesale sellers of power (including EWGs) and the adequacy of fuel supplies employed by such sellers. Requires State commissions to consider reflecting the results of such analysis in approving or disapproving wholesale power purchases.

Provision of EWG Books and Records.—Allows affected State commissions to uncover potential EWG/utility cross subsidy problems and to access the financial stability of EWGs by requiring disclosures of EWG books and records.

TITLE XVI—STRATEGIC PETROLEUM RESERVE

Completion of One Billion Barrel SPR.—Directs President to enlarge the SPR to one billion barrels as rapidly as possible.

Defense Petroleum Inventory.—Authorized creation of a 10 million barrel Defense Petroleum Inventory.

Petroleum Acquisition.—Provides that the President, acting through the Secretary of Energy, may 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 SPR or the Defense Petroleum Inventory, and may contract, without regard to certain specified provisions, of law, for storage in the SPR or the Defense Petroleum Inventory of petroleum products owned by one or more foreign governments.●

ORDER OF BUSINESS

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

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

FEDERAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

Mr. MITCHELL. Mr. President, as stated earlier in the day on two occasions and earlier in the week on several occasions, it had been my hope and my intention that the Senate could proceed to the consideration and ultimately disposition of the transportation bill, a matter of critical importance to everyone in the country and every Senator, and upon disposition of that proceed to the comprehensive crime legislation.

The report on the transportation bill was filed at 2:33 this afternoon and under the rules we cannot move to proceed to it until 48 hours have elapsed from the time of the filing of the report unless all Senators consent to do so. I earlier sought consent to do so, and the distinguished Republican leader, in behalf of the distinguished Senator from Virginia [Mr. WARNER] registered an objection and therefore we were not able to proceed to the bill at that time. Since then, Senator DOLE and I have met with Senator WARNER and Senator GRAHAM of Florida representing, as they stated to us, approximately 10 Senators who have concerns about some aspects of the bill.

Those Senators and perhaps others are meeting at this moment with the subcommittee chairman and possibly other members of the committee to discuss their differences on the legislation and are expected to report to me prior to 7 p.m. on the status and prospects of their discussion. Senator WARNER indicated that pending that discussion the group of Senators opposed to the bill intend to exercise all of their rights under the rules of the Senate to delay the consideration of the legislation. They are, of course, entitled to do so under the rules, and while I understand that I find it most regrettable because I had previously indicated our desire to proceed to that bill.

I have requested of both Senators opposed to the bill that, since their concern is legitimate with respect to immediate consideration, given the fact that the report was filed only this afternoon, they permit us to proceed to the bill on Monday. That would give Senators a period of some 5 days to review the report before the time we actually take the bill up. Senators WARNER and GRAHAM advised that they were not in a position to agree to that at that time and therefore we are not in a position to proceed to the bill at this time.

Since we do not expect a report from the other Senators until prior to 7 p.m., I see no purpose in the Senate remaining in a quorum call until that time and I will shortly, after yielding to the distinguished Republican leader, who is present on the Senate floor at this time, seek consent to recess until 7 p.m., at which time I would hope to come back and make a then current report to the Senate on the current status of matters.

If there is to be full use of the rules on the part of those who oppose the legislation, it will, of course, be incumbent upon those of us who are charged with the responsibility for moving forward on this matter to use all appropriate means to move the matter forward which, of course, could mean a session during the weekend in order to set up a cloture vote on the motion to proceed early next week. I hope that will not be necessary but since it is at least possible—and that possibility has just developed in the last few minutes—I wanted to alert Senators to that fact so that they can be aware of it in accordance with their schedules.

I repeat, I hope that is not necessary and I will resort to that only as a last resort, all other means failing, to obtain agreement to move forward on the legislation.

Mr. President, with that, I yield to and invite any comment which the distinguished Republican leader would wish to make. He was present at the meeting with me and I ask him to make any comment and, certainly, if I have made any statement that inac-

curately describes our meeting, to correct that.

The PRESIDING OFFICER. The distinguished minority leader.

Mr. DOLE. Mr. President, if the leader will yield, the majority leader has accurately reflected the present circumstances and the meeting that was held in his office just 20 minutes ago. It is my hope that we can have an agreement to proceed to the bill on Monday. I know that they could, using the rules, not let us proceed. We would have to have a motion to proceed, then obtain cloture on the motion to proceed, and all that of course is time consuming. But I understand those who have a very strong view on this issue—and they indicate it might be as many as 20 or more Senators, almost evenly divided—have a different view on how a certain formula in the bill, which I am not totally familiar with, works.

So it is a rather important thing to each State involved.

They are now in a meeting, as I understand it, with the distinguished Senator from New York [Mr. MOYNIHAN]. But I would hope whatever may happen that they would let us proceed to the bill on Monday, as suggested by the majority leader, and it would not be necessary for a session on Saturday, for example, so that a cloture motion could be filed.

In any event, I believe both Senator WARNER from Virginia and Senator GRAHAM from Florida are in good faith protecting their rights. It is just my hope that they can resolve any procedural issues that they have, and let us proceed to the bill on Monday.

Mr. MITCHELL. Mr. President, I thank my colleague. I understand we now have some other matters to dispose of.

MEASURES PLACED ON THE CALENDAR—S. 1241 AND S. 635

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 1241, introduced earlier today by Senator BIDEN, be placed on the calendar, and further that the Judiciary Committee be discharged from further consideration of S. 635, and that it be placed on the calendar.

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

NATIONAL SCLERODERMA AWARENESS WEEK

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 219, designating "National Scleroderma Awareness Week," just received from the House; that the joint resolution be deemed read a third time and passed; that the motion to reconsider passage of the joint resolution be laid upon the table; and that the preamble be agreed to.

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

So, the joint resolution (H.J. Res. 219) was deemed read a third time and passed.

The preamble was agreed to.

Mr. LAUTENBERG. Mr. President, I rise today in support of House Joint Resolution 219, a bill to designate the second week of June as "National Scleroderma Awareness Week." House Joint Resolution 219 is the companion to Senate Joint Resolution 130, which I introduced earlier this year and is cosponsored by 55 Senators.

Scleroderma affects approximately 300,000 Americans. This chronic disease usually strikes healthy individuals at any time between the ages of 25 and 55 years old. Women suffer from scleroderma two to three times more frequently than men. It causes thickening and hardening of the skin. In its most severe form, the hardening process spreads to the joints, causing decreased mobility and to the body organs causing functional impairment. Early diagnosis allows therapeutic treatment that may slow the progression of the disease.

Even with early treatment, scleroderma is an incurable disease. Caused by the excess production of collagen, the severity of the prognosis of scleroderma patients varies widely; some experience a remission or have minor symptoms that do not interfere significantly with a normal lifestyle. But for others, who may develop kidney malfunction, respiratory weakness, heart spasms, digestive and intestinal problems or respiratory weakness, the disease can be fatal.

A national week of awareness would heighten public awareness of scleroderma, recognize progress, and would promote activities and events to facilitate financial support of much needed research and patient support groups. I urge my colleagues to support House Joint Resolution 219.

MAKING MINORITY PARTY APPOINTMENT TO THE SPECIAL COMMITTEE ON AGING

Mr. DOLE. Mr. President, I send a resolution to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 139) to make a minority party appointment to the Special Committee on Aging.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 139) was agreed to, as follows:

S. RES. 139

Resolved, That the following Senator shall be added to the minority party's membership on the Special Committee on Aging for the One Hundred Second Congress or until their successors are appointed:

Mr. Specter.

RECESS UNTIL 7 P.M.

Mr. MITCHELL. Mr. President, unless the distinguished Republican leader has anything further, I now ask unanimous consent that the Senate stand in recess until the hour of 7 p.m. this evening.

There being no objection, the Senate, at 6:24 p.m., recessed until 7 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. AKAKA].

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, earlier today I indicated that I expected to receive a report from the Senator from Virginia and the Senator from Florida with respect to a meeting that they were having with the Senator from New York. I have received no report, but I assume the purpose of the Senator's presence here is to give us the report out here on the Senate floor. So I would be pleased to hear from my colleague.

Mr. WARNER. Mr. President, I telephoned over about 6:40 and was informed that the majority leader was to bring the Senate back in at 7, and at that time he would receive our report. So there may have been a gap procedurally. But I am here to represent what I interpret as an effort on both sides to try to remove a serious misunderstanding; namely, that Senator MOYNIHAN had offered to have a meeting, the communications broke down, but finally it came together, and Senators did meet with the chairman of the committee and the chairman of the subcommittee from approximately 6:20 until just a few minutes ago.

I speak on behalf of Senators representing roughly 10 States at this time. They have become cosponsors of the bill, which is commonly known as the WARNER bill, but it embraces the work of over 2 years by an organization known as the FAST group of transportation officers. So much for that.

We feel very strongly, our group. While at this time it is only 10 States, we know of another at least 10 States that feel equally as strongly as we do that the bill referred to by Mr. MOYNIHAN as a committee bill—I am a member of that committee—does not provide a fair distribution, percentagewise, of the tax dollars collected each year from the motorists and other users of transportation in our States, which are paid into the revolving fund, and that revolving fund distributes the

money back to the States. It is that formula that separates this group of roughly 22 Senators from another group of roughly 23 Senators.

We are referred to as the "donor" States; they are the "donee" States. I will allow my distinguished chairman, Mr. MOYNIHAN, to speak with respect to the meeting. He is present in the Chamber now, along with the Senator from Ohio, the Senator from Florida, and the Senator from North Carolina, who would have attended if they had received notice. That is not important at this moment.

At this moment, I say we are engaged in a dialog, and I will let others speak to the possibility of resolving this problem. I myself feel that in the near future it cannot be resolved, and I will, therefore, assert whatever rights I have as a U.S. Senator to prohibit this bill from being brought up.

Mr. MITCHELL. Well, Mr. President, I appreciate the Senator's comment. Let me just say that it is, of course, commonplace that Senators disagree on an issue. It happens about every day that the Senate is in session. There is nothing new, unique, or different about this bill, or any other bill, when Senators disagree.

The customary manner, the logical manner, the historical manner for resolving differences is to have an open, free and vigorous debate on the Senate floor and then vote. That is what the democratic process is about. If the Senator has 20 States, that means 40 Senators adhere to his position or support his position. Then he need only persuade five or six more, and his position can prevail.

I have not advocated any particular position on this issue. What I have advocated is that the Senate take this bill up and debate it and consider it. The Senator from Virginia, the Senator from Ohio, the Senator from Florida, and the Senator from New York, and a Senator from any other State, if he wants to, may state his position as vigorously and forcefully as he can.

I remind my colleagues that this is a bill which the President said, in addressing the Congress, was one of his highest priorities and asked that we bring the matter up and act on it within 100 days of the date on which he spoke. I have been attempting to honor the President's request, to bring the bill up, and to have a debate on it, and to have a vote on it. That is my only request.

Obviously, each Senator has a right to delay, to prevent action, in the hopes of using the delay and the preventing action as leverage to advance his or her position. That is also commonplace here, and we all understand and accept that. That means that a large number of Senators must be inconvenienced, from time to time, to accommodate the interests of a relatively small number of Senators. That is understandable; that is commonplace, and that occurs regularly.

I, earlier, asked the distinguished Senator from Virginia—with the report having been filed on Thursday afternoon—whether he would agree to permit us to proceed to the bill on Monday, 4 days hence, with the further understanding that there would not be any votes on Monday, that we would simply debate the issues on Monday with action to occur on Tuesday, 5 days hence. And the Senator had earlier refused that request. I take it from the Senator's comment now that he persists in that refusal.

Mr. WARNER. Mr. President, that is correct.

Mr. MITCHELL. Then let me say to the Senator that I am used to being here all the time. I accept that as part of my job. When the Senate begins, I am here, and when the Senate ends, I am here, as is Senator DOLE. Whether it is Monday or Saturday is not of great consequence to me, because I understand and accept that as part of my job.

Most Senators like the opportunity to devote time to meeting with their constituents and traveling through their States, and that is an important part of their job. Under the rules of the Senate, once the 48-hour period has expired, which would be at 2:33 on Saturday afternoon, it would be possible for me than to have the Senate in session Saturday afternoon, make a motion to proceed and file a cloture motion on that motion to proceed, which then would ripen 1 hour after the Senate convened on the second day thereafter. If we were not in session Sunday and were in session on Monday, that means the Senate would vote a cloture on the motion to proceed to this bill on Tuesday morning.

Since that is possible under the rules, but would require a Senate session Saturday afternoon, I inquire of the Senator from Virginia whether he and his colleagues would permit us to act as though that had occurred, obviate the need for a Saturday afternoon session, permit a cloture motion to be filed later today, with the agreement that the vote on cloture would occur on Tuesday morning?

It is something which we can accomplish under the rules, and if the Senators persist in that refusal we will accomplish it if it means a Saturday afternoon session with great inconvenience to many people.

I inquire of the Senator from Virginia whether he is agreeable to permit us to proceed as though that had occurred, thereby achieving the same result without the necessity of that further inconvenience for all concerned to actually have a Saturday afternoon session.

Mr. WARNER. Mr. President, we must also recognize that Saturday is an unusual day in the Nation's Capital since we will be observing a parade and there could be logistic consequences that none of us can foresee at this time bringing the Senate in.

It seems to me that the leader places before the Senate a reasonable request; however, at this time I feel in deference to my colleagues who worked with me, perhaps one or more would like to speak to the issue. If not, I will be prepared to give the majority leader my response.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. SANFORD. Mr. President, I certainly have, I think, since I have been here attempted to support the leadership in large and small matters, and I am inclined to do so now. But I am also inclined to say that this is the first time that I have seen the kind of actions that strike me as inconsistent with the spirit of this organization, the U.S. Senate.

Clearly in talking to staff members, and now in talking to the chairman of the full committee and the chairman of the subcommittee, I have seen no indication whatsoever of them bringing any serious attention to compromise or to working something out. As the leader points out, we frequently have differences—of course we have differences—and we simply have to vote on those differences, but it seems to me this whole exercise over the highway bill falls into an entirely different category.

First of all, the committee Members, represent 13-to-3 the States that have been donee States, receiving the benefit of taxes paid by hardworking people in the donor States. North Carolina has been contributing to New York now for many years. The per capita income difference between the States is remarkable, with New York being far higher.

The GAO several years ago, at the request of Senator CHILES, addressed the need of changing the highway funding formula, and said that most of these rules were adopted 40 to 70 years ago, and that they ought to be based on what is going on in the world today.

Any change in updating the formula was postponed when the Interstate System came along. And I could hardly object at that time, when I happened to be the Governor of a State short of Interstate funds, because I understood that the Western States that were vast in area but small in population, and they needed an extra advantage. We were glad enough to contribute a sizable amount of money every year, as we had for decades, in order to see to it that we had an Interstate System across the Nation. It would have been unfair to have suggested anything else.

Now that is basically behind us, but do we get now an opportunity to have a fair shake? We did not in the committee.

I said facetiously that it was stacked. Of course, I do not mean it was delib-

erately stacked, but the fact of the matter is the Committee is rather one-sided. We are in the position of having patiently borne up under this inequity long enough. Five years ago I thought that I ought to protest this, having observed it for many years before I came here. But at that time I succumbed to the need, it seemed to me, to get a highway bill passed. And I put myself in an embarrassing position, for that reason, at the request of the leadership.

Now those of us, and it is about 20 States that have been on the contributing side all of these years—not just the last 10—think that we are entitled to a more generous attitude on the part of the leadership, on the part of the committee, and on the part of the subcommittee chairman. I do not think that has been forthcoming.

This may be seen as an effort by Virginia and North Carolina to get something more. That is not really the point. The point is fair play.

We are getting dealt out, not given fair play, and it distresses me that the U.S. Senate would take advantage of a majority position and barely be willing to discuss what I think is a longstanding, really a generation-standing, complaint of unfair treatment. Now we are forced to play our hand in a way that neither the distinguished Senator from Virginia nor I like to—insisting that, yes, we can probably get 40 votes on a cloture vote. Maybe we cannot, but I do not think that is the way we ought to go. I think the Senate ought to realize that these States, even if they are in the minority, have been cheated—to use a rather sharp word—and there is no indication now to be fair.

Having said that, obviously I would not have to be here Saturday afternoon because we are not taking any votes. Obviously, the leader would have to be here to start the procedure. I have no desire whatsoever to inconvenience anybody, certainly not the leader who devotes so much time and energy to making this institution run smoothly. So I do not have any objection and will not pose any objection. But I did not want to sit here mute without letting the leader and others know how I feel about this procedure.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who seeks the floor? The Senator from Florida Mr. GRAHAM is recognized.

Mr. GRAHAM. Mr. President, I share the opinion that is just expressed by my colleagues from Virginia and North Carolina. I do not have objection to what appears to be an eminently procedurally fair recommendation made by our leader.

The Senator from North Carolina has talked about the history of how we got to where we are today. I would like to make some comments about where we are going to be over the life of this legislation which is from now until 1996.

There is an environment in which we are going to be considering this matter. I believe that all my colleagues and all of the American people interested in transportation and interested in what transportation means to a competitive American economic system need to clearly understand this fundamental fact. The fact is that we are about to vote on legislation which will guarantee us that at the end of this 5-year period the Nation's highway system will be worse off than it is today.

We are passing a bill which guarantees that at the end of this 5-year period, the American highway system will be worse off in the amount of approximately $85 billion of additional accumulated maintenance and capacity needs than it is today.

We will add to the $450 billion of unmet needs today an additional $85 billion. Why is that important? It is important because it removes from us the ability to argue that we are going to be making a great contribution to a better transported America or to an America which is better prepared to compete in the international economy. Neither of those statements is accurate. It is also important because it sets the environment for much of this debate over State-to-State allocation.

If we were dealing with a level of funding which kept us even, which allowed us to say things will not be better but at least it will not be any worse, then there could be greater acceptance of what we think to be the unfairness and the inequities in the allocation formula. But as we are, in fact, scraping for the spare morsel of a declining transportation system, it heightens each of our sense of inequity, it brings to mind historic patterns and creates a strong incentive to want to achieve a more equitable distribution of inadequate funds.

We also are dealing with an important period here. It is the end of the interstate era. We are now moving to the post-interstate era. One of the concerns about the allocation formula that we have is that it proposes to distribute half of the money by taking the distribution as it existed from 1986 to 1991, adjusting that distribution by subtracting among other items, and primarily interstate construction funds and other interstate payments in lieu of construction, then determining what percentage an individual State received of the national total. And that percentage then becomes the percentage that you will receive of half of the transportation funds for the period 1992 to 1996.

What are some of our concerns about that basic approach? One very obvious one is the 1986 to 1991 distribution formula is based on the 1980 census. So we are going to be representing to our people that we will be distributing in 1996 funds based on the 1980 census. I find that argument patently absurd and incapable of explanation to the American people.

It also says that those States which happened to come in later in the interstate period and therefore had a disproportionally high amount of their total transportation construction in the period 1986 to 1991 in the interstate program are going to have a disproportionately large subtract from their total Federal expenditures and therefore a smaller percentage of funds available in the 1992 to 1996 period.

I recognize, Mr. President, and my colleagues, that we are talking about statistics that are difficult to grasp if you have them on a piece of paper, but even more so when received verbally. But the fact is that we are about to carry forward almost to the 21st century some basic inequities of the immediate past.

So, Mr. President, I will agree—and will agree with enthusiasm and respect—with the proposal that has been made by our leader. But I want all to understand that this is a very serious issue for our Nation, the judgment that we are making in terms of what we consider to be an adequate investment or, I would say, an acceptable disinvestment in our Nation's transportation system, and then how those funds will be allocated among the 50 States who have the primary responsibility for converting those funds into the actual resource of transportation.

This is going to be an important debate whenever we commence this debate, and it is a debate in which I believe that all parties need to accord the seriousness and respectful attention of those who share differing views. I hope that some of those differing views can be worked in appropriate conferences over the next few days. If not, they will be the source of a very interesting debate that we will participate in here on the Senate floor.

Mr. MITCHELL. Mr. President, I would like to propound the unanimous-consent request if I am able to do so.

Mr. WARNER. Will the Senator yield for a slight modification? And then I would, therefore, like to wholeheartedly endorse the request of the leadership.

The facts that will be needed by this body to make an informed decision are still being gathered. Despite the efforts of our distinguished chairman and others, we are still gathering essential facts. A debate is needed with those facts in hand. I, therefore, would like to submit for the consideration of the leadership the following: that we accept the offer for a Tuesday vote on a cloture motion but provide for a 3-hour debate equally divided beforehand and schedule the vote at such time as the leadership indicates.

Mr. MITCHELL. Mr. President, let us get one thing clear. I am the person here that is trying to get the debate

going on this bill. It is the Senators who have stood up to prevent us from getting the bill who say we want a debate but who will not permit the debate to begin. Every Senator ought to understand that.

Let us not have any misunderstanding about what is occurring here. I am trying to have the Senate begin debate on the bill. The Senator from Virginia and the other Senators who have spoken are trying to prevent the Senate from beginning debate on the bill. But when the Senators stand up and say, "We want a debate on this bill; we want to have a debate on this bill; this is an important bill, let us debate it; we ought to have 3 hours of debate on Monday," I am trying to have a debate tonight, tomorrow, Monday.

So let there be no misunderstanding about having a debate. I am perfectly prepared to be here tomorrow. I tried to get a debate going all day today but was prevented from doing so. I suggest we have 8 hours of debate tomorrow and 8 more hours of debate on Monday. That would give 16 hours of debate before the cloture vote Tuesday morning, five times what the Senator has requested. And I think everybody then could have their say and all those who have stood up here and said they want to debate will have ample opportunity to debate.

So I suggest then, if, as the Senators indicate their desire is to debate this issue—the Senator has asked for 3 hours of debate on the issue—I suggest 16 hours of debate on the issue, 8 hours tomorrow and 8 hours on Monday. Then we will have the cloture vote on Tuesday morning and everybody can be fully informed on the subject matter and every Senator will have had the fullest possible opportunity to debate. And if the Senators here this evening wish more time, then I would suggest 10 hours tomorrow and 10 hours on Monday, or whatever time they wish to debate the subject.

So, Mr. President, I appreciate the interest of the Senators in having a debate on the subject. In fact, I gather the debate has started this evening. All I am suggesting is, let us proceed to have that debate and I will agree to have the Senate in session tomorrow and Monday for as long as the Senators who want to debate wish to debate the subject.

Mr. SANFORD. Mr. President, will the leader yield?

Mr. MITCHELL. Yes, certainly.

Mr. SANFORD. I simply want to disassociate myself from anybody who wants a debate. I think this bill is so badly flawed that it ought to be corrected before we start a debate. So I have not been asking for a debate, Mr. Leader.

Mr. METZENBAUM. Will the leader yield?

Mr. MITCHELL. I yield to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, I want to address myself to the majority leader, for whom I have great respect. I do not think the issue is debate. I think the Senator from North Carolina pretty much hits the nail on the head. What we have here is not the kind of situation where you have an issue such as abortion, where the issues run deep, emotions run deep; or an issue such as aid to the Soviet Union or some issue having a philosophical basis.

What we have here is a debate about numbers. It has to do with the fact that a number of States have been shortchanged over a period of years, and there may very well have been a reason for that to have occurred, because some of the Western States did not have as much tax revenue, had longer highways, so that kind of arrangement was made.

Now, as a consequence, some States, my own included, have been shortchanged over a period of years. This piece of legislation proposes to continue that same shortchanging. But the fact is just about all of the Interstate Highway System has been completed and it does not make good logic to continue that same procedure.

I am frank to say 16 hours, 20 hours, 60 hours of debate is not going to change too many minds. It probably will not change anybody's mind. I have said to the leader before, I have said to the distinguished manager of the bill, the Senator from New York, I have said to my very respected chairman of the committee, the 85-percent formula that has been operable over a period of years—it is time to change it. There is a general recognition that in the House, in all likelihood, it will be changed.

But the fact is that many of us from States that get shortchanged have a strong feeling we have an obligation to fight for a change, at this point, in the Senate.

I would say to my leader, I believe he could perform a very useful function. Far, far be it from me to tell the Senator what his function is in this body. He has led us well and ably, and I do not mean this as any reflection upon that leadership, but I think this Senator has been saying compromise, compromise. None of us expect we are going to get 100 cents back for every dollar paid in.

In a short meeting I had with the manager of the bill and the distinguished chairman of the committee, the indication was we could not do that without taking it back to the committee. We know how the committee vote stands.

I say I believe there are some issues, particularly where you are dealing with numbers, that deserve a compromise resolution and I, for one, am prepared to be a party to that kind of negotiation. I hope the leader will see fit to help bring that about.

We can battle it out here on the floor next week. Even if we move on Tuesday and we go to cloture, we then start on the bill itself, and that means there would be rather extended debate and there probably would be another cloture motion and then there would be various postcloture amendments, et cetera.

But the basic issue has to do with the fairness and equity of some States getting 85 cents on the dollar and some States getting $2 and $3 and $7 on the dollar paid in.

I hope, regardless of the mechanics of when we vote or how we vote or with how much debate before, I hope the leader will see fit to see if we could not bring about a compromise resolution of this issue so this bill can be passed, not in 72 or 96 or 120 hours, but in 24 hours. I think once compromise is reached this bill would pass just about immediately thereafter.

Mr. MITCHELL. I thank my colleague for his comments, and he has certainly illuminated what the issue is here, what we all know the issue is here, and that is money for the individual States. Each Senator wants more money for his or her State. That is what the issue is here. That is the only issue here.

I happen to have some familiarity with it because last year on the authorization bill I was the ranking member on the subcommittee and participated with the distinguished Senator from Rhode Island, the then chairman of the subcommittee, and that was the issue then.

We do not need to dress it up in any other context. Each Senator wants more money for his or her State. I am certainly amenable to attempting to resolve that, and will do so, along with the distinguished chairman of the subcommittee, in any context at any time that Senators wish.

The Senator from Virginia is now going through the process of drafting an alternative bill, and I have not been involved in the drafting and I do not know what is in the bill, but I say with absolute certainty he is trying to figure out a way to increase the allocation for 26 States. That is the way he expects to prevail. It is the only way he is going to prevail.

The immediate question before us is how we proceed.

I have been attempting for days to get the Senate in position to consider this bill; to permit the debate that at least some Senators here say they want to have, and to permit a disposition of the bill which the President has said is one of his high priorities and which he has asked that the Congress complete action on within 100 days of the time in which he spoke. The 100th day is expiring a week from tomorrow.

No one is surprised that Senators who do not like what is in the bill are trying to prevent the bill from coming

up. But let us not suggest somehow there is anything other at stake than how much money a Senator can get for his State, so the Senator can say "I have done this for my State."

Every Senator has used the word fairness. Well, fairness, like beauty, is in the eye of the beholder. When we get into the debate, if the Senators would like to do so, they can stand up here and describe what they think is fair for as long and in as much detail as they want, and other Senators can get up and describe what they think is fair.

I am going to propound a request which seeks to have occur a cloture vote on Tuesday morning, which will occur in any event. The rules which the Senators are here so skillfully exploiting, as is their right, are such that I, as majority leader, will be able, using those same rules, to cause to occur a cloture vote on the motion to proceed on Tuesday morning. And I am simply asking the Senators to permit us to do that which otherwise can be done under the rules in a manner that imposes a modestly less amount of inconvenience upon other persons.

Mr. METZENBAUM. Will the Senator yield?

Mr. MITCHELL. Yes, I certainly yield.

Mr. METZENBAUM. I am aware it is money. But the fact is some are below a dollar for a dollar. My question to the distinguished majority leader is: Would he be willing to convene a meeting tomorrow morning or Monday, whichever time is convenient for him, of those Senators who are handling the bill and those of us who have a concern—and let me say in propounding that question I have no authority to speak for any other Senator, for any Senator other than myself—but I want to say to the leader that if we can arrive at a compromise, we will not have a vote on Tuesday with respect to the cloture motion to proceed; on Tuesday next we will pass the bill, if we arrive at that, and put it away. There will be no further debate and there will be no further delay.

Mr. MITCHELL. I will be pleased to respond to my colleague.

Mr. WARNER. Will the Senator yield for just a moment?

Mr. MITCHELL. May I respond to this, and then I will be pleased to yield.

Mr. WARNER. Gladly.

Mr. MITCHELL. On those occasions on which the Senator from Ohio has been the manager of a bill within the jurisdiction of his committee, he would surely expect the majority leader to consult with him before convening a meeting on any measure which he was managing or within his committee's jurisdiction.

Mr. METZENBAUM. Of course. Of course.

Mr. MITCHELL. My response to the Senator is I will consult with the chairman of the committee and the manager of the bill, and then will be pleased to respond to the Senator from Ohio.

Mr. METZENBAUM. I, of course, accept that and recognize the manager and chairman of the committee are both on the floor. I would point out if there were to be a meeting tomorrow morning, since some Senators will be leaving shortly, as soon as they know there will be no further votes—and some may have—and I am sure they would want to participate in a meeting, I hope the leader would just take that into consideration or maybe make the meeting on Monday.

Mr. MITCHELL. I yield to the Senator from Virginia.

Mr. WARNER. I thank the distinguished leader. I listened very carefully to what he said and he said the bottom line here: the motivation is money. Indeed money is very important. To my State the potential loss is $200 million over the next 4 or 5 years. I have to stand up and fight, as do others, for the rights of my citizens, for those who operate vehicles and otherwise pay taxes. But my bill is not simply about money, in fairness to those who cosponsored and otherwise supported me. We have provisions in there about the National Highway System.

There is an honest dispute between the committee bill and my sponsors about how the money is allocated within the State, commonly known as flex bill. We just received the report today. So in fairness to the debate, while it could have started after 2:43 this afternoon when the report was received by the Senate, I do not think we have lost that much time and we have not, as yet, I think, used dilatory tactics.

So I hope the distinguished leader will recognize that while we are ready to exercise our rights, I so informed you briefly in our meeting, roughly at 6 o'clock, we do want to cooperate. And we recognize the hardships inflicted on members of the Senate staff and others if we come in on Saturday.

So we are prepared as a group to accept the proposition, and I hope the distinguished leader will allow us some period on Tuesday morning, when likely more Senators are resident and available to participate and certainly have the benefit of the debate, to have some debate on Tuesday morning prior to the cloture vote.

Mr. FORD. Will the majority leader yield to me a moment?

Mr. MITCHELL. Certainly.

Mr. FORD. Mr. President, there is not a Senator in the Chamber that has not received some correspondence or telephone call from his Secretary of Transportation at home. There is not a Senator in this Chamber who does not understand what the committee bill does and basically what the substitute does. We are kidding ourselves if we say we do not know.

I am basically with the distinguished Senator from Virginia and the approach he is going to take, and my vote will be there, but not on procedure.

I think you are doing a disservice to the Senate by trying to develop a wall against a procedure of the majority leader. He has been here for 2 hours now before 7, and now an hour almost since 7, trying to work out an agreement so we will not be in on Saturday. He can do that.

I just say to my colleagues, let us be fair. You want to debate some more on Tuesday. If the majority leader does that, then that just delays it a little bit further. He has to reserve his right, and if he does not reserve his right, then that yields to those who want to delay.

So I say in all fairness, where you can get a meeting tomorrow and work it out, I do not believe it. I have been in on the meetings a little bit. The staff have been in on the meetings. I think it is going to be difficult to get a few Senators together in the morning and walk out with a bill and say hooray, vote on it on Tuesday, and not have any debate.

I am not sure the final bill I will like, even though I will probably go along with which bill helps my State and my constituency most. I say to my colleagues, let us agree to the unanimous-consent request.

You can debate tomorrow, hold meetings, call them in Saturday after the parade, call them in Sunday afternoon after church. You can be here on Monday. This institution used to have Members who would develop their schedules around the schedule of the institution. Now the institution is trying to schedule around the schedule of the membership. We have it all backwards: We cannot be here; some of them have already gone home, will not be here to vote; cannot be here tomorrow; let us wait until Monday until they get back.

I think we have to take a 180-degree turn and let the majority and minority leaders set the schedule in this Senate. We should develop our schedule around doing our job. The majority leader is trying to do his job. He is trying to be fair and trying not to bring us in on Saturday and trying to let you debate on Monday.

I encourage my colleagues to support the motion about to be made and not object to it.

Mr. MOYNIHAN addressed the Chair.

Mr. MITCHELL. I yield to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I will make a very brief comment. It is entirely the case, we are discussing the allocation of moneys among the 50 States and territories, and the Commonwealth of Puerto Rico.

I would ask a moment to note there is something else involved here, as well, which is a very large, new under-

taking with respect to surface transportation in this country.

The first Secretary of Transportation, Alan Boyd, appointed in 1965 by President Johnson, testified before us that this is breakthrough legislation. This is not simply a formula for allocating the gasoline tax.

We have some very large ideas here, and I find in that regard, and I hope the majority leader will take this much comfort at least, there is a surprising degree of not unanimity, but something very close, as reflected by the 15-to-1 vote in the committee.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that a cloture vote occur on the motion to proceed to S. 1204, the surface transportation bill, on Tuesday, June 11, at 11 a.m. with the live quorum having been waived; that the 2 hours prior to the cloture vote on Tuesday be equally divided for debate between Senators MOYNIHAN and WARNER; that the motion to proceed to S. 1204 be considered as having been made on Monday, June 10, at the close of morning business; and that it be in order at this time to file a cloture motion relative to the motion to proceed.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object. Would the majority leader be good enough to explain his point with respect to filing an additional cloture motion on the bill? Is that what the majority leader is saying?

Mr. MITCHELL. No, that is not. I have requested permission to file the cloture motion relative to the motion to proceed.

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion, having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to the consideration of S. 1204, a bill to amend title 23, United States Code, and for other purposes:

Daniel P. Moynihan, Howell Heflin, Fritz Hollings, Paul Simon, Alan J. Dixon, Claiborne Pell, Quentin Burdick, Frank Lautenberg, Wendell Ford, Bill Bradley, Joseph Lieberman, Harry Reid, Joe Biden, Tom Daschle, Kent Conrad, Harris Wofford.

Mr. MITCHELL. Mr. President, I suggest 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.

ORDERS FOR MONDAY, JUNE 10, 1991

Mr. FORD. Mr. President, I am about to propound a unanimous-consent agreement that has been approved by the Republican leadership.

Therefore, I ask unanimous consent, Mr. President, that when the Senate recesses today it stand in recess until 10 a.m. Monday, June 10; that on Monday the Senate meet in pro forma session only; further that the motion to proceed to S. 1204 be deemed to have been made on that day; and that when the Senate closes the pro forma session it stand in adjournment until 9 a.m. on Tuesday, June 11; that when the Senate reconvenes on Tuesday the Journal of the proceedings be deemed to have been approved to date, the call of the calendar be waived, and no motions or resolutions come over under the rule; that the morning hour be deemed to have expired.

I further ask unanimous consent that the time for the two leaders be reserved for their use later in the day; and the Senate then resume consideration of the motion to proceed to S. 1204, the Surface Transportation Efficiency Act as under the previous order; further that the required live quorum be deemed waived.

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

RECESS UNTIL MONDAY, JUNE 10, 1991 AT 10 A.M.

Mr. FORD. Mr. President, if there be no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as under the previous order.

There being no objection, the Senate, at 8:04 p.m., recessed until Monday, June 10, 1991, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 6, 1991:

DEPARTMENT OF LABOR

STEVEN I. HOFMAN, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE DALE TRIBER TATE.

FRANCES CURTIN MCNAUGHT, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE KATHLEEN HARRINGTON.

DEPARTMENT OF THE TREASURY

DESIREE TUCKER-SORINI, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE ROGER BOLTON, RESIGNED.

IN THE AIR FORCE

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:

To be lieutenant general

MAJ. GEN. ROBERT M. ALEXANDER, XXX-XX-XXXX U.S. AIR FORCE.

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:

To be lieutenant general

MAJ. GEN. GARY H. MEARS, XXX-XX-X... U.S. AIR FORCE.