SENATE—*Thursday, November 21, 1991*

(Legislative day of Wednesday, November 20, 1991)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the Honorable WENDELL H. FORD, a Senator from the State of Kentucky.

The ACTING PRESIDENT pro tempore. We are privileged this morning to have the Reverend Thomas H. Carr, associate pastor, Burke Community Church, Burke, VA, to deliver the prayer.

PRAYER

The Reverend Thomas H. Carr, associate pastor, Burke Community Church, Burke, VA, offered the following prayer:

Let us pray:

Gracious Father, You shatter all the ways we use to hide from Your liberating truth. For example, Your word declares: "Consider it pure joy whenever you face many kinds of trials * * *."—James 1:2.

"Pure joy" under the pile of today's business? While facing the seduction of money, sex, and power in its many guises? Lord, You must have a way that is above our ways? A wisdom that beggers our own. This joyous truth eludes us.

And so, I bring to Your loving embrace the Members of this body with their political trials and their personal temptations, known only to them, and to You. They often agonize over issues that tear at them deeply.

Father, give Your servants more than just the will to survive today's spiritual warfare. In the name of Jesus Christ, enable them to thrive by "counting it all joy" in the midst of the conflict.

For Your gracious word reminds us: "Blessed are they who persevere under trial, for when they have stood the test, they will receive the crown of life that God has promised to those who love Him."—James 1:12.

In the name of the One who chose the agony of the cross for the joy of resurrection. Amen.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for the transaction of morning business for not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein.

The Chair now recognizes the senior Senator from Tennessee [Mr. GORE] who is permitted to speak for up to 25 minutes.

Mr. GORE. Thank you, Mr. President.

With apologies to my colleague, I will reclaim the title of the junior Senator from Tennessee in deference to Senator SASSER.

The ACTING PRESIDENT pro tempore. The Chair might say to the distinguished Senator from Tennessee, I probably was thinking about his father.

Mr. GORE. I appreciate that reference also, Mr. President.

COMPLIMENTS TO THE GUEST CHAPLAIN

Mr. GORE. I would also like to say that I especially enjoyed and was moved by the opening prayer this morning, and my compliments to our visiting chaplain.

YUGOSLAVIA

Mr. GORE. Mr. President, on October 25, Senator PELL and I submitted Senate Resolution 213 regarding developments in Yugoslavia, or what some call the former nation of Yugoslavia because, in effect, it exists no longer. Later today, I am given to understand that the Senate may well take up Senate Resolution 213 and, as of now, it has 24 additional cosponsors whose names will be included in a list that I will attach to the end of my statement, and I will ask unanimous consent to do that at the appropriate time.

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

(See exhibit 1.)

Mr. GORE. I think it is also important to thank those Members who have expressed doubt about one aspect or another of this resolution but who were gracious enough not to prevent the Senate from taking it up. I want to say that I deeply respect their concerns and that I also believe that they rightly decided to risk erring on the side of the concern for the great tragedy now unfolding in Yugoslavia.

As amended, Senate Resolution 213 says, essentially, that, assuming the Republic of Croatia adheres in good faith to European Community cease-fire and peace proposals, and in the event that the Republic of Serbia will not do the same, then, there should be a change in United States policy. Namely, the United States should promptly raise, in broad consultation with other governments, in the EC, bilaterally, and through the United Nations, the question of recognizing republics such as Slovenia and Croatia, that have declared their sovereignty and independence, and that have agreed to cooperate with EC efforts.

There are additional points in the resolution, but this one would represent the most salient change in American policy. It would say that Members of the Senate wish to warn the Government of the Republic of Serbia that continued resort to violence risks placing them in the status of a parish state: diplomatically and economically isolated. In the spirit of objectivity and fairness, it also puts on notice all concerned in this conflict, that the path to formal recognition places obligations upon them: to cooperate with the EC, and to go the extra mile toward absolutely assuring the protection of the rights of ethnic minorities within their borders. And this is especially true where the rights of Serbians within the Republic of Croatia are concerned.

I believe it both appropriate and urgent for the Senate to send this message today. What the Republic of Serbia is attempting to do cuts across the interests of the United States in a way deserving our close attention. I am convinced that we are not witnessing some random spasm of violence. Rather, we are in the presence of a strategic concept whose successful realization is dangerous for our National interests.

From the press and television reports, we know—however imperfectly—what is happening in Vukovar and Dubrovnik. This morning's reports showed rows upon rows of corpses in Vukovar and the frightened children with their mothers emerging from shelters and the reports of summary executions of civilians. But Vukovar and Dubrovnik, which has not yet fallen, are not the be-all and end-all of the conflict. They are actually the left and right hand anchors of an extended military campaign planned and conducted by the last unreconstructed Communist dictator on the continent of Europe. Forces responding to the Republic of Serbia are attacking cities in the Republic of Croatia along an arc running from the Hungarian border to the Adriatic. Behind that arc is a region equivalent to at least one-third of Croatia, as its borders have been recognized for centuries.

Let me take a moment to digress on the duration of that border. It has been

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

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said that the internal boundaries separating the various republics inside Yugoslavia represent an artificial creation by Tito. In some cases that is true.

Not so with the border between Croatia and Serbia. That border was the border between the empire of Constantinople and the empire of Rome. It was the boundary line between East and West. In fact, history has placed so much ethnic strife right in this concentrated area that has been called Yugoslavia because it was the outer boundary of three empires: the Roman Empire, the Eastern Empire coming out of Constantinople, and the farthest reaches of Islam, and then, from the north, the Russian empires. It represented, in a sense, an area in which the tectonic plates of geopolitics have pressed against one another for millennia. And then, after totalitarianism descended in the 1930's, the conflict was exacerbated, and when the Communist form of totalitarianism froze everything in place, all of these tensions were put on hold, in large part.

And now, with the collapse of communism, the conflicts that have been in part there for millennia have come to the surface. But it represents a challenge to what President Bush has attempted to describe as a new world order. It represents a challenge specifically to the hopes and dreams of Europeans for a continent free of the war which has ravaged that continent for most of its history. And it represents a challenge to the United States of America as the natural leader of the effort by humankind to create a new world in which territorial boundaries cannot be changed by violence. And that is what Serbia is engaged in right now.

Meanwhile, to the rear of this region, across the border into the Republic of Bosnia and Hercegovina, Serbs have reportedly voted to create an autonomous zone to be linked to the Republic of Serbia. This is an extremely ominous development, since it threatens to ignite civil war in Bosnia-Hercegovina between Serbs, Croats, and Muslims, all of whom share the region. This has the clear potential to spread. Already communities and villages in Hungary have been bombed by aircraft under the control of the Republic of Serbia. The surrounding area is threatened by a continuation of this violence.

My own family, as I have said on one prior occasion here on the floor, was touched by the conflict which erupted out of the Balkans in 1914, and called many young men from the hills of Tennessee and Kentucky and States all across our Nation to go. And many lost their lives in World War I, partly because the world stood by and did not attend to the simmering conflict in the Balkans.

Now, as the world is on the verge of a potential for a unified European Community, for a common agreement throughout most of the world that democracy and a free market will be the path taken by humankind in the future, we cannot afford to stand by and allow this violence to spill over these boundaries.

Clearly, under the inspiration of the Republic of Serbia, there is an effort to totally redraw the map of the region: to truncate Croatia, shave off the top of Bosnia, add the two to Serbia, and create a greater Serbia which cuts Yugoslavia in two, and reaches to the Adriatic Sea. Keep in mind, also, that before the Republic of Serbia invaded the Republic of Croatia, it had earlier seized control of the previously autonomous region of Kosovo, with its Albanian population. This greater Serbia will then presumably dominate all the other Republics and provinces of Yugoslavia, including Macedonia, to the south.

This is an effort to establish a small empire of the sort dreamed of since Serbia was a kingdom. And this process is being carried forward at the expense of the single most important principle for the postwar organization and stability of Europe. To create greater Serbia, it is necessary to utterly disregard the principle that borders will not be changed by force. And that principle—so long as it is intact—constrains every state in Eastern Europe from seeking redress from every other state for territories transferred in the aftermath of WWII, and it inhibits those who might seek to stir up violence between every ethnic group in every state of Eastern Europe and the Balkans.

If the world stands by, paralyzed and afraid to act in the face of this naked aggression, mass death, and destruction, it will send a message that whatever dictator can amass the most weapons can, with virtual impunity, expand his borders and conquer the territory of his neighbors.

In this delicate situation in the immediate aftermath of the cold war, do we want to send that message? Mr. President, inaction is a policy in and of itself.

We cannot pretend by doing nothing that we are not expressing ourselves and influencing the course of events in the Balkans. By standing by as the only Nation capable of providing leadership for the world and doing nothing as this tragedy unfolds, we are sanctioning it, in effect. We have an obligation to speak out.

Some say the European Community is the natural intervenor. And, indeed, Lord Carrington, speaking for the European Community, has conducted a dialog in the region. But the European Community has been exceedingly timid. And there is a reason why. It is because many of its members, including most prominently Great Britain, have been reluctant to deal with this situation, which takes what was a nation, in the aftermath of World War I, and travels down a path toward the elevation of a subnational grouping into an entity that will achieve political recognition. Great Britain, of course, has the festering problem of Northern Ireland. It does not want to raise the profile of that issue. It wants to stay hands off.

Germany, which has been sympathetic to the point of view which I am expressing, is so invested in the idea of a unified Europe that it has deferred to Great Britain.

France has not been sympathetic. But for all of these reasons, and others, the European Community has not been willing to lead. The United States of America can offer leadership here, and can make the difference in bringing this conflict to an end.

Instability in this region is contageous, with the possibility for advancing eastward until it encounters the westward spread of ethnically driven instability radiating out from Moscow. The prospect for a Europe whole and at peace is the foundation for American planning and hopes for the future. And that prospect is at risk to the forces of violent ethnic nationalism, which is burning white hot at the moment in Yugoslavia, fanned by the actions of the leaders of the Republic of Serbia.

I do not mean to give short shrift to the human costs of all this. Thousands have died. Hundreds of thousands are displaced. Innocent people on both sides of the conflict are exposed not only to random injury and death from shells and bombs, but to direct, inhuman cruelty at the hands of that small, but awful percentage of humankind that seems to thirst for the opportunity to do unimaginable evil in the name of lofty ideals. The efforts of an entire generation to build for themselves and for their children have been wiped away by artillery paid for by their own taxes. And all of this in the midst of Europe struggling to move forward, rather than to recycle the bloody past.

There may be some among us who continue to feel that the United States should not move out ahead of the European Community, which, for better or for worse, has the lead in this matter. I would argue that the United States ought already to be exerting leadership, because of the long-term significance this issue has for us. Reasonable people can differ on that point. But surely, we ought not to lag far behind the EC, and should at least be keeping pace with it and strengthening its resolve.

The EC now essentially blames Serbia for continuation of the violence, and for conducting violence on a scale out of proportion to military necessity. The EC has not only announced sanctions against Yugoslavia—and appealed to the United Nations to make them

universal and binding—but has also announced its intention to slip those sanctions in the case of republics that are cooperating with the EC peace effort: read, Slovenia and Croatia. Finally, the EC, even in its most recent communique, is itself raising the issue of recognition, tied to absolute guarantees for the human and cultural rights of minorities.

And that insistence on absolute guarantee is contained in Senate Resolution 213. Senate Resolution 213 as amended, is squarely in line with what the EC is doing. The EC is attempting to totally isolate Serbia: diplomatically and economically. It is on record as intending to work out special ties to Slovenia and Croatia. And it has used the word "recognition" in a manner which clearly hints that continued Serbian intransigence may well cause this card to be played. Senate Resolution 213 expresses the sense of the Senate that if Serbia will not cooperate, the United States will—as the EC is threatening to do—confront the issue of recognizing the independence of Slovenia and of Croatia, within that Republic's borders as established by history, custom, and law. That we and other nations should also move to protect the rights of all minorities in the Republics and Provinces of Yugoslavia should be a given, and Senate Resolution 213 makes that clear.

But if Serbia will not cooperate in bringing this war to a conclusion, the United States, the European Community, and the world in general should draw the necessary conclusions and act upon them to protect basic principles of international order while that is still possible. I believe that all of us agree that sometime in the future a durable peace in this region requires that some kind of common framework for cooperation needs to replace the shattered and essentially totalitarian dream of a unitary Yugoslav state. But that framework cannot be assembled at gunpoint. It has to come into being based on the consent of the peoples who will have to make it work, and right now those peoples are concentrating on achieving the stature of independence, which alone gives them the means to choose cooperation in the future on the basis of decisions taken in freedom and in dignity.

There are times when we should be concerned to protect the continuity of other states that matter to us. For many years, so long as our primary concern was the Soviet threat, what mattered most to us about Yugoslavia was that it was a barrier to Soviet expansionism and for that purpose it had to be unitary and intact.

There are other times in history when we must recognize that efforts to prolong the continuity of failed governments is itself a source of danger for our interests. The Serbian effort to perpetuate a dominant position over other peoples in this region now threatens America's national interest. Even if human concerns did not force us to realize that the time for change has come, a rational calculation of our national interest ought to. If we do not know how to help history move forward, it will assuredly know how to pull us back.

Mr. President, I ask unanimous consent to have printed the text of Senate Resolution 213, as amended.

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

S. RES. 213

Whereas attacks against the people and territory of the Republic of Croatia by armed forces responding to direction from the Republic of Serbia are continuing despite numerous cease-fire agreements negotiated under the auspices of the European Community;

Whereas losses of life, property, and displacement of persons have already reached grievous levels and are continuing to rise as the result of continued violation of cease-fires;

Whereas attacks against the Republic of Croatia represent an effort to change post-war borders by force; and

Whereas it is a fundamental principle essential for the future peace of Europe that internationally recognized borders not be changed by force: Now, therefore, be it

Resolved, That it is the sense of the Senate that, if the Croatian government adheres in good faith to the terms of cease-fires negotiated by the European Community, and if those parties now conducting military operations against the Republic of Croatia refuse to comply immediately with the terms of such cease-fires, the policy of the United States should be—

(1) to consult promptly with the EC, with other countries on a bilateral basis, and with the United Nations on the question of recognizing, upon request, those Republics such as Slovenia and Croatia that have declared their sovereignty and independence and have agreed to cooperate with EC efforts;

(2) to take whatever steps are needed under existing legal authorities to bring the United States into conformity with sanctions and other punitive measures agreed to by the EC for its own members and recommended by them for others, and to take action parallel to those proposed by the EC for applying "positive compensatory measures" to be applied to those parties that "cooperate in a peaceful way towards a comprehensive political solution on the basis of EC proposals;"

(3) to offer humanitarian assistance to those republics that require such assistance on an emergency basis in light of conflict taking place on their territories;

(4) to place the Republic of Serbia on notice that continued military action will cause the United States to support EC efforts to call for mandatory UN Security Council measures as a response to an act of aggression;

(5) to require of all authorities a clear and binding commitment to protect the rights of minorities living within the borders mutually recognized by the republics and provinces of Yugoslavia in 1974 and to seek formal commitment on their part to accept international inspection and, if necessary, arbitration, to protect those rights; and

(6) to lend strong support to all EC and other international activities aimed at bringing about a restoration of peace and respect for the principle that territorial disputes shall not be settled by the use of violence.

EXHIBIT 1

COSPONSORS OF SENATE RESOLUTION 213, AS OF NOVEMBER 20

Gore/Pell Lieberman, Wellstone, Kohl, Gorton, Akaka, Adams, J. Kerry, DeConcini, Wirth, Wofford, D'Amato, Pressler, Bryan, Dixon, Johnston, Dole, Breaux, Specter, Exon, Inouye, Rockefeller, Danforth, Craig, Riegle, Lautenberg.

BACKDOOR ACCESS FOR POLLUTERS

Mr. GORE. Mr. President, before my time expires, I would like to turn to another matter. I ask unanimous consent to have printed at the conclusion of these remarks two newspaper articles, one from the Washington Post by Michael Weisskopf and one from the Boston Globe by Michael Kranish.

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

(See exhibit 1.)

Mr. GORE. Mr. President, both of these reports describe what I believe is a reprehensible conflict of interest within the administration. The White House has established a special panel, the Council on Competitiveness, to give polluters backdoor access to review regulations protecting the environment before they are put into effect. Companies that dump pollution into the environment go through the process established by EPA to fight against regulations, and some they win and some they lose. But in every case, especially when they lose, after the public process is over with, they are given another bite at the apple, illegally and unconstitutionally, in my view. I will spell out in just a moment my reasons for believing that.

They come in the back door and, without any procedural safeguards for the public's interests, they whisper in the ear of this White House panel Director and say, "EPA should not have won this one, it is too tough on us, kill it," and in many cases they kill it.

Now we find that the Executive Director of that panel, Alan Hubbard is an owner of a chemical company putting pollution into the atmosphere and that he is affected by the regulations he is reviewing. He got $786,000 in dividends from this company in 1990, the last year for which the figures are available. The regulations affect his company.

Yet, he is in charge of the hot wiring. He is the one who decides whether to take an EPA regulation that EPA will not give in on and shuffle it over to this Council that is made up of the people in the administration most hostile to environmental protection. That is his power.

Vice President QUAYLE, who chairs the Council, has given Hubbard an ex-

emption from the conflict of interest requirements. Hubbard says he avoids dealing with any regulation that directly affects his company.

It is unclear as to whether he has been successful in so doing. His company is World Wide Chemical, Inc., in which he has an interest valued at over $1 million. We do not know how much over $1 million.

One of the issues that has been referred to his Council—and the way it gets referred to his Council is the polluters call up and say, "Hey, look at this,"—one is a matter involving the regulation of small polluters, a category in which, World Wide, his company, falls, this regulation in question would give a blanket 5-year exemption from the permits for companies that emit small amounts of pollution, like Mr. Hubbard's company.

That exemption was approved by EPA. I think that violates the authority granted to EPA by Congress. I think they went too far there. But EPA gagged on what Mr. Hubbard is trying to make them do because EPA said, "We are going to give you this exemption for 5 years, but then you, the polluter, have the burden of proof to extend that exemption." Mr. Hubbard says, "No, no, no, no, we want to hot wire that provision; we want that to stay in effect and give the polluter an indefinite exemption unless EPA bears the burden of proof to come in and affirmatively change it."

Apparently, EPA gagged on it, as I said, and has decided to fight. The evidence is all in the public press now, but, Mr. President, this is an outrage. Here we have a situation that clearly illustrates what the American people are sick and tired of—the arrogance of power. A polluter with more than $1 million in a company that is polluting the environment is put in charge of the regulations governing the pollution, is acting behind closed doors, refusing to answer questions from Congress or anyone else, refusing to abide by the safeguards established in the laws which delegate authority to the Environmental Protection Agency, safeguards which say, in effect, be fair. Mr. Hubbard is thumbing his nose at the law and the principle of due process and hot-wiring regulations to allow the pollution of the environment to continue unimpeded.

You think the American people are tired of the arrogance of power, of people who are in power just caring little or nothing about the people? Well, here is a prime example. And Vice President QUAYLE has specifically given him an exemption from the conflict-of-interest regulations. And President Bush, who originally chaired this panel in the Reagan administration, knows all about it. He is the one who set this deal up.

The Constitution gives some powers directly to the President. It gives others to the Congress, which we delegate to agencies to administer laws, and when we delegate power, we often establish safeguards to ensure that power is exercised fairly. It is that latter route by which the Constitution has given authority to regulate this pollution, and this executive branch officer is violating the safeguards that we established here in the Congress, and the administration is saying, we do not care, we are going to give him an exemption. Even though he owns a polluting company, we are going to give him extra constitutional authority to cut down the regulations.

Vice President QUAYLE made a critical error not only by turning his back on a flagrant conflict of interest but also by condoning that conflict of interest with a waiver. Vice President QUAYLE should not have granted that waiver and Allan Hubbard should not be allowed to continue as Executive Director of the President's Council on Competitiveness. This arrogance of power must stop. It's time to put the public's interest first, not the special interests of polluters or the personal interests of high-placed bureaucrats. That's why today I am calling for Allan Hubbard's immediate resignation as Executive Director of the President's Council on Competitiveness.

EXHIBIT 1

[From the Washington Post, Nov. 20, 1991]

REGULATORY ADVISER HAS STAKE IN CHEMICAL FIRM

(By Michael Weisskopf)

The executive director of the White House council that reviews federal regulations, including new Clean Air Act rules for the chemical industry, is half owner of a chemical processing company in Indianapolis.

As chief administrator of the President's Council on Competitiveness, Allan B. Hubbard coordinates debates among agencies on clean air regulations and has an important say on the antipollution rules the chemical industry will have to observe. The council itself has drawn increasing attention—and some criticism from congressional authors of the law—for altering regulations to make them more palatable to business.

According to Hubbard's financial disclosure report at the Office of Government Ethics, he has an interest of "over $1 million" in World Wide Chemical Inc., which manufactures car polishes, waxes and cleaners. The company paid him $786,233 in dividends in 1990, Hubbard reported.

Hubbard has sought and received from Vice President Quayle, the council chairman, a waiver of conflict-of-interest laws which otherwise might have prevented him from participating in decisions affecting the industry in which he has a financial interest.

In a memo last May to Quayle disclosing his business interests, Hubbard pledged to avoid "even the appearance of a conflict," saying he would rescue himself "from any particular matter that specifically involves" his holdings. Specifically, he promised to abstain from matters involving auto appearance.

There is no evidence that Hubbard has departed from that pledge. He has, however, participated in decisions affecting regulation of the chemical industry generally.

Last week, for example, Hubbard asked the Department of Justice to review a legal opinion by the EPA questioning whether business should be able to increase pollution simply by giving seven days' notice to environmental authorities.

By seeking the review, officials said, Hubbard kept the EPA from complying with the Nov. 15 deadline set by Congress for the issuance of regulations governing a key enforcement tool of the Clean Air Act Amendments of 1990: the process for controlling pollution through the granting and withholding of permits.

According to administration officials, Hubbard also participated in a recent meeting where outstanding issues of the permit regulations were discussed.

Federal law prohibits government officials from participating "personally and substantially" in decisions in which they have a financial interest. A waiver may be granted if the official fully discloses his holdings and receives a written finding from a superior that his judgment would not be compromised.

Hubbard declined several interview requests in recent days. He also has declined invitations to testify in Congress about the council. The council was set up to make sure regulations were not unduly burdensome on industry. In practice, this has usually meant scaling back regulations to hold down costs. In recent months, the council has been criticized for its secrecy. Because of its White House status, it is not subject to the same "sunshine" provisions of federal law that governs regulatory agencies such as the EPA.

Hubbard serves as deputy chief of staff to Quayle and became director of the Council on Competitiveness in June 1990.

"I believe that the range of chemicals processed by World Wide is sufficiently narrow to establish that I do not have an interest in particular matters focused upon the chemical industry generally that is so substantial as to be deemed likely to affect my services in government," Hubbard said in the May 22 memo to Quayle.

Vice presidential spokesman David Beckwith said that Quayle approved the waiver and that Hubbard has circulated a copy of his recusal statement to his staff with instructions that matters posing a potential conflict be referred to his deputy.

Such a referral "has not been necessary to date," according to the spokesman.

Hubbard has said previously that he chairs a biweekly meeting on rule-making for the new clean air law, which is expected to cost industry $26 billion a year and cover virtually every manufacturer from utilities to cars. He uses the meetings for general discussions of issues and to resolve differences among agencies, he said.

Although the EPA is legally responsible for writing and enforcing the law, the Office of Management and Budget has veto power over all regulations under a longstanding executive order.

Since Bush inaugurated the competitiveness council in 1989 to protect industry from onerous regulation, it has opened the rule-making process to aides of its six permanent members, including those least sympathetic to environmental laws—the director of OMB, the secretaries of Commerce and the Treasury, the White House chief of staff and the chairman of the Council of Economic Advisers.

Hubbard can call a formal session of the council in the event of irreconcilable differences between the agencies. That, officials

say, is the real source of his power. Knowing it faces even more formidable foes among the council members, the EPA is more inclined to compromise with its conservative rivals.

The proposed rules governing pollution permits have divided the administration for months. Congress was unusually explicit in its directions for permits, intended to give backbone to the law by spelling out pollution limits for each factory, timetables for achieving them and specific duties for companies to plan and monitor the cutbacks.

Among the issues is the regulation of small polluters, such as World Wide, which emitted less than 10 tons of toxic and smog-forming substances last year, according to a company report to the EPA. The agency has proposed granting a blanket, five-year exemption from the permits for companies that emit relatively small amounts of pollution. The proposal, while it appears to exceed the discretion that Congress gave the EPA for such exemptions, is accepted by all sides of the administration.

What is in dispute, however, is the fate of small polluters after the grace period, according to informed sources. The EPA wants the exception to expire automatically, unless the agency extends it. OMB officials want the burden reversed: They want the exemption automatically extended unless the EPA decides formally to stop it.

Asked whether the issue would pose a conflict for Hubbard, his spokesman said, "He hasn't had to face it, so we don't know.

Another issue concerns the procedures that companies with permits must follow if they want to exceed allowed emissions. In these circumstances, the law requires polluters to apply for a new permit, triggering a public review. The EPA carried out that provision in its initial draft of the regulations. But in a package of "suggested changes" sent to the agency April 6 by Hubbard's deputy, David McIntosh, the rule was revised in line with the demands of industry lobbyists. Under the revision, plants would be allowed to increase pollution, essentially without limit, by giving seven days' notice to authorities. No public review would be required.

According to Beckwith, the revisions were prepared by other White House officials. Hubbard was not involved, he said.

When the EPA formally proposed its permit rules in late April, the revised plan was intact. But by August, its general counsel questioned the legality of exceeding permit limits on pollution without public review. Hubbard asked the Justice Department for a second opinion Nov. 12.

Beckwith said that Hubbard asked for the opinion to resolve the legal questions, and that he has not taken a position on the issue. Asked if World Wide had an interest in the outcome if it eventually is required to get a permit, he said such questions were "speculative."

[From the Boston Globe, Nov. 20, 1991]

QUAYLE AIDE'S FIRM IS LINKED TO POLLUTION

(By Michael Kranish)

WASHINGTON.—Vice President Dan Quayle's deputy chief of staff, who is deeply involved in the revision of federal clean air regulations, is co-owner of a company that an Indianapolis official said violates local antipollution laws. The official also said the company could benefit from the revisions that the aide is pursuing.

Quayle granted the aide, Allan Hubbard, a waiver of federal conflict-of-interest laws, allowing him to work on issues that might generally benefit his substantial corporate holdings, according to documents reviewed by the Globe.

Hubbard is Quayle's deputy chief of staff and executive director of the Council on Competitiveness, which the vice president heads.

In that role he oversees the council's review of federal regulations that affect business interests. Critics say the council's proposed changes would weaken dozens of air pollution regulations.

On Nov. 12, Hubbard signed a memorandum asking the Justice Department about the legality of a Quayle proposal to allow a company to increase pollution if local authorities fail to object in one week.

Hubbard owns 50 percent of World Wide Chemical Inc., an Indianapolis firm that deals with products used in automobile finishing. Indiana environmental officials told The Globe that the company emits toxic pollutants without the required local permit. Hubbard's company, they said, stands to benefit from some of the regulation changes proposed by Quayle's council.

As reported by The Globe last week, some Democrats say the Quayle and the Hubbard-run council are acting as a "shadow government," overturning proposed federal regulations at the behest of business lobbyists. The Environmental Protection Agency recently clashed with the panel on several matters, including a decision by Quayle to redefine wetlands in a way that would allow commercial development of vast acreage now off limits.

A Quayle spokesman denied that Hubbard has a conflict of interest in the air pollution case. The spokesman said that while Hubbard did not remove himself from dealing with such matters, he received a special waiver that enables him to deal with issues even though they could affect the financial interest of an industry with which he is associated.

"The vice president gave him the waiver," said the spokesman, David Beckwith.

The waiver allows Hubbard to deal with matters that generally benefit his company, but not a specific matter such as a contract that affects his firm, according to a Quayle aide. Beckwith denied that the waiver had created the appearance of a conflict of interest.

Hubbard has not been charged with any wrongdoing.

Beckwith said Hubbard "doesn't know anything" about claims his company is violating clean air laws.

According to Hubbard's financial disclosure reports, he made $786,000 from his half-ownership of World Wide Chemical in 1990 and nearly $1.6 million the year before. Hubbard also has millions of dollars worth of investments in an array of other interests, making him among the wealthiest members of the Bush administration.

Records on file in Indianapolis show that in 1990 World Wide Chemical emitted into the air about 19,000 pounds of chemicals, some of them classified by the federal government as toxic and ozone-depleting.

The firm was not subject to federal laws until the Clean Air Act passed in 1990, but the regulations for that are not in effect yet.

FIRM LACK PERMIT

David Jordan, director of the Indianapolis Air Pollution Board, said in an interview that World Wide Chemical does not have the permit required to release the emissions. The company is putting out nearly four times the allowable emissions without a permit and could be subject to a $2,500-a-day penalty, Jordan said.

"We believe, based on the information we have, that they should have an operating permit," Jordon told the Globe. They are currently violating a local regulation."

The official said the company should have obtained a permit "at some point in the last six to eight years."

Jordan said his agency notified World Wide Chemical on Nov. 6 about the need for the permit, and he said his agency will have to make some judgment as to whether it was just ignorance on their part. It will probably be a matter of how cooperative they are in submitting the necessary paperwork."

If the board determines that World Wide Chemical violated the law out of ignorance, Jordan said, the board might not invoke the penalty.

TERRIBLE IDEAS

Jordan is also president of the National Association of Local Pollution Control Officials, which has charged that the Council on Competitiveness is trying to weaken air pollution laws by making it difficult or impossible for local officials to control pollution at local companies. Jordan said he did not know Hubbard was an owner of World Wide Chemical and executive director of the council until informed yesterday by The Globe.

Jordan said he was surprised at the connection and said it raised questions about the propriety of Hubbard's involvement in the council's review of air pollution laws.

Jordan charged that Quayle's council has come up with "terrible ideas" that could limit the ability of local boards to police air pollution violators.

He cited a proposal that would allow a company to increase pollution if a state did not object within seven days.

EPA FOUGHT PROPOSAL

The Environmental Protection Agency fought the proposal, saying it would not allow time for the public to object to increased pollution. EPA general counsel Donald Elliott wrote a legal opinion saying the proposal would be thrown out of court. Hubbard then wrote a letter to the Justice Department Nov. 12 asking for a new opinion.

Beckwith said Hubbard did not take a position on the seven-day proposal. Nonetheless, the Council on Competitiveness originally backed the proposal, and Hubbard's letter indicates that the council is trying to get a new legal opinion to uphold it.

Jordan, the Indianapolis official said Hubbard's company could benefit if the seven-day pollution proposal were upheld.

In another example, the EPA, earlier this year, proposed that the federal government be allowed to enforce air pollution laws if a local government does not. Quayle's council is seeking to block the plan.

If Quayle's revision is approved, the federal government and citizens' groups would not be allowed to sue a company if the local government does not enforce air pollution laws, according to government officials. The officials said Hubbard's company also could benefit from that action.

Beckwith said that although the proposal was forwarded to the EPA on vice presidential stationary by Hubbard's top assistant, it was not fair to assume that Hubbard had backed it.

MOTIVES QUESTIONED

Quayle, he added, "has complete confidence" in Hubbard and does not think his aide did anything wrong. Beckwith said "Hubbard only attends quarterly stockholders' meetings" and does not know anything about charges that the company violates air pollution laws.

Beckwith at one point questioned Jordan's motives, asking what party Jordan belonged

to. Jordan, a Republican, said he had no political motive for making his statement, and he stressed that he did not know Hubbard had anything to do with World Wide Chemical until yesterday.

Beckwith said "Hubbard had gone to extraordinary lengths to go beyond the requirement of the ethics law to make sure that conflict and even the appearances of conflict do not occur." However, the spokesman acknowledged that Hubbard did not divest himself of his holdings when he entered government nor did he put his holdings into a blind trust. Divestiture is not required, but many officials, including President Bush, have taken such steps to avoid suggestions of impropriety.

Quayle became acquainted with Hubbard after Hubbard's wife helped run Quayle's Senate race in 1980. Hubbard was the campaign manager of Senator's du Pont's unsuccessful race for the presidency in 1988.

The ACTING PRESIDENT pro tempore. The Senator's time has expired. The Chair recognizes the Senator from Nevada [Mr. REID] for 15 minutes.

DRUG TESTING OF SCHOOLBUS DRIVERS

Mr. REID. Mr. President, this past August, on a Wednesday night, August 28, just after midnight, in New York, beneath Manhattan's Union Square, 5 people were killed and over 200 injured in a bloody accident. The cause of the accident was the result of the actions of one Robert E. Ray, who was the driver of the subway car which, at the time of the incident, was traveling three times faster than the limit posted when the train smashed into a steel column. Robert E. Ray was drunk and in the process of falling asleep at the time of this accident. Ray's blood alcohol level, in fact, was twice the State's legal limit for operating a vehicle, and this test came about 13 hours after the accident. Think of how badly deficient he was at the time of the accident.

Mr. President, experts estimate that his blood alcohol level 13 hours before he was tested was at least .33 percent.

Most people would have passed out long before Robert E. Ray fell asleep at the controls of his subway car. His ability to still be awake with a blood alcohol level of .33 is a sign of chronic use of alcohol.

Because this was a case of chronic use, this accident could have been avoided if the driver, Robert E. Ray, had been subjected to a drug test any time during his employment, not just the day or the night before this accident. Mr. President, lives could been saved. Human beings could still be alive. Five of them were taken from this Earth as a result of his activities. If a drug testing program had been implemented, 200 people would not have been injured, some of them seriously, and 5 people would still be alive. If this were an isolated incident, we could disregard it, but it is not an isolated incident.

Last December, less than a year ago, at 6:45 a.m. in a subway in Boston, 33 people were hurt when a trolley struck another from behind. At least 1 of the 33 injured was critically injured. The driver tested positive for alcohol abuse.

Again, in 1988, an Amtrak train, the so-called Washington-to-Boston Night Owl, went down the wrong track and smashed into a 17-ton ballast regulator and derailed just north of Philadelphia; 19 people were injured, some of those seriously, 2 locomotives overturned, 10 passenger cars derailed. The switchman on duty during the crash failed his drug test. Why? Because he was grossly under the influence of drugs when he sent his train down the wrong tracks.

One of the greatest environmental disasters of all time, the *Exxon Valdez* spill in Alaska, which in effect devastated so much of the beautiful Alaska coastline, was as a result of a drunk captain, Joseph Hazelwood.

These tales of horror and terror continue, as we speak, on our roads, on our rails, on the seas, and even in the skies. In the skies? Yes, even in the skies? In August of last year, three Northwest Airlines crew members were convicted of flying while intoxicated—not driving while intoxicated, flying while intoxicated. One of the pilots testified he drank 20 rum and cokes the night before his 6 a.m. takeoff.

The Transportation Department's inspector general has also reported that 10,300 active pilots certified by the Federal Aviation Administration had their automobile licenses suspended or revoked for drunken driving. These are the same people who carry me and hundreds of thousands of other passengers from National Airport, Dulles Airport, Dallas-Fort Worth, McCarran in Las Vegas, Cannon in Reno. Wherever we go, there is the potential of one of these 10,300 FAA active pilots flying, or trying to fly, us across the country.

This Congress has passed legislation that addresses this issue. We have required alcohol and drug testing of certain transportation workers in various safety-sensitive positions, and rightfully so. We have, however, overlooked one very important group, schoolbus drivers. But I must say in passing, Mr. President, that this is not the first time children have been forgotten. Children, really, in this modern day and age, are the forgotten group. That is one of the reasons why 25 percent of young people who enter high school never graduate; we do not pay a lot of attention to them, and we have failed to pay attention to them in this regard.

Why are our schoolchildren not as important as a truckload or trainload of chemicals? How is it possible transportation workers who are responsible for driving our children to and from school are exempted from the regulations we have passed? It does not make sense.

This past September, a couple months ago, not far from where I stand today, not far from this Senate Chamber—in fact, in Montgomery County—a schoolbus driver with children on board was clocked exceeding the speed limit. This was a 30-mile-an-hour speed limit. The bus turned on to what is called Route 27, one of the busiest roads in the entire area, and started going even faster. After having been witnessed twice recklessly crossing over the dividing line on the highway, he was stopped and arrested and tested to be under the influence of drugs.

In this instance we have a happy ending; the children were not hurt, but we cannot leave such a thing to chance. Some school districts—for example, the Montgomery County school district, about which I just spoke—have drug testing policies for their bus drivers. You see, in most places in this country, if that bus driver had been stopped, his employer could not have tested him. Law enforcement officials under certain circumstances could, but his employer could not. Drivers are required, in Montgomery County, to take a drug test at their annual physical and after any incident involving their bus.

The policy also allows for random testing. For example, in the Manhattan Union Station tragedy, that involved a chronic abuser of alcohol. In this instance, if in fact they had had a procedure like in Montgomery County, that person could have been tested at random and because he was a chronic user, it would have come up positive and he would have been taken from the controls.

Since March 1991, using the example of Montgomery County, when this plan was implemented, 9 of 211 drivers tested positive. That is 5 percent. Seven of those have been fired and the other two cases are pending. This is an average of one case per month in just one school district or, as I said, about 5 percent.

We can extend Montgomery County's rate of 5 percent nationwide. If we do that, it is obvious that this country needs a nationwide policy. Parents and students have a right to know whether their bus drivers are loaded, not loaded with passengers but with drugs or alcohol.

National Public Radio recently ran a segment on a program called All Things Considered, and they were talking on that program about a confession service in New York where you can dial a number and confess to whatever you feel like confessing about on the telephone. They had some outrageous things that people had called confessing about. And they have the actual voices of persons who had called in confessing. One confessed that he was a bus driver, and that he went to work high every day; that he was trying to stop but he could not. He said he was always stoned while he drove the bus.

I think we have enough examples that we can easily show there is a need

to do some drug and alcohol testing of school bus drivers.

The Supreme Court has permitted the unannounced drug tests under certain circumstances for workers who hold safety-sensitive jobs. We should not have to have a requirement of a Supreme Court decision to tell us that schoolchildren are being driven around by drivers in situations where the driver is in a safety-sensitive position.

Driving our children to school is one of the most safety-sensitive positions that I can think of. If 5 percent of our children are being put at risk by drunken or stoned bus drivers we need to do something about it. I hope my colleagues will support me in this effort.

I yield the floor, 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. SIMON. 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. SIMON. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Chair informs the Senator from Illinois that we are. Under a previous order the Senator from Connecticut [Mr. LIEBERMAN] is permitted to speak for 5 minutes, and the Senator from Arkansas [Mr. PRYOR] controls the remaining time until 10 a.m. this morning.

ORDER OF PROCEDURE

Mr. SIMON. Mr. President, I ask unanimous consent to speak for not more than 3 minutes.

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

Mr. PRYOR. I have no objection, Mr. President. The Senator from Arkansas looks forward to hearing the Senator from Illinois speak.

The PRESIDING OFFICER. The record will so note. The Senator from Illinois is recognized.

Mr. SIMON. I thank the Senator from Arkansas.

MOVE TO END HIRING PREFERENCES

Mr. SIMON. Mr. President, I got up this morning, picked up the morning newspapers, and read about the move by the administration away from affirmative action. I could not believe that we in this country are going to turn our backs in saying we want opportunity for everyone.

We have slipped into a kind of poisonous atmosphere in this country that is not helpful. In the last 10 years we have sanctified indifference. The stops are not far from indifference to Willie Hortonism to Dukeism, and now the administration seeing what has happened with the Duke phenomenon is hoping it is not going to be bitten by that monster that they have created.

We have to return to seeing to it we are going to give opportunity for everyone. That means reaching out to some people who have been denied opportunity. That is what affirmative action is all about. It does not mean we are going to hire people who are not qualified. It does mean that we are going to see to it the dream of opportunity is here.

Just this morning I read this statistic, that the number of children in very poor homes—that is homes where there is half the poverty rate—has grown in this past decade from 3.3 to 4.8 million.

We just are ignoring these kind of things. I want to see a country with compassion. I want to see a country with common sense. I want to see a country that creates more and more opportunity for all Americans, and we are moving away from that. I think it is a great disservice to the country.

The administration in the announcement that was made yesterday is trying for political reasons to move away and to escape from the bite of the monster of Dukeism. They helped to create that monster by their own actions. I hope that there will be a reaction in this country that will move us back to a more common sense compassionate course.

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

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

PRESCRIPTION DRUG COST CONTAINMENT ACT OF 1991

Mr. PRYOR. Mr. President, first, I want to make one or two brief statements relative to prescription drug prices in the United States of America, where we are today, and to say that the prescription drug price increases of the last year and of the last decade are absolutely defying the law of gravity.

In the whole medical care area, in the health care system we have in this country, the cost of prescription drugs for the average American is the single biggest cost increase factor in the whole health care environment.

Mr. President, today, on behalf of myself, along with Senator COHEN, Senator SASSER, Senator BAUCUS, Senator BURDICK, Senator CONRAD, Senator EXON, Senator METZENBAUM, and Senator WELLSTONE, we are introducing the Prescription Drug Cost Containment Act of 1991. It is a step in the right direction, Mr. President. It is not the overall cure, but it is a step that we must take.

This is an area that is so concerning to me, and so concerning to all of us in the U.S. Senate, that almost on a daily basis—in fact, sometimes several times a day—when we open our mail from constituents back home, seldom does a day go by that there is not some elderly person or some individual constituent out there who is writing to protest the cost of drugs.

Mr. President, the drug manufacturers of America have become greedy. They have become rich. They have become insensitive, and they have become immune to the cries of those Americans out there everywhere who say, yes, we may make the finest prescription drugs in the world, but the problem is we can no longer afford to purchase them. It is happening all across America, Mr. President, in all walks of life. Whether we be Democrat or Republican, we are hearing from our constituents that no longer can they afford the cost of prescription drugs.

Mr. President, in fact, if I might demonstrate on this chart, when the prescription drug companies last year were told by an act of Congress that we were going to attempt to lower the prices of those drugs that they sold to the State Medicaid programs, we thought the Congress had then sent a message that said to the pharmaceutical manufacturers of this country that no longer are you going to continue increasing your prices over the cost of inflation without some action by Congress.

So the Congress spoke. In the OBRA 90 of last October, we spoke, I think, in very clear terms. But what happened since October 1990 until 1991? At the present time, we have seen general inflation rise 2.9 percent in that 12-month period.

What have we seen the pharmaceutical manufacturers do, Mr. President? We have seen them increase the price of prescription drugs, not 2.9 percent, as is happening in Canada, for example, or might be happening in Germany or Great Britain, but we are seeing the cost of prescription drugs in that 12-month period rise 10.1 percent.

This is in keeping, Mr. President, with an overall inflation rate of prescription drugs over the past decade, which has consistently tripled the rate of general inflation. We have seen, for example, Mr. President, in prescription drug costs, since 1980 let us say, a bottle of pills that sold for $20, we have seen that same $20 bottle of pills increase to $53.76 in 1991. If this trend continues, Mr. President, that same cost of prescription drugs, that same $20 bottle of 1980 is going to, by 1995, cost $77.06. By the year 2000, 9 years from now, it will cost $120.88.

We have seen over the last decade a general rate of inflation of 58 percent—58 percent in the past 10 years. That is

the blue area on the chart, Mr. President, from July 1980 to July 1990.

In looking back over that decade, the price of prescription drugs has spiraled 152 percent—a staggering increase, especially a staggering increase for those citizens out there across our country who are victims of this price gouging, and who no longer can afford the price of being ill. We think that this is a situation, Mr. President, that can no longer continue.

Mr. President, as recently as yesterday, I visited CNN, along with a representative of the drug manufacturers. It was a public visit.

This particular chart demonstrates what the drug companies are doing today in compensating their executives. They say: We care about the poor people in America. We want to make certain that they not only have quality drugs, but that they are at a fair price. We want to make certain that there is a sense of basic fairness in the marketplace, where we are not taking advantage of anyone. Yet, we want to make a reasonable profit, so that we can develop and make more drugs to cure AIDS, cancer, Alzheimer's, and other diseases.

Well, Mr. President, let us look and see how the drug companies are making out. If we might look here at the average elderly household income.

I see my friend from Tennessee, Mr. SASSER, who is going to be speaking momentarily. He is a cosponsor, along with Senator COHEN, my colleague on the Aging Committee, the vice chairman of the Aging Committee from the State of Maine.

When we look at these figures, the median elderly household income in America today is $8,781.

Mr. President, we looked at the salary of the top 15 drug companies' executives in America. What would you imagine their salaries might be, Mr. President, of the CEO's of these companies that want to represent the people, and be fair, and give them a good deal? The median salary of the CEO's of these top 15 manufacturing companies salaries is $1.56 million. This is not stock. It is not stock options. It is not dues to the country clubs. It is not yachts, sailboats, Mercedes, chauffeurs, or limousines, or other perks. This is their base salary—$1.56 million, the median salary for the top CEO's of our 15 major drug companies.

Then the drug companies come back and say to the Members of the Congress and the American public, "We would like to have these profits, because we must find a cure for cancer; we must find a cure for AIDS; we must find a cure for Alzheimer's disease that is affecting the elderly population of our country."

Let us look at this argument. We have taken one company, Ciba-Geigy, because we think what they have done is very, very representative of what is happening with many companies in the drug industry. While many companies are investing in research, there are many cutting back on research and adding to their profits by simply increasing their prices to try to find new ways to sell what we call "me too" drugs. These are not the breakthrough drugs. These are the drugs that duplicate the drugs that are already on the market. They change the color of the capsule. They might change the color of the box. They might hire huge marketing firms to find out how to get doctors to prescribe these particular drugs.

We think that in itself is an abuse that we are going to talk about a great deal later.

So the pharmaceutical manufacturers are not only pulling the wool over the eyes of Congress and the American people, but now they are getting in our pocketbook. They are getting in the pocketbook of the poorest of the poor to enrich the richest of the rich.

We think that the legislation that we are going to introduce today is going to be a step in the right direction.

My colleagues are going to be called upon in just a moment to make a presentation and statements. Let me ask my colleagues if they are aware of a section in the Internal Revenue Service Code called the section 936 program? You can pick up the phone and you can call any tax lawyer or CPA and you can say, "What is the section 936 program?" Well, a moment of history:

In the 1920's, this country adopted legislation which said that we want to help the territories of the United States, such as Puerto Rico, we want to help the Philippines, we want to create jobs in those territories to help bolster them economically. So section 936 became a part of the Tax Code. Any industry basically could use it. You could go to Puerto Rico, you could set up a plant, and if you hire a native worker there, you get a tax credit.

For example, if you are a shoe manufacturer and you want inexpensive labor, you can set up a manufacturing operation in Puerto Rico. The amount of the tax credit, Mr. President, is not based on good will, it is not based on altruism, it is not based on what is going to be good for the economy of Puerto Rico; it is based, rather, on what is going to be good for the economy and the finances of the drug companies. Because of the enormous profits that the drug companies are making, under section 936, a drug company can get a tax credit—unbelieveable but true—of $70,788 per employee that they hire in Puerto Rico for an average salary paid of $24,500.

Mr. President, I know this is incredible, but these are the figures from the Internal Revenue Service, based on the latest available data in 1987.

Today in 1991, because drug profits have gone up even more; we would anticipate that this $70,000 may even be higher now.

Mr. President, we are going to say in our legislation that those drug companies that are taking advantage of this section of the Tax Code, when they increase their drug prices over the price of the general inflation rate, we are going to take away some of these section 936 tax credits.

Further, we are going to say that the savings, the billions of dollars in savings, from this tax credit reduction, first, are going to go for deficit reduction and, second, are going to go to establish demonstration projects across America to help Medicare beneficiaries—the elderly in our country—afford their prescription drugs.

Third, this legislation is going to establish a new board. I know that no one wants to establish a new board, but we are going to establish a new board that represents the people. It is going to become, we hope, the people's advocate against the drug manufacturers in trying to get a better deal. This board will be called the Prescription Drug Policy Review Commission. This Commission would determine the feasibility of establishing a Canadian-like drug price review board, here in our country, which has helped contain the drug prices in Canada. We are going to see if that would be feasible here. We are going to analyze international prescription drug pricing trends. American consumers pays more for their drugs than the citizens of any other industrialized country of Europe or in Canada. And finally, we are going to make policy recommendations aimed at containing drug cost increases for Medicare and Medicaid and other public and private programs.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 2000

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 "Prescription Drug Cost Containment Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) although prescription drugs represent one of the most frequently used medical care interventions in treating common acute and chronic diseases, many Americans, especially elderly and other vulnerable populations, are unable to afford their medications because of excessive and persistent prescription drug price inflation;

(2) between 1980 and 1990, prescription drug price inflation was triple the rate of general inflation, and in the first half of 1991, prescription drug price inflation increased even faster, exceeding 3½ times the rate of general inflation on an annualized basis;

(3) because of the limited availability of private or public prescription drug coverage for the elderly, prescription drugs represent

the highest out-of-pocket medical care cost for 3 of 4 elderly patients, surpassed only by costs of long-term care services;

(4) prescription drug manufacturers continue to make enormous profits on the backs of the elderly, poor, and other vulnerable populations that are unable to afford their medications;

(5) the Federal Government and American taxpayer provide substantial subsidies to the pharmaceutical industry in the form of tax incentives, tax write-offs, and grants for non-research activities;

(6) for example, in 1987 alone, the pharmaceutical industry received a section 936 tax credit of more than $1,400,000,000, and such credit is estimated to have yielded over $2,000,000,000 in tax breaks in 1990 to such industry; and

(7) in addition, there is a need to determine whether Federal subsidies are used in the most efficient manner by the pharmaceutical industry to develop drugs which represent true therapeutic advances over those products already on the market.

(b) PURPOSES.—The purposes of this Act are—

(1) to insure that elderly patients and all Americans have access to reasonably-priced pharmaceutical products;

(2) to establish a medicare outpatient prescription drug benefit demonstration project and trust fund;

(3) to provide for the establishment of the Prescription Drug Policy Review Commission and a study of the impact of a pharmaceutical price review board on containing price inflation on prescription pharmaceutical products in the United States;

(4) to provide for a study on how Federal tax credits and subsidies and market exclusivity given to the pharmaceutical industry can be used to modify an individual manufacturer's pricing behavior and research priorities; and

(5) to provide the Federal Government with information on drug prices in other industrialized nations.

SEC. 3. REDUCTION IN POSSESSIONS TAX CREDIT FOR EXCESSIVE PHARMACEUTICAL INFLATION.

(a) IN GENERAL.—Section 936 of the Internal Revenue Code of 1986 (relating to Puerto Rico and possession tax credit) is amended by adding at the end the following new subsection:

"(i) REDUCTION FOR EXCESSIVE PHARMACEUTICAL INFLATION.—

"(1) IN GENERAL.—In the case of any manufacturer of single source drugs or innovator multiple source drugs, the amount by which the credit under this section for the taxable year (determined without regard to this subsection) exceeds the manufacturer's wage base for such taxable year shall be reduced by the product of—

"(A) the amount of such excess, multiplied by

"(B) the sum of the reduction percentages for each single source drug or innovator multiple source drug of the manufacturer for such taxable year.

"(2) MANUFACTURER'S WAGE BASE.—For purposes of this subsection—

"(A) IN GENERAL.—The manufacturer's wage base for any taxable year is equal to the total amount of wages paid during such taxable year by the manufacturer to eligible employees in Puerto Rico with respect to the manufacture of single source drugs and innovator multiple source drugs.

"(B) ELIGIBLE EMPLOYEES.—The term 'eligible employee' means any employee of the manufacturer (as defined in section 3121(d)) who is a bona fide resident of Puerto Rico and subject to tax by Puerto Rico on income from sources within and without Puerto Rico during the entire taxable year.

"(C) WAGES.—The term 'wages' has the meaning given such term by section 3121(a).

"(3) REDUCTION PERCENTAGE.—For purposes of this subsection—

"(A) IN GENERAL.—The reduction percentage for any drug for any taxable year is the percentage determined by multiplying—

"(i) the sales percentage for such drug for such taxable year, by

"(ii) the price increase percentage for such drug for such taxable year.

"(B) SALES PERCENTAGE.—The sales percentage for any drug for any taxable year is the percentage determined by dividing—

"(i) the total sales of such drug by the manufacturer for such taxable year, by

"(ii) the total sales of all single source drugs and innovator multiple source drugs by the manufacturer for such taxable year.

"(C) PRICE INCREASE PERCENTAGE.—The price increase percentage for any drug for any taxable year is the percentage determined by multiplying—

"(i) 20, times

"(ii) the excess (if any) of—

"(I) the percentage increase in the average manufacturer's price for such drug for the taxable year over such average price for the base taxable year, over

"(II) the percentage increase in the Consumer Price Index (as defined in section 1(g)(5)) for the taxable year over the base taxable year.

"(D) TOTAL SALES.—

"(i) DOMESTIC SALES ONLY.—Total sales shall only include sales for use or consumption in the United States.

"(ii) SALES TO RELATED PARTIES NOT INCLUDED.—Total sales shall not include sales to any related party (as defined in section 267(b)).

"(E) AVERAGE MANUFACTURER'S PRICE.—The term 'average manufacturer's price' for any taxable year means the average price paid to the manufacturer by wholesalers or direct buyers and purchasers for each single source drug or innovator multiple source drug sold to the various classes of purchasers.

"(F) BASE TAXABLE YEAR.—The base taxable year for any single source drug or innovator multiple source drug is the later of—

"(i) the last taxable year ending in 1991, or

"(ii) the first taxable year beginning after the date on which the marketing of such drug begins.

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) MANUFACTURER.—

"(i) IN GENERAL.—The term 'manufacturer' means any person which is engaged in—

"(I) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

"(II) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

"(ii) CONTROLLED GROUPS.—For purposes of clause (i)—

"(I) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(II) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subclause shall be based on principles similar to the principles which apply in the case of subclause (I).

"(B) SINGLE SOURCE DRUG.—The term 'single source drug' means a drug or biological which is produced or distributed under an original new drug application or product licensing application, including a drug product or biological marketed by any cross-licensed producers or distributors operating under the new drug application or product licensing application.

"(C) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug (within the meaning of section 1927(k)(7)(A)(i) of the Social Security Act) that was originally marketed under an original new drug application or a product licensing application approved by the Food and Drug Administration.

"(5) SPECIAL RULES.—For purposes of this subsection—

"(A) DOSAGE TREATMENT.—Except as provided by the Secretary, each dosage form and strength of a single source drug or innovator multiple source drug shall be treated as a separate drug.

"(B) ROUNDING OF PERCENTAGES.—Any percentage shall be rounded to the nearest hundredth of a percent.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4. MEDICARE OUTPATIENT PRESCRIPTION DRUG PROGRAM DEMONSTRATION PROJECT.

(a) IN GENERAL.—Not later than October 1, 1992, the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall establish no less than 15 demonstration projects in counties (or other geographic areas) located in different States in rural and urban areas. Each of the counties (or other geographic areas) designated shall have a significant proportion (as determined by the Secretary) of individuals eligible for medicare benefits under title XVIII of the Social Security Act.

(b) PURPOSE.—(1) The purpose of demonstration projects conducted under this section is to assess—

(A) the impact on cost, quality of care, and access to prescription drugs of developing (in each geographic area) a medicare outpatient prescription drug benefit using various forms of benefit design and reimbursement policies, and

(B) the impact on cost and quality of care of extending coverage of outpatient prescription drugs to medicare beneficiaries served by community health centers.

(2) The partial purpose of at least 5 of the demonstration projects is—

(A) to assess the impact on quality of care and reduction in other health care service expenditures of reimbursing pharmacists separately for providing ongoing drug utilization management (including medication regimen review) to insure that prescriptions are appropriate, medically necessary, and unlikely to result in adverse medical results;

(B) to reimburse pharmacists (or other persons authorized to dispense drugs under State law) under such projects based on marketplace pricing; and

(C) to use an electronic, on-line claims capture and adjudication component in such projects to process medicare prescription drug claims.

(c) PROJECT REQUIREMENTS.—(1) A project conducted under this section shall provide for coverage of all drugs and biologicals approved by the Federal Food and Drug Administration and all medically accepted indications of these drugs as indicated in the 3 national compendia of drug use standards: the USP-DI, AHFS-DI, and AMA-DE.

(2) In each geographic area in which a project is conducted, a Drug Use Review Board (hereinafter referred to as the "DUR Board") shall be established which shall consist of a sufficient number of actively practicing physicians and pharmacists from the geographic area who shall possess knowledge in pharmacology and therapeutics, especially as it relates to drug use with respect to the elderly. In lieu of establishing a DUR Board in the area, functions of the DUR Board may be performed by the State medicaid DUR Board established under section 1927(g) of the Social Security Act.

(3) The DUR Board established under this section shall be responsible for recommending the design and development of the medicare prescription drug benefit within the geographic area. It shall establish a program of prospective and retrospective drug use review for medicare beneficiaries entitled to drug benefits under the project. The Board shall also develop appropriate educational interventions to ensure that drugs are prescribed and dispensed in accordance with standards that are described in the 3 national medical compendia and the peer-reviewed medical literature.

(4) In assessing the total costs of the medicare prescription drug benefit, the DUR Board should consider various levels of discounts, rebates (or other appropriate incentives), and inflation containment mechanisms that could be negotiated with, or required from, pharmaceutical manufacturers as a condition of participating in the program, such as the discounts and rebates provided to the medicaid program under section 1927 of the Social Security Act.

(d) DURATION OF PROJECTS.—The demonstration projects established under this section shall be conducted for a period of 5 fiscal years beginning October 1, 1992, except that the Secretary may terminate a project before the end of such period if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(e) EVALUATION AND REPORT OF SECRETARY.—The Secretary shall fund an independent evaluation of the demonstration projects and shall report to the Congress on the results of such evaluation no later than 5 years from the date of enactment of this Act. The report of the Secretary shall review the impact on cost and quality of care of the various forms of benefit design and reimbursement policies to provide prescription drugs to medicare beneficiaries and make recommendations on the applicability of the demonstration projects to other medicare beneficiaries.

SEC. 5. ESTABLISHMENT OF MEDICARE OUTPATIENT PRESCRIPTION DRUG TRUST FUND.

Part B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1841 the following new section:

"MEDICARE OUTPATIENT PRESCRIPTION DRUG TRUST FUND

"SEC. 1841A. (a) There is established in the Treasury of the United States a trust fund to be known as the 'Medicare Outpatient Prescription Drug Trust Fund' (hereafter in this section referred to as the 'Trust Fund'), consisting of such gifts and bequests as may be made as provided in section 201(i)(1) and amounts transferred to such Trust Fund under subsection (b).

"(b) There are hereby appropriated to the Trust Fund amounts equivalent to the additional revenues raised as a result of the amendments made by section 3(a) of the Prescription Drug Cost Containment Act of 1991. The amounts required to be transferred to the Trust Fund under the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(c) The provisions of subsections (b) through (i) of section 1841, as in effect on the day before the date of the enactment of the Prescription Drug Cost Containment Act of 1991, shall apply to the Trust Fund in the same manner as such provisions apply to the Federal Supplemental Medical Insurance Trust Fund.

"(d)(1) Of the amounts in the Trust Fund—

"(A) an amount determined under paragraph (2) shall be available for each of the fiscal years 1993 through 1997 for making expenditures to carry out the demonstration projects established under section 4 of the Prescription Drug Cost Containment Act of 1991;

"(B) $1,000,000 shall be available for each fiscal year beginning with fiscal year 1993 for—

"(i) the administrative expenses of the Prescription Drug Policy Review Commission, and

"(ii) the report required under section 7 of the Prescription Drug Cost Containment Act of 1991; and

"(C) such funds, as provided in appropriation Acts, beginning with fiscal year 1998 shall be available to the Secretary of Health and Human Services to improve the accessibility of prescription drugs to the elderly.

"(2)(A) For purposes of paragraph (1)(A), the amount determined under this paragraph is—

"(i) for fiscal year 1993, $200,000,000, and

"(ii) for fiscal years 1994, 1995, 1996 and 1997, the dollar amount for the previous fiscal year, increased by the cost-of-living adjustment.

"(B) For purposes of subparagraph (A), the cost-of-living adjustment for any fiscal year is the percentage (if any) by which—

"(i) the CPI for the previous fiscal year, exceeds

"(ii) the CPI for fiscal year 1992.

"(C) For purposes of subparagraph (B), the CPI for any fiscal year is the average of the Consumer Price Index for prescription drugs as of the close of the 12-month period ending on June 30 of the previous fiscal year.

SEC. 6. PRESCRIPTION DRUG POLICY REVIEW COMMISSION.

(a) ESTABLISHMENT.—The Director of the Congressional Office of Technology Assessment (in this section referred to as the "Director" and the "Office", respectively) shall provide for the appointment of a Prescription Drug Policy Review Commission (in this section referred to as the "Commission"), to be composed of individuals with expertise in the provision and financing of inpatient and outpatient drugs and biologicals. The provisions of title 5, United States Code, governing appointments in the competitive service shall not apply to the appointment of members of the Commission.

(b) COMPOSITION.—(1) The Commission shall consist of 11 individuals. Members of the Commission shall first be appointed by no later than October 1, 1992, for a term of 3 years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than 4 members expire in any one year.

(2) The membership of the Commission shall include—

(A) recognized experts in the fields of health care economics and quality assurance, medicine, pharmacology, pharmacy, and prescription drug reimbursement,

(B) other health care professionals, and

(C) at least one individual who is an advocate of medicare and medicaid recipients.

(c) ANNUAL REPORTS.—The Commission shall submit to the Congress an annual report (by not later than January 1 of each year beginning with 1994) which shall include information and recommendations regarding national and international drug policy issues, such as—

(1) trends and changes in prices for prescription and non-prescription drugs in the inpatient and outpatient setting in the United States;

(2) trends and changes in prices for prescription drugs in other industrialized nations, such as Canada, Japan, and countries of the European Economic Community;

(3) the scope of coverage, reimbursement, and financing under titles XVIII and XIX of the Social Security Act (including the structure and operation of the demonstration projects provided under section 4 of this Act), and other programs that directly provide or receive Federal funds to provide coverage for or reimbursement of prescription drugs, such as the Department of Veterans Affairs, the Department of Defense, and Public Health Service clinics;

(4) the availability and affordability of prescription drugs for various population groups in the United States, and the accessibility and affordability of public and private insurance programs for prescription drugs for such population groups;

(5) changes in the level and nature of use of prescription drugs by recipients of benefits under titles XVIII and XIX of the Social Security Act, taking into account the impact of such changes on aggregate expenditures under these titles;

(6) suggestions to make prescription drugs more affordable and cost-effective for third party insurers, including State-based pharmaceutical assistance and general assistance programs;

(7) evaluation of technologies available for efficient third party prescription drug program administration, such as electronic claims management and payment technologies;

(8) methods of providing reimbursement under Federal health care programs to providers for drug products and cognitive services;

(9) evaluation of the use and efficiency of all Federal tax credits and subsidies given to the pharmaceutical industry for various purposes, including the tax credit allowed under section 936 of the Internal Revenue Code of 1986; and

(10) evaluation of the impact on total health care expenditures in other industrialized nations of switching prescription drugs to non-prescription status, and the role of various health professionals in the distribution of such non-prescription drugs.

(d) SPECIAL REPORT.—(1) The Commission shall submit to the Committee on Finance of the United States Senate, the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives, and the Special Committee on Aging of the United States Senate, by not later than October 1, 1993, a study of the feasibility of establishing in the United States a pharmaceutical products price review board.

(2) In conducting the study, the Commission shall—

(A) assess the impact of such a board in other industrialized nations, such as Canada, in containing the costs of prescription drugs and the introductory price of new drugs;

(B) suggest how such a board might operate in the United States, including the membership of the Board;

(C) suggest guidelines that might be used by the board in determining whether prices or price increases for prescription drugs are excessive and whether the introductory prices on new drugs are excessive; and

(D) suggest incentives for drug manufacturers to price their products fairly in the United States, including a system of compulsory licensing of pharmaceutical products or a reduction in the period of market exclusivity as a penalty for excessive inflation.

(e) ADMINISTRATIVE PROVISIONS.—Section 1845(c)(1) of the Social Security Act (42 U.S.C. 1395w-1(c)(1)) shall apply to the Commission in the same manner as such section applies to the Physician Payment Review Commission.

SEC. 7. REPORT ON FEDERAL SUBSIDIES AND INCENTIVES PROVIDED TO THE PHARMACEUTICAL INDUSTRY.

(a) REPORT.—By not later than July 1, 1992, the Secretary of Health and Human Services, acting in consultation with the Secretary of the Treasury, shall submit a report to the Committee on Finance of the United States Senate, the Committee on Energy and Commerce and the Committee on Ways and Means of the United States House of Representatives, and the Special Committee on Aging of the United States Senate, on Federal subsidies and incentives provided to the pharmaceutical industry. Such report shall include—

(1) a determination of the total cost over the 5 immediately preceding fiscal years to Federal taxpayers of all Federal subsidies provided to the pharmaceutical industry (including tax incentives, subsidies, grants, and any other financial support);

(2) a description of—

(A) the purposes for which such Federal subsidies are used by the pharmaceutical industry;

(B) the Federal role in researching and developing patented pharmaceutical products and the extent to which the Federal Government should co-license certain drugs and biologicals;

(C) the extent to which pharmaceutical industry marketing research costs are incorporated into allowable Federal tax credits;

(D) comparable financial incentives, subsidies, and tax credits provided to the pharmaceutical industry by other industrialized nations and the use of such incentives, subsidies, and credits by such industry;

(E) the relationship between the total Federal financial support provided to the pharmaceutical industry by the United States and other industrialized nations and the prices paid by the citizens of such respective nations for prescription drugs; and

(F) the extent to which tax credits provided by the Federal Government subsidize total worldwide pharmaceutical industry research and development; and

(3) recommendations on how Federal tax credits to pharmaceutical manufacturers and marketing exclusivity for drug products may be related to—

(A) an individual manufacturer's pricing behavior in the marketplace; and

(B) the relative therapeutic value of new pharmaceutical products researched, developed, and marketed in the United States.

SEC. 8. MANUFACTURER INTERNATIONAL DRUG PRICE REPORTING REQUIREMENTS.

Subparagraph (A) of section 1927(b)(3) of the Social Security Act (42 U.S.C. 1396r-8(b)(3)) is amended—

(1) by striking "and" at the end of clause (i),

(2) by striking the period at the end of clause (ii) and inserting ", and", and

(3) by adding at the end thereof the following new clause:

"(iii) not later than 30 days after the end of each calendar year, the average price that the manufacturer sold each covered outpatient drug in such calendar year in the following countries: Canada, Australia, and the countries of the European Economic Community.".

Mr. PRYOR. Mr. President, at this time I wish to yield to either of my colleagues.

Mr. President, I recognize now and I yield the floor to Senator COHEN of Maine.

Mr. COHEN. Mr. President, I thank the Senator for yielding.

Mr. President, I am pleased to join my colleague, Senator PRYOR, the distinguished chairman of the Special Committee on Aging, in introducing legislation to address the problem of skyrocketing costs of prescription drugs.

Americans are becoming more and more alarmed about the high cost of health care, both in terms of out-of-pocket health care expenses, and runaway costs of insurance premiums. I have joined with my colleagues from both sides of the aisle in devising major proposals aimed at containing health care costs, and the merits of these proposals will be debated in the coming months.

While a comprehensive overhaul of our Nation's health care system may be many months in coming, passage of the bill we are introducing today would be a major leap toward lower health care costs by lowering the out-of-pocket costs of prescription drugs for millions of Americans. I am pleased to note that this bill has the support of over 40 major senior citizen, consumer, and small business groups.

Mr. President, as the Senator from Arkansas has made clear, a trip to a pharmacy for a prescription drug has become a journey into a Chamber of financial horrors for many Americans. Families with no insurance, or with no prescription drug coverage under their insurance policies dread a trip to the doctor for fear of what their prescription drugs will cost.

High drug prices are especially devastating for senior citizens. So many of us have seen our mothers and fathers spread across the table an array of medications that they must take daily for a variety of conditions. It is little wonder, then, why unrelenting drug prices hit senior citizens especially hard. In addition to being major consumers of prescription drugs, most elderly do not have prescription drug coverage themselves, and Medicare does not provide coverage of outpatient prescription drugs. In fact, prescription drug prices are the highest out-of-pocket medical expense for 3-out-of-4 elderly Americans.

Senior citizens in my State of Maine are greatly worried by high drug prices. For example, in 1989 one of Maine's Area Agencies on Aging surveyed seniors and volunteers working with seniors to identify their 10 greatest needs. From a list of 30 items, those taking the survey listed the rising cost of prescription drugs as the No. 1 concern of the elderly.

Recently, the Congressional Budget Office concluded that a full 60 percent of Medicare enrollees face potentially catastrophic out-of-pocket expenses, either because they have no supplemental Medicare coverage, or because their supplemental coverage does not include prescription drugs. When we stop to consider that, over the past decade, prescription drugs have increased three times as fast as the general inflation rate, it is no surprise that drug prices are taking a greater and greater bite out of the fixed incomes of our senior citizens.

While Americans are scrimping to pay for their medications, the profits of drug companies are soaring far above those of other industries. Recently, the Senate Special Committee on Aging, on which I serve as the ranking Republican member, released a staff report that included many shocking statistics on how drug companies have enjoyed profits soaring into the stratosphere at the direct expense of the consumer.

It has been argued by some that the drug companies are the only ones making a profit, and that we should thank God we have the drug companies to help pick up the slack in our economy. The fact is that we are learning that most every other industrialized country has some cost containment mechanism to control the cost of prescription drugs. What we are seeing is a cost shifting to the American taxpayer because there is, in fact, an interlocking network of drug companies and their research and development programs. So while the prices are being controlled in other countries, the prices are allowed to go without any restraint in our country.

Free market system? Are we impinging on it? The question I would have is

what choice do our elderly citizens have when a doctor prescribes a drug for their precondition? Take it or leave it? Live or die?

Mr. President, we find ourselves in one of those good-news bad-news jokes. The good news is that, as a result of the inventiveness and the research and technology that has been applied by our drug companies, we can develop a drug that will save your life. The bad news is you cannot afford it. And that is what more and more people are finding in our society.

During the 1980's, the prescription drug price inflation rate tripled the general inflation rate and rose, on average, almost 20 percent more each year than even medical inflation in general. Once more, the annual average profit margin of the drug industry is now more than three times the profit margin of the average Fortune 500 company. These exorbitant profits are far above those necessary to finance the legitimate research and development costs of drug companies. In fact, the Aging Committee investigation found that the drug industry is spending a billion dollars more per year on public relations than it is spending on research expenses.

In fact, some drug manufacturers offer cash payments to doctors for prescribing their drugs, or tempt doctors with lavish gifts or vacations. Taxpayers should not be footing the bill for these questionable marketing practices.

To illustrate how high drug prices have become, the average American now must pay $54 for a bottle of pills that cost him or her $20 in 1980. If drug prices continue on their current course, this same prescription will cost the consumer about $77 in 1995, and $120 in the year 2000, representing an increase of over 600 percent.

These tremendous price increases and unparalleled profits of drug companies are unacceptable in light of the fact that the Federal Government now provides $2 billion annually to the prescription drug companies in the form of nonresearch and development tax credits. This so-called section 936 tax credit, which provides tax exemptions for business income earned in Puerto Rico, in effect lowers the effective tax rate of the drug industry by 9 percent. This tax subsidy is in addition to the hundreds of millions of dollars in tax credits that the drug companies receive for researching and developing new pharmaceutical products.

To illustrate how bad this situation has become, I have a family from the town of Skowhegan, ME, that has a monthly income of roughly $1,300 per month in Social Security, other pensions, and disability payments. They spend $690 a month for prescription drugs for Parkinson's disease and heart disease, which is over half of their monthly income. In addition, they have to pay another $60 a month out of pocket for the wife's medication for heart disease. They do not even qualify for Medicaid. Mr. President, their total out-of-pocket expenses of $750 for prescription drugs represent 58 percent of their combined monthly income. And that does not take into account the long, cold winter months that are coming.

The bill we are introducing today provides an important incentive for the drug companies to lower their windfall profits that are taking such a toll on individuals and families nationwide. Namely, drug manufacturers would lose portions of their section 936 tax credits if the increase their prices beyond the general inflation rate. This proposal is designed to pull the plug on the tax subsidies that the Federal Government provides the drug companies if they do not take steps to curb their excessive profits. While the companies may attack this approach as unfair price controls it is only fair that the Federal Government reassess the subsidies it provides an industry through the Tax Code when that industry is making windfall profits at the expense of the American consumer.

We must stop allowing the Federal Tax Code from supporting a prescription drug pricing system that has millions of Americans in a financial chokehold. Too many drug companies are stuffing money from the Treasury in one pocket and money from hard-hit consumers in the other.

The savings from the reduced tax credits would be funneled into a new prescription drug trust fund which would finance 15 demonstration projects providing outpatient prescription drugs to Medicare beneficiaries. Additional savings would be used to reduce the deficit.

Further, the bill would establish a Prescription Drug Policy Review Commission, to analyze trends in national and international drug prices and make recommendations on improving the coverage and financing of prescription drugs under Federal programs, such as Medicare and Medicaid. The Commission would also be charged with studying whether a drug price review board should be established in the United States.

Finally, the bill requires the Secretary of the Department of Health and Human Services to study and report to Congress on the value of all the grants, subsidies, and writeoffs that are now given to the prescription drug companies by the Federal Government.

Mr. President, consumers are fed up with the outrageous costs of prescription drugs and it is time for us to address this spiraling health care cost. While we cannot underestimate the tremendous, and indeed, often life-saving, importance of prescription drugs to millions of Americans, we must take steps to make these drugs affordable and accessible. The legislation we are introducing today will go far toward achieving this goal.

Finally, Mr. President, I want to thank and congratulate my colleague, Senator PRYOR, for his leadership on this important issue. He has been dogged and unceasing in his pursuit of affordable prescription drug prices, first for the Medicaid Program, and now for all Americans, especially senior citizens. We owe him greatly for his dedication in this area and I look forward to working with him on the Aging Committee on this and many other ways to bring quality health care within the financial reach of senior citizens.

Mr. PRYOR. Mr. President, I want to thank the Senator from Maine for his comments. And I would like to just note, Mr. President, for the record, that this is not a partisan affair. This is not something the Democratic Party has cooked up over here on this side of the aisle. This is an issue that transcends political parties and transcends politics.

Senator COHEN, who is the ranking member of the Senate Special Committee on Aging, is one of the major moves in this whole area of trying to bring fairness into the prescription drug pricing for our citizens. I want to thank the very distinguished Senator from Maine and my very good friend, the vice chairman on the Special Committee on Aging.

Mr. President, at this time, my friend from the State of Tennessee, Senator SASSER, is on the floor, and I yield to Senator SASSER at this time for as much time as he may consume.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Tennessee.

Mr. SASSER. Mr. President, I thank my friend from Arkansas for yielding. I am pleased to join with my good friend from Arkansas today in introducing the Prescription Drug Cost Containment Act of 1991. This is legislation which I think is of critical importance to the health of all of our citizens here in this country.

I want to commend at the outset Senator PRYOR's tireless efforts to address the runaway costs of prescription drugs. I think his efforts deserve the praise of every Member of this body.

Mr. President, we simply must find a way to ensure access to affordable quality health care for all of our citizens here in this country. We all have ideas about how to achieve the goal of quality accessible health care for our citizens. As a matter of fact, literally dozens of proposals have been made in this area.

But skyrocketing medical costs are blocking the road toward fundamental health care reform in this country. We have all seen the latest figures. Last year, we as a Nation spent over $600 billion on health care—over $660 billion

last year was spent on health care. That represents almost 13 percent of everything we produce in this country—13 percent of our gross national product. If this trend continues—and we surely cannot allow it to continue—we will be spending 16.4 percent of our total national output on health care by the end of this decade.

Unless we get a handle on these costs, Mr. President, any attempt to extend medical care coverage to 35 million Americans who presently lack health insurance is doomed to failure. And I might say, Mr. President, that today the United States of America is spending over twice as much of its GNP, its gross national product, on health care than the Japanese are, and yet they extend health care coverage to all of their citizens, and we have 35 million who have no health care whatsoever.

Last year, I chaired a Senate Budget Committee hearing which looked into the dimension and causes of our country's health care inflation problem. It was clear to me at that time that there are a number of areas in which medical costs are simply totally out of line.

Eight months ago, I began an investigation into the waste and inefficiency in Medicare's Durable Medical Equipment Program. As many of my colleagues know, we found a $2 billion program—a $2 billion Medicare Program dealing with durable medical equipment—that was losing more than 10 percent of its annual budget to waste, inefficiency, and mismanagement.

Just this last month, after months of investigation and hearings before the Senate Budget Committee, I introduced legislation to correct many of these loopholes—to close them—loopholes that were being exploited by unscrupulous medical equipment dealers.

I am pleased to advise my colleagues that the Secretary of Health and Human Services, Secretary Louis Sullivan, announced just last month that the Department of Health and Human Services will, by regulation, adopt much of the language of the legislation which I have introduced in order to stem the flow of wasted tax dollars from the Medicare system.

I am gratified that the Department of Health and Human Services has taken notice of our efforts to expose this waste and abuse and is moving unilaterally to try to close some of the loopholes themselves.

I should mention that my able and distinguished colleague from Arkansas has been very much involved in this issue, and the Special Committee on Aging, which Senator PRYOR chairs, has also held hearings on this very serious problem. I am pleased to have him as a cosponsor of our legislation, and I look forward to working with him to pass the additional reform measures which are so badly needed.

All of us realize that this country delivers the best medical care in the world to those who can afford it, but ever spiraling costs are driving medical care beyond the reach of millions of our fellow Americans.

I see my involvement in the legislation that we are introducing today to limit the price increases on drugs as a logical and important step in the battle to lower health-care costs.

I think the figures that have been provided are simply staggering.

If we look at a chart that has been prepared by the Senate Committee on Aging, we see that the general inflation rate over the past decade has been 58 percent. But when we look at the general inflation rate of prescription drugs, they have gone up over three times higher than the general inflation rate; a 152-percent increase in prescription drug prices just over the past 10 years.

The Aging Committee has uncovered dozens of examples of medicines that have risen in costs astromically during the last several years. Let me cite just a few.

In 1980, the commonly prescribed heart medicine, Lanoxin, cost $1.25 per 100-tablet package. Today, that same prescription costs $9.40, an increase of 652 percent over a 10-year period.

Mr. President, this is just one example of an industry that is out of control.

I would like to also take another look at a couple of charts that were discussed just a moment ago. The second chart, if we may look at it again, shows drug inflation between October 1990 and October of just this year. We are talking about 1 year, Mr. President. As we can see, the chart illustrates very graphically that, between October 1990 and October 1991, we had a general price inflation of 2.9 percent, almost 3 percent.

But, look at what happened to prescription drugs in the same period of time. Prescription drugs went up 10 percent, almost 300 percent higher than the ordinary rate of inflation during the period from October 1990 to October 1991.

Let us look at a third chart, if we may. What we will see is that a prescription that costs $20 in 1980 costs almost $54 today. By the year 2000, that prescription will cost $120. If the same drug that cost $20 in 1980 increased at the general rate of inflation, rather than costing almost $54 in 1991, it would be $20 cheaper, $33 in 1995. If it continues to increase at the present rate, it will be up to $77, whereas, if the drug increased at the general rate of inflation, it would be some $33 cheaper, at $39.

We see it goes on out to the year 2000. The general inflation rate between 1980 and the year 2000 would have doubled the price of the drug. But at the rate of increase for drug prices, it would have gone up to $120 from the price of $20 in 1980.

Mr. President, my fellow Tennesseans simply cannot afford to pay these prices. These price increases are making prescription drugs less accessible to those who are elderly, who are living off fixed incomes, to those who work for a living, to those without health insurance. They simply cannot afford to buy the medications that their doctors tell them are necessary for life.

I do not believe there is any reasonable justification for this type of huge increases we have seen across the industry in the prices of prescription drugs. This becomes very clear if we look at the profit margins realized by drugmakers in recent years. In 1990, the average Fortune 500 company posted a profit of 4.6 percent, but the 10 largest pharmaceutical companies, those who make the prescription drugs, posted a profit margin 300 percent higher than that posted by the Fortune 500 companies.

Last year, the pharmaceutical industry, the industry that makes these prescription drugs that those who are ill have to have, led all the industries in the United States in each of the three most commonly used profitability measures. In fact, I am advised that the prescription drugmakers' profits in 1990 were almost twice that of the second most profitable industry in this country.

I have no objection to American companies making a profit. In fact, we all applaud the fact that American companies can make a profit. But I think these profit margins are out of line when they come at the expense of the health and well-being of the most vulnerable of our citizens. Average middle-class Americans are finding it impossible to make ends meet while trying to pay the ever increasing costs of prescription drugs.

The huge increases we have seen in prescription drug prices, in my view, amount to nothing less than piracy at the expense of those who are ill. My colleague, Senator PRYOR, has already demonstrated to us the very high salaries paid to drug company officials. These executives can sit behind their desks. Perhaps they are not aware of what I see when I go into the drugstores of my native State of Tennessee, when I see elderly people standing before the drug counter having to make a decision about whether they have the money to buy this prescription drug that their doctor tells them they have to have, whether they will have enough money left over to buy food, to pay their rent, to pay their electrical bill. I have seen their faces myself. Thousands of Tennesseans and literally millions of Americans have found they can simply no longer afford to pay the price of prescription drugs. They are forced to walk away from the prescription counter without the medication that they desperately need.

I say enough is enough. In my view, action by the Congress to remedy this

problem is not only prudent, but absolutely necessary. Legislation has been drafted, under the leadership of Senator PRYOR, and I am pleased to join with him, to slow the unreasonable and skyrocketing cost of prescription medicines. I am proud to add my efforts as a cosponsor. This bill will go a long way, I think, toward dealing with the problem of prescription drugs and pharmaceutical companies. It establishes a drug policy review commission with wide-ranging authority, including the investigation of the feasibility of a national drug price review board.

Second, the legislation will curtail the use of a little-known tax credit that has been taken advantage of by the pharmaceutical companies called the possessions tax credit. This benefit allowed drugmakers with operations in Puerto Rico, for example, to reap a $2 billion tax windfall in 1990.

Third, the bill will use the money saved by the preceding provision to fund a 3-year, 15-site Medicare outpatient prescription drug demonstration project. This project will provide outpatient drug coverage not currently provided by Medicare. This legislation will be the first step in reining in drug company excesses which are unjustified and which we as a nation can no longer afford.

I do think we ought to take cognizance of at least the efforts of one or two pharmaceutical firms here, who have tried to be reasonable on their own. Merck, Sharp, Dohme, considered to be one of the world's most research intensive pharmaceutical firms, restricts its price increases to the general inflation rate. They are to be commended for that. I am also advised that the Schering-Plough Co., which has some nonprescription operations in my own State of Tennessee, has shown some restraint in their pricing practices also.

But, Mr. President, I think we all owe a debt of gratitude here today to our friend from Arkansas, Senator PRYOR, for his unstinting efforts to bring some reasonableness to the pricing of these very vital pharmaceuticals which the elderly of our Nation and those who are ill rely on a day-to-day basis.

I yield, now, to the distinguished Senator from Arkansas for any further comments he might wish to make.

Mr. PRYOR. Mr. President, I thank my very good friend from Tennessee. He has long been interested in this issue. And in discussing this matter with him over the last several weeks, I will say that he has been most instrumental in not only encouraging us to introduce this legislation, but also to be involved in its development and deciding the characteristics of this legislation. I thank my friend from Tennessee, the distinguished chairman of the Senate Budget Committee.

Mr. President, I have only a few moments left, but in summary let me say I would like to thank the 42 organizations across America who are endorsing this legislation that we are introducing today.

For example—let me read just a few of them: The Small Business Legislative Council, United Auto Workers, the Older Womens League, the National Rural Electric Cooperative Association, the National Council of Senior Citizens, the AARP, AFL-CIO, Consumers Union, Families USA, Green Thumb, Independent Insurance Agents of America, Apha, the Leadership Council of Aging Organizations. There are 42 organizations, Mr. President.

I ask unanimous consent to have the names of those organizations that support us in the RECORD at this time. Mr. President, I also ask unanimous consent to have the bill printed in the RECORD and the bill's specifications, with an explanation and a section-by-section analysis.

Mr. President, we also have an R&D factsheet. I ask unanimous consent to have the research and development factsheet printed in the RECORD, which challenges the drug industry's claim that they need all this money for research and development of new drugs.

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

ORGANIZATIONS ENDORSING THE PRESCRIPTION DRUG COST CONTAINMENT ACT OF 1991

AFL-CIO.
AIDS Action Council.
American Association for International Aging.
American Association of Homes for the Aging.
American Association of Retired Person [AARP].
American Nephrology Nurses Association.
American Pharmaceutical Association.
AFSCME Retiree Programs.
American Public Welfare Association [APWA].
Asociacion Nacional Pro Personas Mayores.
Association for Gerontology in Higher Education.
Association for Gerontology and Human Development in Historically Black Colleges and Universities.
Catholic Golden Age.
Childrens Defense Fund [CDF].
Consumers Union.
Families USA.
Gray Panthers.
Green Thumb.
Independent Insurance Agents of America.
International Ladies Garment Workers Union [ILGWU].
Leadership Council of Aging Organizations [LCAO].
National Association of Area Agencies on Aging.
National Association of Foster Grandparents Program Directors.
National Association of Life Underwriters.
National Association of Meal Programs.
National Association of Older American Volunteers Programs Directors.
National Association of Retired Federal Employees.
National Association of RSVP Directors.
National Association of Senior Companion Project Directors.
National Association of State Units on Aging.
National Caucus and Center on Black Aged [NCBA].
National Committee to Preserve Social Security and Medicare.
National Consumers League [NCL].
National Council of Senior Citizens.
National Hispanic Council on Aging.
National Indian Council on Aging.
National Rural Electric Cooperative Association.
National Small Business United.
North American Transplant Coordinators Organization.
Older Womens League.
Small Business Legislative Council.
United Auto Workers Retired Members Department.

THE PRESCRIPTION DRUG COST CONTAINMENT ACT OF 1991

SUMMARY OF THE LEGISLATION AND LEGISLATIVE SPECIFICATIONS

General Background

For years, consumers and their advocates, businesses, insurers, health care providers, and the Congress have raised serious concerns about skyrocketing health care costs. From 1980 to 1990, prescription drug prices [CPI-Rx] inflated by a staggering 152 percent, while the general inflation rate [CPI-U] was 58 percent. This disturbing trend continues and is worsening in the 1990's. In fact, for the 12-month period between October 1990 and October 1991, the CPI-Rx was running at more than three times the rate of the CPI-U. These facts are particularly troubling to older Americans because prescription drug costs represent the highest out-of-pocket health care expenditure for three out of four elderly and 60 percent of this population have inadequate prescription drug coverage. Other vulnerable populations, particularly children and their parents, are also significantly burdened by these costs.

The September, 1991 Senate Special Committee on Aging staff report, "The Drug Manufacturing Industry: Prescription for Profits," outlines many distressing facts about prescription drug inflation, industry profits, marketing expenditures, internationall prices, and the degree to which Americans subsidize the drug manufacturing industry through the lavish nonresearch and development oriented tax credit provide under section 936 of the Internal Revenue Code. The report makes it clear that the drug manufacturing industry has exploited the section 936 tax credit well beyond the bounds of its intended purpose. This taxpayer-supported subsidy, in combination with the price increases and profits Americans are being forced to underwrite, well illustrate how this Nation is not receiving and adequate return on its multibillion-dollar investment on prescription drugs.

Legislative Summary

The Prescription Drug Cost Containment Act of 1991 addresses the prescription drug inflation problems by utilizing a carrot and stick tax incentive approach. Specifically, individual drug manufacturers would have reduced access to the section 936 tax credit if, and only if, the manufacturer increases prices beyond the general inflation rate. The drug manufacturing industry receives approximately $2 billion in section 936 tax credits each year. Under the proposal, revenue saved would be funneled into a new prescription drug trust fund to finance Medicare outpatient prescription drug demonstration projects and to reduce the deficit.

Section 1—Reduction in Section 936 (Possession) Tax Credit for Excessive Drug Inflation

Legislative Specifications: Amending section 936 of the Tax Code, section 1 establishes a formula that provides a strong tax incentive for drug manufacturers to keep price increases at or below the general inflation rate. The formula first compares the drug manufacturer's section 936 tax credit to the amount of wages it paid in Puerto Rico. If the manufacturer's section 936 tax credit exceeds the wages paid in Puerto Rico, the excess will be subject to a reduction of 20 percent of the 936 tax credit for each percentage point its drug prices increase over the general inflation rate [CPI-U]. The reduction formula will be applied on a drug by drug basis and be weighted according to the percent of sales that each drug accounts for the manufacturer's total drug sales. If the manufacturer's section 936 tax credit does not exceed wages paid, the reduction formula does not apply.

Background: While most Americans are aware that the drug industry receives hundreds of millions of dollars each year in tax credits for research and development of new drugs, few are aware the extent to which the drug industry avails itself to the multibillion dollar nonresearch and development section 936 tax credit.

The purpose of the credit is to stimulate the development of jobs in Puerto Rico. However, the tax credit is calculated based on the profits of a company, not on any basis related to jobs or wages. The result is a subsidy to the already enormous profit margins of the drug manufacturers, rather than to the Puerto Rican economy and its people. For example, the latest IRS data for 1987 indicate that the average drug company receives a tax credit of $70,788 per employee hired in Puerto Rico, which is 267 percent more than the average salary of $26,471 paid per employee.

The average drug company has a profitability of 15.4 percent, compared to the average Fortune 500 company which has an annual average profit of 4.6 percent. Because the Section 936 tax credit is based on profits, the drug companies get more tax credit per employee than any other manufacturing industry in Puerto Rico. In fact, the structure of the credit gives them the incentive to raise prices, because the more profits they make, the more section 936 tax credits they receive. As a result, almost 50 percent of all section 936 tax credits—almost $2 billion each year—go to drug manufacturing companies.

It is important to note that it is more than possible for drug companies to maintain inflation at the CPI-U, while still making significant investments in meaningful research. For example, Merck Sharp and Dohme, the world's most research intensive drug company, restricts it annual price increases to the CPI-U.

Section 2.—Establishment of Medicare Prescription Drug Benefit Demonstration Project and Trust Fund

Legislative Specifications: Section 2 provides that up to $200 million saved from the recapture of the 936 tax credit (and directly attributable to excessive and inflationary pricing practices of drug manufacturers) would be directed each year to a new Federal Prescription Drug Trust Fund. The Fund would finance the establishment of a 5-year, 15-site Medicare Outpatient Prescription Drug Demonstration program as well as the establishment of the Prescription Drug Policy Review Commission [RxPRC]. Revenue above the amount necessary to fund the Demonstration program would be directed for deficit reduction.

The demonstration requires that Medicare beneficiaries have access to all FDA-approved prescription drugs and that a physician-pharmacist Drug Use Review [DUR] program be utilized in each demonstration. The DUR program can be separate or linked into the Medicaid DUR programs required under OBRA 90. Discounts or rebates should be sought from drug manufacturers as a condition of participation in the project, and appropriate pharmaceutical inflation containment mechanisms should be developed.

Background: The Medicare program does not provide insurance protection against the costs of out-patient prescription drugs. Moreover, because of the high costs of these medications, few private Medicare supplemental insurance policies offer affordable prescription drug coverage. As a result, according to an August, 1991 report by the Congressional Budget Office, 60 percent of older Americans do not have adequate prescription drug insurance protection. It is therefore not surprising that, for three out of four elderly, prescription drug costs represent their highest out-of-pocket expenditure. To begin to address this situation, it is advisable that we study the feasibility of amending the Medicare program to provide at least some protection for some of the most vulnerable populations of our society.

Section 3—Establishment of U.S. Prescription Drug Policy Review Commission and Study on Price Review Board

Legislative Specifications: Section 3 provides for the establishment of a Prescription Drug Policy Review Commission [RxPRC]. The Commission would be responsible for analyzing trends in national and international prescription drug prices and making recommendations on providing or improving coverage, reimbursement, and financing for prescription drugs under federal health care programs, such as Medicaid and Medicare. In addition, it would monitor the use and effectiveness of the various financial incentives given to the drug industry, including the revised section 936 tax credit. Finally, the Commission would be charged with studying the feasibility of establishing a pharmaceutical products price review board in the United States. Membership on the Commission would include health care and pharmaceutical economists, physicians, pharmacists, other health care professionals, and consumer representatives.

The study of the price review board would:

(a) Assess the impact that such a board has had in other nations in containing the costs of old and new prescription drugs;

(b) Develop guidelines that might be used by the board in determining whether prices or price increases for drugs are excessive; and

(c) Evaluate possible incentives for drug manufacturers to price their products fairly, including a system of compulsory licensing of drug products and/or a reduction in the period of market exclusively (patent life) as a penalty for excessive inflation.

Background: The Medicare Catastrophic Coverage Act (MCCA) of 1998 provided for a RxPRC, which would advise Congress on policy matters relating to the operation of the Medicare outpatient prescription drug program established under the legislation. Although RxPRC was abolished along with the repeal of MCCA, there are many other public prescription drug programs, such as the $5 billion Medicaid prescription drug program, and private insurance prescription drug programs, that could significantly benefit from the establishment of a RxPRC. Congress benefits tremendously from information provided by the Prospective Payment Assessment Commmission [ProPAC] and the Physician Payment Review Commission [PhysPRC]. Unlike many industrialized nations, the United States does not have a commision that could provide accurate data and policy guidance on the U.S. prescription drug marketplace to Medicaid and other third party insurance plans. This could be accomplished through a RxPRC.

Section 4—Study on Federal Subsidies and Tax Write Offs Given to Drug Industry

Legislative Specifications: Section 4 instructs the Secretary of the Department of Health and Human Services, in consultation with the Secretary of the Treasury, to conduct a study of the value of all the federal tax grants, subsidies, and write offs given to the pharmaceutical industry.

Included in the study should be an assessment of:

(a) The value and designed purpose of federal subsidies of the drug industry;

(b) The federal role in researching and developing patented pharmaceutical products;

(c) Comparable financial incentives and tax credits provided to the drug industry by other industrialized nations; and

(d) How Federal tax subsidies can be modified to provide incentives for an individual drug manufacturer's pricing behavior and research priorities.

Background: While the industry receives hundreds of millions of dollars in tax write offs to research and develop new drugs, there is little evidence to suggest that the industry is bringing a significant number of innovative, breakthrough products to the market. Many of the drugs brought to market already duplicate what is available to physicians to prescribe, which are commonly called "me-too" drugs. There is also evidence that the manufacturers are using the drug research tax credit to write off expensive marketing research activities, some of which may be illegal.

In addition, there are many new drug research projects that are funded in whole or in part by federal grants or conducted in federal institutions, such as the National Institutes of Health [NIH]. For example, two drugs used to treat symptoms of AIDS—AZT [Retrovir] and Foscavir—were researched and developed primarily in Federal Government labs, yet private drug companies hold the patents. This monopoly allows the companies to charge exorbitant prices for these drugs. With thee facts in mind, it may make sense to restructure the R&D tax credits so that manufacturers have move incentive to bring more breakthrough drugs to market.

Section 5—Manufacturing Reporting of International Drug Prices

Legislative Specifications: Section 5 requires drug manufacturers to report to the the Health Care Financing Administration at the end of each calendar year, the average price that the manufacturer sold each of its drugs in Canada, Australia, and the countries of the European Economic Community.

Background: Under the OBRA 90 legislation, manufacturers are required to report to HCFA on certain prices for which they sell drug products in the United States. However, there is overwhelming evidence to suggest that American citizens pay some of the highest prices for drugs in the world when compared to Canadians and Europeans. It is important for HCFA and the Congresss to know how prices in the United States compare to

prices in other industrialized nations, especially since the United States provides billions of dollars in tax subsidies and incentives for the worldwide pharmaceutical industry, with little evidence to suggest that the result is lower drug prices for the American consumer.

For additional information about the legislation, or a copy of the Aging Committee staff report on which the legislation is based, contact either Chris Jennings or John Coster at the U.S. Senate Special Committee on Aging (202-224-5364).

FACTS COUNTERING DRUG INDUSTRY FICTION REGARDING RESEARCH AND DEVELOPMENT

Background: Anytime Congress is critical of the enormous profit margins of the pharmaceutical industry, or questions the need for the industry to raise prices in excess of three times the rate of inflation, the industry argues that they need these exorbitant profits and high prices to finance research and development. However, it is clear that their well-worn and re-recycled research and development argument is not going to sell anymore. Consider these facts:

Fact 1: Americans are already providing hundreds of millions of dollars in tax breaks annually for the industry's R&D investment.

Fact 2: According to a 1991 Forbes Magazine article, the drug industry is spending a billion dollars more a year on marketing than it is on research; that is, the industry will spend $10 billion on marketing and advertising this year, but only $9 billion on research and development.

Fact 3: After accounting for the investment in research and development, the pharmaceutical industry still earns an annual Fortune 500 industry-leading profit of 15.4 percent. This industry profit average is TRIPLE that of the average Fortune 500 club member, which is 4.6 percent.

Fact 4: The drug industry says it needs such profits to attract capital, yet they certainly do not need a return on shareholder investments (return on equity) that industry analysts say is consistently 50 percent higher than the average Fortune 500 company to attract capital. Other Fortune 500 companies, whose profit margins are one-third that of the drug industry, do not appear to have trouble attracting sufficient capital.

Fact 5: In addition to the hundreds of millions of dollars in direct research and development tax breaks given to the drug industry each year, a significant amount of research on new drug products occurs in Federal facilities or with grants provided by federal agencies. For example, most of the research on the drug AZT, used to treat symptoms of AIDS, was conducted at the National Institutes of Health [NIH], yet a private drug company holds the patent on the product and has used the patent to charge exorbitant prices for the drug.

Fact 6: The drug companies whose R&D investment has brought no new breakthrough drugs to market are the very same companies that are increasing prices at some of the highest rates. Therefore, while there are some drug companies who are research intensive, the majority are using the "research" argument as the excuse to raise prices, yet their research pipeline is dry. For example:

Dilantin, an antiepileptic drug, manufactured by Parke-Davis has been on the market since 1953. Since 1985 it has gone up in price 69 percent, an annual average increase of over 11 percent. Parke-Davis has not brought one new molecular entity to market in the last 5 years.

Fact 7: For a pharmaceutical company that spends 15 percent of its revenue on research to increase their research expenditures by 10 percent, it would only require a 1.5 percent increase in their drug prices each year. However, drug manufacturers have been increasing prices, on average, at three times the rate of inflation for the last 11 years.

Fact 8: One of the largest investors in R&D in the industry—Merck—is holding their price increases to inflation. Merck Sharp and Dohme has been one of the most research productive companies over the last decade, yet they have adopted a public policy position that restricts their price increases to changes in the CPI-U. If the world's most research-intensive drug company can adopt this responsible public policy, the others should be able to do the same.

Fact 9: In Canada, the drug industry has voluntarily agreed to limit its price increased to the inflation rate, while substantially increasing its investment in research.

While the industry's arguments about the relationship between high profits and research are clearly questionable, the "Prescription Drug Inflation Containment Act", introduced by Senator David Pryor, will not reduce the research tax credits of drug manufacturers. The legislation uses the industry's $2 billion annual nonresearch and development tax credit, which is bestowed on the industry each year by American taxpayers, as an incentive to contain prescription drug price inflation at or below the rate of general inflation.

Mr. PRYOR. Mr. President, the recent and decisive victory of Senator HARRIS WOFFORD has ignited a long overdue movement to overhaul the health care system in the United States. There is little doubt that the problem of out-of-control costs is, and will continue to be, the No. 1 issue driving the health care reform debate.

Today, I am pleased and honored to be joined by Senators COHEN, SASSER, BAUCUS, BURDICK, CONRAD, EXON, METZENBAUM, and WELLSTONE in taking an important step toward containing costs by introducing legislation that addresses the single highest inflating component of the entire medical inflation index—prescription drugs. With the introduction of the Prescription Drug Cost Containment Act of 1991 (S. 2000), we are sending a message to the drug manufacturers that their price grouping status quo is unacceptable and will no longer be tolerated.

Nothing we do in the Congress convinces the drug industry that we mean business about skyrocketing drug prices. During the debate surrounding last year's Medicaid drug rebate law and the years of hearings leading up to it, drug manufacturers frequently stated that the 1980's was an anomaly. They said that drug price inflation that tripled the general inflation rate would not continue and gave many in Congress the impression that they had received the message that drug cost increases of the past were unacceptable.

Incredibly, if current trends continue, it appears that the 1990's will not only be a price inflation encore, but may well surpass the intolerable performance of the 1980's. Recent drug price increases continue to defy the laws of gravity. Over the 1-year period between October 1990 and October 1991, drug prices increased 10.1 percent, more than triple the rate of increase in general inflation, which was 2.9 percent.

Mr. President, the drug industry recently criticized my use of the CPI as a measure of drug price increases. They said that the Producer Price Index, the PPI, rather than the CPI, was a more accurate measure of drug price inflation. Out of curiosity, I checked the October PPI. Guess what product topped the list of all products in price increases? That's right, prescription drugs. Their prices rose more than two and half times the PPI for all goods. Even the industry cannot find an index that shows them in a favorable light.

While the news about drug prices is bad with one index and even worse with another, for the average older American, it really doesn't matter what index you use. They only know that they cannot afford their medications. Day after day, my office receives letters from citizens around the Nation who tell me about the devastation that drug price increases are having in their life. One elderly woman from Fort Smith, AR, wrote that her drug bill increased in 1 year from $8,000 to $11,000 for the very same medications. She says that she may have to stop taking some of her drugs.

Mr. President, it is getting to the point where the only Americans who can afford to buy medications are drug company executives. The annual median income of an elderly household in this country is just $8,781. At the absolute opposite end of the spectrum, drug company CEO's made a median salary of $1.56 million in 1990—175 times the income of the median elderly household. In fact, 5 of the 20 highest paid CEO's in the entire country are drug company executives. Maybe these figures explain why the drug industry is so price insensitive.

This year the drug company CEO's are using the new Medicaid rebate law as the excuse to raise prices. Never mind that the Medicaid Program makes up only 10 to 15 percent of the industry's market and could not possibly explain their increases in prices. Never mind the industry invests $10 billion in marketing and makes multibillion-dollar profits. Never mind the industry chose to cost shift to this Nation's soldiers, veterans, hospitals, HMO's and poor people served by Public Health Service clinics.

By raising drug prices to the Department of Veterans Affairs and Defense during the Persian Gulf war, a number of drug companies showed that their so-called patriotism does not run as deep as their pockets. Although the bill I am introducing today does not specifically address the cost shifting concerns of the DVA, Public Health Serv-

ice clinics, hospitals and HMO's, I remain resolute in my commitment to developing legislation to alleviate their problems.

Mr. President, the day has come for us to enact legislation that contains prescription drug price inflation for all Americans. If we do not act now, we are condemning ourselves to witness a $20 drug in 1980 costing $120 in 9 short years—a 504-percent increase. The answer to this problem begins with revising our Tax Code.

It was, and still is, difficult for even me to believe, but American taxpayers now bestow upon the drug industry a $2 billion a year, nonresearch and development tax break for manufacturing drugs in Puerto Rico. This section 936 tax credit is designed to increase employment in U.S. possessions—like Puerto Rico. This credit returns to the drug industry $70,788 for every employee they hire. This is quite a return when you consider the average annual salary of these employees is $26,471. Amazingly, beyond underwriting excessive price increases, unmatched profits, multibillion-dollar marketing campaigns, and hundreds of millions of dollars in research and development tax credits, our taxpayers are reducing—through the 936 tax credit—the effective tax rate of the drug industry by 9 percent.

Mr. President, enough is enough. Attempting to shame the drug manufacturing industry into being responsive to the needs of the American public is obviously not working. American citizens and businesses are demanding that we take actions against the high cost of health care, and many want us to begin with prescription drugs.

To address the escalating costs of prescription drugs, the legislation we are introducing today uses a simple, business-like, carrot and stick approach. In short, it achieves its goal by:

First, reducing the multibillion-dollar section 936 tax credit for each point that a drug manufacturer raises its prices over general inflation.

Second, directing any money saved from the section 936 tax credit reduction to:

Reduce the Federal deficit; and

Establish a Medicare prescription drug demonstration to determine feasibility of providing a new drug benefit.

Third, establishing a board called the Prescription Drug Policy Review Commission, which would, among other things:

Determine the feasibility of establishing a Canadian-like drug price review board in the United States;

Analyze international prescription drug pricing trends; and

Make policy recommendations aimed at containing drug cost increases for Medicare, Medicaid, and other public and private purchasers.

Fourth, directing the Secretary of HHS to determine the amount of subsidies the Federal Government provides to the drug industry, such as tax credits and research grants, and to recommend how these taxpayer underwritten benefits can be restructured to provide better incentives for the industry to contain costs and produce more breakthrough—not "me too"—medications.

Mr. President, 42 national organizations have endorsed the Prescription Drug Cost Containment Act. These organizations represent a broad spectrum of groups concerned about the escalating cost of prescription drugs, and include representatives of small business, older Americans, children, pharmacists, consumers, unions, rural communities, and insurance agents.

Mr. President, lobbyists for the Pharmaceutical Manufacturers Association and their member companies have already geared up their multimillion-dollar lobbying machine to claim that my policies toward the drug industry are bad and my solutions are even worse. I am not surprised that they are trying to use their old and recycled argument that they need their high prices and exorbitant profits to finance research and development of new drugs.

Many drug companies are hiding behind this research fiction to gouge the American public. The drug companies that are doing the least research are the ones that are increasing prices the fastest. Let me give you just one of many startling examples. Ciba-Geigy, which makes the antiarthritis drug Voltaren, increased the price of the drug over 14 percent from 1989 to 1990. During this same period, the company actually decreased its expenditures on R&D by 1.2 percent. Yes, Mr. President, the companies are raising prices, but it is to put dollars in their profit coffers not their research labs.

Mr. President, drug companies are also double-dipping by charging outrageous prices for drugs that were primarily researched by the Federal Government. Recently, Astra Pharmaceuticals, a Swedish-based company, marketed the drug Foscavir for eye infections in AIDS patients. In spite of the fact that the overwhelming majority of the research on the drug was done with Federal tax dollars, the company holds the patent on the drug. It is charging $21,000 a year, enabling it to make hundreds of millions of dollars in profits. A similar situation occurred with AZT. Burroughs-Wellcome continues to make hundreds of millions of dollars in profits from Federal research efforts on this drug.

Examples like these make me wonder if this legislation goes far enough. The drug industry has made the American public the laughingstock of the world for so long, that I believe more draconian action may be needed. However, I am a realist, and understand that this business-like approach may be more acceptable to many of my colleagues. Let me say for the record, however, that I am not willing to wait forever. If evidence continues to mount into 1992 that drug prices are not coming down, I will be back on this floor next year with much stronger legislation.

Mr. President, we have given the drug industry a blank check to run rough-shod over this Congress and the American public. We must have the resolve to stand up to an industry who places profits before patients and greed before the common good. The American public is looking to this Congress to take bold steps and meet the challenge of containing health care costs. If we do not meet the challenge, the American public—as they recently reminded us—may not be shy about turning to others to get the job done.

Mr. President, in conclusion, let me say, because I know that many of my colleagues are going to be here, that the drug industry will be swarming the Capitol Hill area in the next several days and weeks as this legislation moves through. They are going to be talking about all of the research they provide in finding new drugs.

Let me say, Mr. President, that last year the research spent for new drugs was $9 billion by the pharmaceutical manufacturers, but marketing and advertising expenditures exceeded—exceeded—research by $1 billion. In fact, $10 billion was spent on areas and ways to market the drugs coming on the market.

Mr. President, also, many of the drug companies are going to be telling our colleagues: We do not make any more money than the other companies. Mr. President, the Business Week magazine 1991, in one of their recent issues, said the average Fortune 500 company in 1990 made a profit of 4.6 percent for the top 10 drug manufacturing companies, 15.5 percent.

Let me conclude, Mr. President, by saying that 3 out of 4 elderly people in the United States of America today find that prescription drugs that their doctors are prescribing to stay alive is the highest out-of-pocket expense that they have. The second fact is that according to CBO, 60 percent of all the elderly people in America today are approaching a financially catastrophic situation because they can no longer afford the cost of drugs, and 60 percent of the elderly have no coverage whatsoever for the drugs that they must have to stay alive.

Mr. President, we need to take some very dramatic action. As I said earlier in the beginning of my statement, this is a step in the right direction. But, Mr. President, I can say without reservation that if the pharmaceutical manufacturers of America continue to abuse the American citizens and continue to abuse the Tax Code and continue to take advantage of those who should not be taken advantage of, then we are going to be back on this floor with even tougher legislation.

The White House some years ago appointed a drug czar. I am saying, Mr. President, this morning, that we need a drug czar, not for illegal drugs, but a drug czar for legal drugs, for prescription drugs, someone who will become the advocate for the average American citizens out there who are finding themselves in the precarious situation of no longer being able to buy a prescription drug.

Mr. President, I thank the Chair for recognizing me. I thank, once again, Senator SASSER, Senator COHEN, and others. I thank the sponsors of this legislation and, of course, those many associations, 42 in number, which have now endorsed this particular legislation.

Mr. President, I yield the floor.

Mr. BAUCUS. Mr. President, I am pleased to rise today as a cosponsor of this important bill. Senator PRYOR, the distinguish chairman of the Aging Committee, has worked on this issue for months, if not years. I am glad to join him and Senator COHEN and others in offering this legislation to rein in prescription drug inflation.

It is a commonsense approach. It tells the drug manufacturing industry that unless they keep their drug prices within the general inflation rate, they will lose at least a portion of the special tax break—known as section 936—that benefits them.

Section 936 of the Internal Revenue Code provides an income tax exemption for business income earned in Puerto Rico and other U.S. territorial possessions. The stated purpose of section 936 is to promote employment and investment in these possessions. But it appears that drug manufacturers have benefited beyond the intent of the provision.

The drug manufacturing industry receives about $2 billion a year in section 936 tax credits. They also receive other tax breaks, including the research and development tax credit, which I strongly support. Their tax burden is proportionately lower than that of the average U.S. industry.

And yet their profits have been the highest, according to several indicators, of any U.S. industry. Their annual 15.5-percent profit margin is more than three times as high as the 4.6-percent margin of the average Fortune 500 company.

While the drug industry is making these huge profits, the people who buy their products are paying the price. Hardworking Americans, as well as senior citizens, are having a harder and harder time buying their prescriptions. The prescription drug inflation rate rose 152 percent in the 1980's, compared to the general inflation rate of 58 percent. As the price goes up on the order of 10 percent a year, and CPI increases less than three, consumers have less buying power. But they need those medicines, so they pay the price. And they just have to make sacrifices elsewhere.

In addition, American consumers are subsidizing the drug industry for consumers in other countries. The average American pays 62-percent more for prescription drugs than the average Canadian citizen and 54-percent more than the average European citizen.

Mr. President, I fully recognize the value of the drug manufacturing industry. There is no question about the usefulness, and indeed the necessity, for new kinds of drugs as well as those that have become commonplace on the market. If a health problem can be treated with drugs rather than surgery, it is beneficial to the patient and to the health care system as a whole because it saves money.

But the drug manufacturing industry should not continue to make extraordinary profits at the expense of the consumer—and still reap huge benefits from taxpayer-supported subsidies.

Mr. President, this legislation is fair. A taxpayer-supported subsidy is not, and should not be, a blank check. If drug manufacturers want to continue to receive preferential tax treatment, they will have to show, at the minimum, that they are being fair to the American public.

I am pleased to be a cosponsor of this important bill, and I urge our colleagues to support it.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent to speak for 3 minutes in morning business.

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

Mrs. KASSEBAUM. First, let me commend Senator PRYOR for his leadership in calling attention to what is a great worry and concern about the high price of drugs. He has done a lot of work, put a lot of thoughtful effort in this. I think his active leadership, his involvement in this issue has made it one of which we are all very aware.

DIRECTIVE ON HIRING PRACTICES

Mrs. KASSEBAUM. Mr. President, what I would like to speak to is my concern regarding the administration's directive on hiring practices which was reported in the news this morning. I have not read the full directive. I have no problem with taking steps that would be in compliance with our new civil rights legislation, but I am deeply concerned if, indeed, we are going to use a broad sweeping hand to overturn what I think has worked very well for many years. As an equal employment opportunity employer, we have put into place affirmative action policies which have opened many doors, and have given us opportunities to bring women and minorities into the work force in a very constructive way.

So I hope, Mr. President, that we will be very cautious with any directives that would undo very positive, constructive policies that now exist and think carefully about what initiatives we put into place. Certainly, changes must be made to conform Government policies to the new law, but this process must be done thoughtfully and with due regard for the importance of continuing beneficial and appropriate affirmative action policies. The Uniform Guidelines, for example, have been in place for 13 years and should not be discarded in whole without careful consideration.

Particularly now, when divisions have become so great, we can ill-afford to send the wrong signal. The employment practices of the Federal Government serve as a model to all employers, and thus we should be especially careful when we change or eliminate current worthwhile practices.

Certainly none of us desire to eliminate legitimate affirmative action policies, and I fear the broad thrust of this directive may do just that.

I yield the floor, Mr. President.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Chair informs Senators that the time for morning business has expired.

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

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

The bill clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. D'AMATO. Mr. President, I ask unanimous consent that I may be permitted to proceed as if in morning business for up to 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

CREDIT CARD INTEREST RATES

Mr. D'AMATO. Mr. President, today, I have sent letters to both the Attorney General, William Barr, and to the Chairman of the Federal Trade Commission, Janet D. Steiger.

In these letters, I have requested an investigation into the credit card interest rates being charged to the American public. In particular, Mr. President, I am concerned that 7 out of 10 of the largest cardholders have the same interest rates, 19.80, identical right down to the demical point.

I have been subject to extensive criticism for the legislation I introduced attempting to get those credit card interest rates down, and to see to it that we truly have free competition in the credit card industry. Some have said that I am trying to control credit and to allocate it. Indeed, that is not my intent. Nor is that the intention of the legislation. The legislation is intended to serve as the juggernaut to attack what I believe is collusive activity by the largest of the credit card issuers to dam up the rates artificially so that the people have little choice but to pay these exorbitant interest rates.

This lack of competition among the top credit card issuers is detrimental to the economy. It is detrimental to an economic recession, and it certainly does not act to spur consumer confidence. Indeed, the absence of competition ends up costing consumers billions of dollars in excess interest. Many of these consumers are already trapped, considering that average outstanding balance carried on a credit card is approximately $2,300. At an almost 20-percent interest rate, that person with a $2,300 balance of his credit card finds himself paying hundreds of dollars annually in interest costs, and in many cases, doing little to get the balance down.

Most consumers do not really have the opportunity to actively shop for the lowest interest rates in many geographic areas.

The public does not have adequate opportunity to find out that there is a bank in Arkansas, for example, that may have an interest rate of 11½ percent, or that there is another bank outside of their region that could and would be happy to serve them that offers a rate of 13½ percent.

It is this conspiracy to which I believe that the regulators have, at a minimum, been indifferent. The Federal policy has been to lower the discount rate, and Federal funds rate to encourage the reduction in interest rates so that the banks could pass this on in the cost of lower consumer credit as well as lower mortgage rates.

The lack of true competition in the credit card industry is not an overnight occurrence. I introduced legislation to bring down the rates in order to try and achieve free market competition 6 years ago. Congress turned the other way from the face of this issue after we were promised that the credit card issuers would undertake actions to promote real competition and to bring interest rates down. Indeed as the cost of money to the institutions has come down, however, the credit card interest rates, if anything, have continued to climb.

This is, as the November's Business Week editorial stated, a subsidy of the banks by the consumers. Let me read a part of this Business Week editorial:

For their part, regulators and politicians should stop subsidizing banks by allowing outrageous rates on consumer loans. It is time to end this charade.

This is not a very cleverly bank subsidy. I think there are some, who are just as happy by having the public unknowingly bailout banks rather than having to come forward and affirmatively ask for a taxpayer bailout—such as the $70 billion "loan" to the bank insurance fund which the taxpayers may be stuck paying back.

Those who talk about free competition should be looking closely at whether we have a free market system with respect to the credit card industry. To do otherwise would be to encourage, and actually allow an illegal practice and restraint of trade and commerce; at the expense of middle-class taxpayers, families, and workers. These individuals have been paying exhorbitant rates of interest to subsidize credit card issuers with billions of dollars, while these same issuers have the nerve to literally blackmail the public by saying, if you dare threaten what we are doing, we will pull at least one-half of these credit cards back from you.

Mr. President, I am not giving up on this battle. We are going to get those interest rates down because we are not going to turn the spotlight away from this horrible anticompetitive practice. We already have begun to see some signs of recognition of this situation by the large credit card companies, some of which are beginning to advertise for the first time and mention interest rates. I think maybe this is a crack in the facade of competition. I want to see to it that that crack becomes more than just a crack but that the wall damming up those interest rates so artificially high is knocked down.

This is why today I have written to both Attorney General Barr and to the Chairman of the Federal Trade Commission to ask them to launch an inquiry to see to it that we have free market competition among credit card issuers, particularly, those seven who interestingly charge the same interest rates, 19.80, as I have said identical right down to the last decimal.

If we are going to talk about free market competition, and that is the best way to go, and I believe it is, then we have an obligation to ensure we actually have unencumbered competition.

I wonder what Teddy Roosevelt would have done if he had seen this kind of situation and whether or not these institutions would have been permitted to conspire for so long against the American people to artificially keep credit card interest rates up in order to make an inordinate profit to pay off their bad loans and compensate for other poor practices. Credit card issuers must be stopped from soaking the middle-class, and those who are using and are forced to use credit cards.

Mr. President, I ask unanimous consent that both these letters be printed in the RECORD.

Later on, when we get to the banking bill, I will have more to say on this matter.

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

U.S. SENATE,
Washington, DC, November 21, 1991.

JANET D. STEIGER,
Chairman, Federal Trade Commission, Washington, DC.

DEAR MS. STEIGER: As you are probably aware, on Wednesday, November 13, I introduced an amendment to the Senate banking bill, S. 543, to set a floating ceiling on the interest rates that credit card issuers could charge their customers. This amendment passed by a vote of 74–19.

This legislation was intended to reduce the cost of credit to consumers. The amendment was also intended to help ease the credit crunch in the hope that savings in credit card interest could be funneled back into the economy through an increase in consumer spending.

I first introduced this legislation back in December 1985, (S. 1992) when I became concerned that credit card issuers were charging their customers rates of interest that bore no rational relation to the cost of money. Although this legislation did not prevail in 1985, I have continued to monitor the high rates of interest being charged by credit card issuers.

Since 1985, the average interest rate on credit cards has actually increased from 18.7 percent to 18.9 percent In 1985, the average prime rate of interest was 10 percent and the average discount rate was 7.75 percent Today, the prime rate of interest is 7.5 percent, and the discount rate is 5.5 percent, yet the average interest rate charged to credit card customers is 18.9 percent. Further, seven of the top ten credit card issuers charge the identical rate of interest—19.8 percent.

There is no free market competition among credit card issuers. The top ten credit card issuers have set an unreasonably high rate of interest to be charged to their credit card customers. Statistics show that the average interest rate being charged on credit card debt continues to increase, despite a definite decline in the cost of money.

Since S. 1992 was introduced in 1985, my office has received approximately 43,000 letters from constituents requesting information on where to obtain credit cards with a lower rate of interest. This response demonstrates that consumers are concerned about the high rates of credit card interest.

I am deeply concerned that credit card issuers are not being adequately supervised. I am also concerned that the identical rate of interest being charged by seven of the top ten credit card issuers—19.8 percent (identical to the decimal), more than suggests collusion and price fixing activities among these companies.

As a result, I ask that the Federal Trade Commission consider the facts I outlined above and conduct an investigation into whether there is free and unrestrained competition in the credit card industry and whether there are any antitrust violations. In particular, the investigation should consider the practices engaged in by top credit card issuers in setting their rates of interest. Enclosed is a chart printed in Newsday that identifies the largest ten credit card issuers and their rates.

Please keep me advised as to your progress on this matter. It is crucial that we continue to protect the public's interests. I look forward to a quick response.

Very truly yours,

ALFONSE M. D'AMATO,
U.S. Senator.

IN THE CARDS—CREDIT CARD TERMS AT 10 BIGGEST, ISSUERS NATIONWIDE, BASED ON OUTSTANDING BALANCES

	Annual rate (percent)	Annual fee
Citibank	19.8	$20
Discover	19.8	(2)
Chase Manhattan	19.8	20
MBNA America	19.8	20
Bank of America	19.8	18
Credit card terms at issuers charging lowest interest:		
Simmons First National Pine Buff, AR	[1] 9.5	25
Arkansas Federal Savings, Little Rock, AR	[1] 9.5	35
Wachovia Bank Wilmington, DE	[1] 10.4	19
Prime Bank Elkhart, IN	12.9	20
AFBA Industrial Bank Alexandria, VA	[1] 13.0	(2)
Bank of New York (Del.) Newark, DE	[1] 13.4	(2)
First Chicago	19.8	20
Optima	16.25	15
Bank of New York	16.98	18
Manufacturers Hanover	19.8	20
Household Bank	21.0	(2)
Fidelity National Bank, Atlanta, GA	[1] 13.7	20
USAA Federal Savings, Tulsa, OK	[1] 13.75	(2)
Bank of Montana, Great Falls, MT	[1] 13.75	19
Bank One Wisconsin, Milwaukee, WI	13.9	25
People's Bank, Bridgeport, CT	13.9	25

[1] Variable rate.
[2] None.

U.S. SENATE,
Washington, DC, November 21, 1991.

WILLIAM P. BARR,
Attorney General, Main Justice Building, Washington, DC.

DEAR MR. BARR: As you are probably aware, on Wednesday November 13, I introduced an amendment to the Senate banking bill, S. 543, to set a floating ceiling on the interest rates that credit card issuers could charge their customers. This amendment passed by a vote of 74–19.

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I am deeply concerned that credit card issuers are not being adequately supervised. I am also concerned that the identical rate of interest being charged by seven of the top ten credit card issuers—19.8 percent (identical to the decimal), more than suggests collusion and price fixing activities among these companies.

As a result, I ask that the Justice Department consider the facts I outlined above and conduct an investigation into whether there is free and unrestrained competition in the credit card industry and whether there are any antitrust violations. In particular, the investigation should consider the practices engaged in by top credit card issuers in setting their rates of interest. Enclosed is a chart printed in Newsday that identifies the largest ten credit card issuers and their rates.

Please keep me advised as to your progress on this matter. It is crucial that we continue to protect the public's interests. I look forward to a quick response.

Very truly yours,

ALFONSE M. D'AMATO,
U.S. Senator.

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	Annual rate (percent)	Annual fee
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Discover	19.8	(1)
Chase Manhattan	19.8	20
MBNA America	19.8	20
Bank of America	19.8	18
Credit card terms at issuers charging lowest interest:		
Simmons First National, Pine Bluff, AR	[2] 9.5	25
Arkansas Federal Savings, Little Rock, AR	[2] 9.5	35
Wachovia Bank, Wilmington, DE	[2] 10.4	39
Prime Bank, Elkhart, IN	12.9	20
AFBA Industrial Bank, Alexandria, VA	[2] 13.0	(1)
Bank of New York (Del.), Newark, DE	[2] 13.4	(1)
First Chicago	19.8	20
Optima	16.25	15
Bank of New York	16.98	18
Manufacturers Hanover	19.8	20
Household Bank	21.0	(1)
Fidelity National Bank, Atlanta	[2] 13.7	20
USAA Federal Savings, Tulsa, OK	[2] 13.75	(1)
Bank of Montana, Great Falls, MT	[2] 13.75	19
Bank One Wisconsin, Milwaukee, WI	13.9	25
People's Bank, Bridgeport, CT	13.9	25

[1] None.
[2] Variable rate.

WORLD CUP SOCCER

Mr. GRAHAM. Mr. President, for the first time in history, the United States has been selected to host the World Cup Soccer Championship. It is a great honor to be chosen host to the games. The World Cup is the largest single-sport spectacle in the world. In the 1990 games, 112 nations played 313 games for the chance to compete in the tournament.

Hosting World Cup represents a historic opportunity for Americans to participate in this international event. Twenty-six cities, including three in my home State of Florida, are competing to host a portion of the games.

The World Cup legislation will create gold, silver, and clad coins to be minted by the U.S. Mint and sold to the public in commemoration of this event. The revenues generated by the coin sales will help the World Cup USA organizing committee stage the tournament. After ticket sales, surcharges will provide the second largest revenue source for the United States to host the games. These funds will help make the event a first-class success and ensure that state-of-the-art facilities are in place in approximately a dozen U.S. host cities.

The 1994 games will match world class soccer with world class American hospitality. The U.S. Department of Commerce anticipates that 1.5 million foreign visitors will attend tournament games. The games will increase aggregate tourism spending by $1.5 billion or 8 percent in 1994. These funds will be spent in our communities, bolstering our economy, in addition, 10 percent of those funds will be set aside for scholarships to qualified students.

By authorizing this commemorative coin, Congress has the opportunity to support World Cup, at no cost to the taxpayers. Let us send a message of support to the potential host communities, to the athletes, and to the expected 20 to 30 billion worldwide viewers, that our Government is behind the 1994 World Cup Soccer Championship.

For the benefit the record and my colleagues, I would like to include a description of the scholarship program.

The description follows:

Subsection 8(b): Ten percent of the funds made available by subsection 8(a) will be available to the United States Soccer Federation Foundation, Inc. for distribution to institutions for scholastic scholarships to qualified students. The scholastic scholarships shall go to any groups for distribution to qualified students that meet the following criteria:

Definition of "Institutions"—In selecting institutions to provide scholastic scholarships to qualified students, we expect that the United States Soccer Federation Foundation shall select no more than five recipients, provided that the institution:

Is a 501(c) (3) nonprofit which includes as its mission increasing the representation of qualified students, as defined in the following section, in higher education by providing scholarship assistance to students pursuing college degrees;

Serves all of the geographic and ethnic subgroups of a target population consisting principally of qualified students; and

Provides educational services, scholastic scholarships and related services to qualified students.

We do not intend that institutions of higher learning, trade associations, for-profit institutions, units of state or local government, or other organizations or entities providing scholastic scholarships that are generally available to persons other than qualified students be considered by the United States Soccer Federation Foundation for participation in the programs authorized by this section.

Definition of "qualified student"—We intend that the term "qualified students" be interpreted narrowly by institutions providing scholastic scholarships. The Committee intends to limit scholarships under this section to the most undereducated persons and groups in American society. The Committee

expects that "qualified Students" shall be identified based on the following criteria:

Individuals who are "first-generation" college students. i.e., whose parents did not complete a course of study at an accredited institution of higher learning; and

Individuals who are "economically disadvantaged", i.e., who come from families with incomes at or below the median family income of the U.S. population, or who are members of communities with median incomes at or below 70% of the median family income of the U.S. population; and

Individuals who are "educationally disadvantaged," because of developmental disability, national origin, nativity or limited-English proficiency, or attended school districts with dropout rates at least twice as high as the national average; and

The scholastic scholarship fund will be targeted to minority student groups that have a high school completion rate of less than 60 percent.

Provided further,

That at least one such institution serves as an umbrella organization for at least 125 affiliated local community-based organizations. Such institution provides capacity-building assistance, public policy analysis and advocacy, public information efforts, and special catalytic efforts on behalf of economically and educationally disadvantaged persons. Such institution is governed by organizational by-laws that required a Board of Directors reflective of the geographic, gender and ethnic composition of a target population consisting principally of qualified students and their families, as defined in this section. Such institution includes a corporate board of advisors composed of at least twenty senior executives of major corporations.

That at least one such institution is a 501(c)(3) nonprofit organization whose sole mission is to provide scholarship assistance to qualified students in all fifty states and Puerto Rico. Scholarship recipients are selected on the basis of academic achievement and personal strengths, and represent hundreds of both public and private colleges and universities across the nation. Recipients are also reflective of the composition of five national regions. Such institution annually selects scholarship recipients using a process of regional review committees. In addition, such institution is government by organizational bylaws which require a board of directors comprised of corporate and educational leaders.

That at least one such institution is a 501(c)(3) nonprofit organization with a national scope and a primary goal to provide post high school scholarship assistance to qualified students in all fifty states and the territories of the United States of America. Scholarship recipients are selected on the basis of academic achievement, community leadership and financial need. Such institution is governed by organizational by-laws that require officers, board of directors, and trustees who are business and community leaders throughout the nation and are dedicated to the educational advancement of a target population of qualified students as defined in this section.

Student eligibility: A qualified student who is in attendance or who has been accepted for admission, as a full-time undergraduate or graduate student at an accredited institution of higher education may apply.

We recognize that institutions must have some flexibility in the selection of scholarship recipients; however, we expect that, except in unusual or exceptional circumstances, each scholarship recipient shall meet the three of the four broad criteria in addition to other criteria set forth by the institution.

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

EXTENSION OF MORNING BUSINESS

Mr. ROBB. Mr. President, I ask unanimous consent, after checking with the managers of the upcoming bill, that the period for morning business be extended for up to 5 additional minutes.

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

The Senator from Virginia is recognized.

Mr. ROBB. I thank the Chair.

(The remarks of Mr. ROBB pertaining to the submission of Senate Concurrent Resolution 78 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. Mr. President, what is the pending business?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The PRESIDING OFFICER. The Senate will now resume consideration of the banking reform bill. The clerk will report the pending business.

The bill clerk read as follows:

A bill (S. 543), to reform Federal deposit insurance, protect the deposit insurance funds and improve supervision and regulation of and disclosure relating to federally insured depository institutions.

The Senate resumed consideration of the bill.

Pending:

(1) Dixon modified amendment No. 1352, to improve the governance of the Resolution Trust Corporation.

AMENDMENT NO. 1352

The PRESIDING OFFICER. The pending business is the Dixon amendment.

Mr. RIEGLE. Mr. President, with respect to the Dixon amendment, let me comment. Senator DIXON has been doing some very important and excellent work in discussions centering around his amendment, which has to do with the restructuring of the RTC. He has been holding those discussions with others of us on the committee and with the Treasury Department officials, and I think he has made very considerable progress in finding a formulation that would be generally agreeable on that issue. That is not to say there will not be some who will not find it precisely to their liking. But progress has been made in that area, greatly to his credit.

Therefore, I ask that the Dixon amendment be temporarily laid aside, fully preserving his rights on that amendment, so that we can take up discussion of a managers' amendment that deals with other issues.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. RIEGLE. I thank the Chair. With the Dixon amendment temporarily laid aside, we return to consideration of the banking reform bill. At the end of the day on Monday, there were several Senators who expressed doubt that the Senate could complete its work on the bill before the Thanksgiving holiday. They pointed out that a number of amendments might be offered to the bill, and suggested that the Senate just could not possibly consider those in a timely fashion.

The majority leader and the minority leader asked Senator GARN and I, and the other members of the committee, to work in every way possible to see if we could resolve as many and, hopefully, all of those issues in this very compressed timeframe in which we are dealing.

I am here now to report, and am pleased to report, that we have made very considerable progress in reaching agreement on contentious issues. We are still working at this minute on those few that remain.

I want to just say at this time, and pay a great personal professional compliment to the Senator from Utah [Mr. GARN] who has worked as hard as I have ever seen anybody work to try to resolve issues, particularly ones that are troubling to Members on his side of the aisle, in a good-faith effort to try to find fair and balanced answers that will keep this bill balanced and intact.

I must say that in working with Senator GARN, which I have now done for many years, there are certain unpleasant experiences that go with this job. One of the pleasant experiences has been the opportunity to work together with the Senator from Utah. I want to thank him for his diligent work and for what I think we have been able to—together and with the help of many others—accomplish to this point.

Yesterday afternoon, Senator GARN and I met with Secretary Brady, and in the course of that discussion, we reached a general outline of an agreement, if you will, tentative agreement, as to how we would try to resolve concerns of all Senators and to undertake to narrow the scope of the bill in a fashion that would be generally agreeable, so that we could bring this issue to a conclusion today.

It is very much my hope and intention that we act on this bill and finish

it today. We are compelled to do that, I think, not only by the Senate calendar and schedule and other items waiting to come to the floor, but also the fact that the deposit insurance fund is virtually empty. It will be bankrupt by the end of the year and cannot be left in that condition, because otherwise, failed banks in the coming year—and there are anticipated to be some large number of those—would not be able to pay off the insured deposits of depositors, and that is obviously a condition that would be intolerable and cannot be allowed to be the situation that we would face.

In terms of the work since late afternoon yesterday, and in the meetings with Secretary Brady that I have just referenced, we have agreed to drop out title IV which would restructure the board of directors of the FDIC, and it has certain other items in it.

We have in previous sessions taken and adjusted and removed part or all of other sections.

We have also worked to achieve a compromise acceptable to most, but not all. I see the Senator from Delaware on the floor, so I am not going to get into, now, any lengthy discussion on the issue of issues.

But we have been working to balance that issue out as best we can, and we are continuing that effort, and I hope and feel that we may be very close to doing that. Where we have 100 Senators agreeing with it, sometimes we can get there; sometimes we cannot. And certainly that is the nature of settling issues here in the Senate.

I want to say just with respect to two or three other items, we had a controversy in the area with respect to the Lampf decision. I want to say in that area, Senator BRYAN and Senator DOMENICI have worked steadily to resolve those issues. I thank them both for that effort. It would allow the Lampf decision to be set aside so there would, in fact, be a legal reachback to cover cases that have been filed in the way of alleged fraud, fraudulent activities. That is a very important provision of the bill, and we have reached a compromise on that, that settles that issue.

We have also worked with a number of other Senators to work out items that will be contained in a managers' amendment to be offered by Senator GARN and me shortly on the front end of this discussion. And then, finally, a residual managers' amendment, which we will offer on the back end, that will contain other items that have been agreed to, and where the technical language is being worked out literally as we speak.

So at that point, we will be offering first one and then the other.

We are down here now to a very limited number of specific amendments that Members want to offer on the floor, and to have time to debate those amendments and to perhaps have a vote on those amendments and have the Senate settle it. I have two such amendments from Senator GRAHAM that have been identified. I have one from Senator KERRY.

And, in addition to that, let me just check one thing here. I am told there is one issue that I hope is on its way to resolution. It may not be. In addition, two by Senator GRAHAM, and the one by Senator KERRY that will require discussion and disposition by the Senate.

There may be an amendment by Senator DODD dealing with the Small Business Administration's investments in banks. I know discussions have been going on back and forth, with appeals on both sides of that issue. I hope that will be settled out.

And then there are four Senators on the other side of the aisle who have indicated they may need to offer amendments. I will let Senator GARN address those, for his part, and any other amendments that may come in from other Senators. The hotline has gone out.

I know Members have questions about certain items that we have worked out late last evening and in the middle of the night, and even early this morning. We will be in a position to discuss those with individual Senators as they come to the floor.

The bottom line is this: We have a solid package here, I think. Each provision that we have worked out, I think, will stand on its own as a solid provision. I think they have to all, in effect, be taken in combination. I think the combination of provisions is sound. We have to enact this bill today, in my view, in terms of the time schedule, so that we are in a position to meet our responsibilities, go to conference, and get this legislation in place.

The President has asked us to do this on an urgent basis. This is one of a very short number of top operational priorities that he set forward. I think that what we have here meets the request for action in that area, and does it in a responsible way.

I thank everyone that has been participating in the effort to resolve these issues. It is not easy to do because they are complicated, they are contentious, and it is necessarily time consuming, even in the best of circumstances, to resolve issues that are very difficult to resolve.

Let me yield to my ranking member.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. GARN. Mr. President, I thank the chairman for his overly generous remarks. Certainly, he has been working extremely hard over the last couple days to resolve these issues.

I compliment him for his work to do that. There is no necessity to repeat all of that he said, other than to emphasize that there has been a lot of progress made on this bill.

Some of the most contentious issues have been agreed to, and I would like to compliment the Senators who, at our request, sat down together and worked out their differences. So this is a considerably different bill and situation than when we left the floor a couple days ago.

Having said all that, though, that does not indicate there are still not some problems to be resolved. There are. And there are still some Senators, as outlined by the chairman, who wish to offer amendments. We would hope they would come to the floor and do that.

I was remarking a few minutes ago, when I first got here, I can remember how much I admired Mike Mansfield, who was then the majority leader, and the Senator from Pennsylvania, who was the minority leader. They were as nice Senators, and kind and gentle, as I have ever seen. But they were not very kind when it came to delay.

And we, I think, have become too accommodative of individual Senators, not just on this bill, but we often sit for hours because some Senator is in a meeting; he is on a conference call; he is downtown giving a lunch, and we wait.

In the old days, it used to be, they would say: Fine; if the Senator is not here in a half hour to offer his amendment, we are going to move on. If nobody is here, we are going to go to third reading.

When you have 100 prima donnas all thinking—each one of us—we are the most important Senator on Earth, you cannot accommodate each one and not have the delays that we do over and over again.

So if I could run this place, I would not be as nice and as compliant as our leaders have been. I may not be leader very long, either, if that were the case.

But on the other hand, I would suggest to those who are listening, what we need to do—if people have amendments, we are ready to consider those amendments; we are willing to debate them; and we are willing to accept the judgment of the Senate, whatever that is. But this Senator is not very tolerant of people stalling by not coming over and debating in the old-fashioned way.

It used to be, too, if a Senator really did want to delay, not by using the good graces of the majority and the minority leaders in accommodating his lunch schedule, or whatever it is, I have been on this floor when I have seen Senators debate for 10 or 12 hours. And if they sat down and quit talking, it was over. The two-speech rule was enforced in lots of things. So I hope that Senators will come over and do their business.

The chairman is right. Whatever the end result of this bill, it must be finished today. And I hope we will stay all night, if we have to, because what is ul-

timately at stake is the safety and soundness of the banking system of this country. And if you hear an edge in my voice, I am going to repeat this ad nauseum, and people are sick of it.

In October 1986, I stood out here, and I gave up my entire bill. I withdrew it, except for one title: Recapitalization, $15 million for FSLIC, the insurance fund of the S&L's, to be paid for entirely by the S&L's, not the taxpayers, every dime of it. No taxpayer involvement.

We passed it in the Senate; the House refused.

I begged, I begged for that to be passed. And what do we have? A $160 billion taxpayer bailout because Congress failed to act on that.

So I would suggest on November 20, 1991 that if we leave this session—I will put it the other way. We cannot leave this session without passing the recapitalization of the bank insurance fund which, once again, is not taxpayers' money. The banks will pay it back with increased premiums on their deposits.

I hope no one loses sight of this, of what fire we are playing with; that in 5 years down the road, if we do not do this before we leave this session, we are going to see a couple other Senators up here talking about another $160 or $200 billion of taxpayer bailout because Congress refused to act.

So I would suggest that everybody that has an amendment out there, bring it over. We will debate it. But let us finish this tonight, and do our responsibility to the taxpayers of this country to put some money in that bank insurance fund, or the FDIC, as we always used to call it. Let us take care of that responsibility with whatever meaningful reforms we can put in.

This is a good package. We ought to be able to put it for a vote right now. The chairman has worked hard. It is a good package.

We recognize there are difference of opinion. Again, I repeat: Fine, come away from your lunches or meetings. There is nothing more important in this body right now than making sure that that bank insurance fund is safe and sound, and has the money to do its business. That is the overriding responsibility. Let us get to it, and get it done before the day is over.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I wonder if I could ask the managers of the bill a question, and then I would like to comment for maybe 5 minutes on the substance of a couple of amendments that I had. May I ask the chairman and ranking member—I say to the chairman, he alluded to the fact that we have reached an agreement with reference to the Lampf decision which, in essence, takes away all the retroactive aspects of that decision but does not extend the statute of limitations. That agrument lives for another day. I think that is a reasonable resolution because, if we are going to extend the statutes of limitations, there are many who wanted to change some of the rules, the rule under which lawyers operate in that kind of suit. So I am willing to do that. I have done that. I told you I have done that. I just wonder, from my own standpoint, will that be offered by the managers as part of some package sometime today?

Mr. RIEGLE. Yes. As a matter of fact, shortly I will be sending a managers' amendment to the desk, which will contain that compromise the Senator from New Mexico has worked out with the Senator from Nevada. I might say that one very important part of that compromise is that it will protect and allow cases, major cases of investment fraud alleged, to be able to proceed and not be cut off by the statute of limitations in terms of cases already set in motion. And so it is very important that those cases be allowed to go forward, and the Senator's agreement on that would allow that and that would be part of it.

Mr. DOMENICI. As I have said two or three times on the floor, I never objected to that. What I wanted to debate in the Senate was should we extend the statute of limitations for the entire body of law? And there are some that think we should. There are some who think we should only if, and the ifs happen to be the amendments that I would have offered.

What I will do now is send to the desk, so everyone will know because this apparently generated a significant amount of activity in America—I do not know from whence it comes but apparently there are all kinds of interest in what this might do, I am going to submit four amendments to the desk. They will never be offered, but they are what I would have offered, and they will give everyone a chance in the next 3 or 4 months to take a look at them because, sooner or later, this issue will be revisited. I do not think there is any doubt about that. So let me send them to the desk with again no intention than they will ever be offered.

They will be the following: I have a combination amendment that puts together the joint and several liability reform with fee-splitting; and then I have a straight joint and several liability amendment; and then one on fee-splitting alone; and then one on what I call miscellaneous provisions. I send those to the desk and ask that they be made a part of the RECORD.

The PRESIDING OFFICER. The amendments will be received.

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

On page 778, line 13, strike "Except" and insert "(a) IN GENERAL.—Except".

On page 778, line 19, strike the quotation marks and the final period and insert between lines 19 and 20 the following:

"(b) AWARD OF FEES UPON FINAL JUDGMENT.—In any implied private action arising under this title, brought on behalf of a class, where the court enters a final judgment against a party on the basis of a motion to dismiss, motion for summary judgment, or trial on the merits, the court shall, upon motion by the prevailing party, award the prevailing party reasonable fees and other expenses under subsection (b) incurred by that party.

"(c) APPLICATION TO COURT.—A party seeking an award of fees and other expenses under subsection (b) shall, not later than 30 days after a final, nonappealable judgment is rendered in the action, submit an application to the court for fees and other expenses. The application shall verify that the party is entitled to such an award under subsection (b) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed.

"(d) COURT'S DETERMINATION.—The court, in its discretion, may—

"(1) determine whether the amount to be awarded under subsection (b) shall be awarded against the unsuccessful party, its attorney, or both; and

"(2) reduce the amount to be awarded pursuant to this section, or deny the award if—

"(A) the prevailing party, during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; or

"(B) the court determines that, notwithstanding any other provision of this section, the action was substantially justified.

"(e) LIABILITY OF COUNSEL.—Counsel for the party against whom fees are awarded under this section in connection with an action described in subsection (b) shall be personally liable for those fees. Such counsel may enter into an agreement for reimbursement or indemnification of such fees from members of the class on whose behalf the action was brought prior to or at any time during such litigation. All such agreements between the counsel for the class and the class members shall be approved by the district court.

"(f) DISCOVERY MOTIONS.—In any motion for an order compelling discovery made pursuant to an implied private action arising under this title, the court shall award the prevailing party as to the securities action reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorney fees, unless the court finds that special circumstances make an award unjust.

"(g) AWARD OF FEES UPON DISMISSAL PRIOR TO TRIAL.—In any action brought on behalf of a class that alleges a violation of section 10(b) or 14 or the rules issued thereunder, where such action is dismissed prior to trial, the court shall order the nonprevailing party or that party's counsel to pay reasonable attorneys' fees and expenses incurred by any prevailing party if, upon motion to the court, the court finds that the plaintiff has failed to establish that, after reasonable investigation made prior to the commencement of the action, the plaintiff had reasonable grounds to believe and did believe that the action—

"(1) was well grounded in fact; and

"(2) was warranted based upon existing law or upon good faith arguments for the reasonable extension, modification, or reversal of existing law.

"(h) FEE AMOUNTS.—The amounts of fees awarded under this section and the reasonable allocation of expenses among multiple parties shall be in the discretion of the court, based upon prevailing legal fees in the district, the prevailing party's legal and other bills, and the pleadings and proceedings in the case, provided that such fees and costs relating to representation at trial or deposition shall not be awarded for simultaneous representation of any 1 defendant by more than 1 attorney. The amount recovered shall not include any amounts separately awarded under Rule 11 of the Federal Rules of Civil Procedure.

"(i) DEFINITIONS.—

"(1) FEES AND OTHER EXPENSES.—For purposes of this section, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project that is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses.

"(2) PREVAILING PARTY.—For purposes of applying for an award of fees under this section, the 'prevailing party' shall be considered to be—

"(A) the party that brought the underlying action if such party succeeded on the central issue of the suit by acquiring the primary relief sought; or

"(B) the party defending in the underlying action if such party prevented the plaintiff from acquiring the primary relief sought.".

SEC. . PROPORTIONATE LIABILITY REFORM.

"( ) LIABILITY.—In any implied private action arising under a provision of this Act, the liability for damages of each defendant shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility, as determined under subsection ( ). A separate judgment shall be rendered against each defendant for that amount.

"( ) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact in an action referred to in subsection (b) shall determine the proportion of responsibility assignable to each defendant.

"( ) EXCEPTION.—This section does not apply to any defendant found by the trier of fact in an action referred to in subsection (b) to have acted with actual, subjective intent to deliberately deceive, manipulate, or defraud. Proof that the defendant acted recklessly does not subject the defendant to joint and several liability in any implied private action arising under this Act.".

On page 778, line 13, strike "Except" and insert "(a) LIMITATIONS.—Except".

On page 778, line 19, strike the quotation marks and the final period and insert between lines 19 and 20 the following:

"(b) LIABILITY.—In any implied private action arising under a provision of this Act, the liability for damages of each defendant shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility, as determined under subsection (c). A separate judgment shall be rendered against each defendant for that amount.

"(c) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact in an action referred to in subsection (b) shall determine the proportion of responsibility assignable to each defendant.

"(d) EXCEPTION.—This section does not apply to any defendant found by the trier of fact in an action referred to in subsection (b) to have acted with actual, subjective intent to deliberately deceive, manipulate, or defraud. Proof that the defendant acted recklessly does not subject the defendant to joint and several liability in any implied private action arising under this Act.".

On page 778, line 21, insert "(a)" after "section 36".

On page 778, line 23, insert after the period the following: "Section 36(b) of the Securities Exchange Act of 1934, as added by subsection (a), shall become effective on the date of enactment of this Act and shall apply to all proceedings commenced on or after that date of enactment.".

On page 778, line 13, strike "Except" and insert "(a) IN GENERAL.—Except".

On page 778, line 19, strike the quotation marks and the final period and insert between lines 19 and 20 the following:

"(b) AWARD OF FEES.—In any implied private action arising under this title, where the court enters a final judgment against a party on the basis of a motion to dismiss, motion for summary judgment, or trial on the merits, the court shall, upon motion by the prevailing party, award the prevailing party reasonable fees and other expenses incurred by that party.

"(c) APPLICATION TO COURT.—A party seeking an award of fees and other expenses shall, not later than 30 days after a final, nonappealable judgment is rendered in the action, submit an application to the court for fees and other expenses. The application shall verify that the party is entitled to such an award under subsection (b) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed.

"(d) COURT'S DETERMINATION.—The court, in its discretion, may—

"(1) determine whether the amount to be awarded pursuant to this section shall be awarded against the unsuccessful party, its attorney, or both; and

"(2) reduce the amount to be awarded pursuant to this section, or deny an award if—

"(A) the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; or

"(B) the court determines that, notwithstanding any other provision of this section, the action was substantially justified.

"(e) MOTIONS.—In any motion for an order compelling discovery made pursuant to an implied private action arising under this title, the court shall award the prevailing party as to the securities action reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorney fees, unless the court finds that special circumstance make an award unjust.

"(f) LIABILITY OF COUNSEL.—Counsel for the party against whom fees are awarded under this section in connection with an action described in subsection (b) shall be personally liable for those fees. Such counsel may enter into an agreement for reimbursement or indemnification of such fees from clients prior to or at any time during such litigation. In the case of a class action, all such agreements between the counsel for the class and the class members shall be approved by the district court.

"(g) Definitions.—

"(1) FEES AND OTHER EXPENSES.—For purposes of this section, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project that is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnishes.

"(2) PREVAILING PARTY.—For purposes of applying for an award of fees under this section, the 'prevailing party' shall be considered to be—

"(A) the party that brought the underlying action if such party succeeded on the central issue of the suit by acquiring the primary relief sought; or

"(B) the party defending in the underlying action if such party prevented the plaintiff from acquiring the primary relief sought.".

On page 778, line 21, insert "(a)" after "section 36".

On page 778 line 19 strike the quotation marks and the final period and insert between lines 19 and 20 the following:

SEC. .

( ) RECOVERY BY NAMED PLAINTIFFS IN CLASS ACTIONS.—In any implied private action arising under this Act that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the share of any final judgment or of any settlement that is awarded to any party serving as a representative plaintiff shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the plaintiff class.

( ) PROHIBITION ON CONFLICTS OF INTEREST.—In any implied private action arising under this Act that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the class may not be represented by any attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation. An attorney who knowingly violates this prohibition shall be barred from acting as class counsel in any future action arising under this Act or under the Securities Act of 1933.

( ) PAYMENT OF REFERRAL FEES.—In any implied private action arising under this Act that is certified as a class action pursuant to the Federal Rules of Civil Procedure, an attorney may not represent the class if the attorney has paid or is obligated to pay a fee to a third party who assisted him in obtaining the representation of any member of the class. An attorney who knowingly violates this prohibition shall be barred from acting as class counsel in any future action arising under this Act or under the Securities Act of 1933.

( ) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGMENT FUNDS.—Funds disgorged as a result of any action brought by the Commission in federal court or of any Commission administrative action shall not be distributed as payment for attorney fees or expenses incurred by private parties seeking a share of the disgorged funds except as much court may order upon a motion of the Commission."

Mr. DOMENICI. Now, let me indicate my appreciation to the chairman and ranking member on another matter. I had an amendment that was essentially an economic amendment because, if you sit down with any Senators and start talking about the banking system in America, the first thing they say is the banks are not lending money, and then you meet with the

bankers and the bankers say, well, we are having a lot of difficulty lending money because the regulators are on our backs. And then you come back here and ask the regulators, "Are you really doing that?" And they tell you, "Oh, not at all."

Well, I am sure either they are really doing it or it is perceived that they are doing it. But everyone agrees that it is much, much more difficult today to lend money on a home or for the purpose of a home because it takes very long to get the appraisals done. In some of our States, it is taking, instead of 10, 15 days, $200 or $300, it is taking 2 or 3 months and it is costing well over $1,000. And, if you get to commercial property, in many States it is taking weeks upon weeks to get the appraisal finished, and the fees are enormous.

Now, I do not deny professional appraisers their due. This amendment had nothing to do with trying to deny them their right to collect as professionals. What it has to do with is the economic fact that that is the big delay and the statistical truism that the threshold for causing certified appraisals is too low; $50,000 for a home is too low. And $50,000 for commercial property is too low. This changes that to $100,000 for homes, $250,000 for commercial, which means they will be appraised under that threshold, but the necessarily by certified appraisers.

This is a new kind of appraisal. And we are short of them in all our States. Every State is short of these because we are bringing ourselves up to speed. And we think the losses are very, very insignificant for sales under those thresholds. History reveals that, and current history reveals that. So we do not think using a different kind of appraiser is going to cause any harm to the banking system. On the other hand, it will move things out much more rapidly.

Likewise, on a home loan, when you want to add an improvement loan to it, currently, you have to go through an entire appraisal for a $20,000 improvement loan. Ridiculous. This makes some changes in that and indicates that some flexibility can be used there. So that if the equity is gigantic, you do not have to spend the money for a full appraisal. It will cause that kind of money to move out of banks more quickly.

There are a few other things in the amendment that will be adopted. And on that one I understand the managers will put that in their collective bill, and I thank them for it. I believe it will do some good. In fact, there are a number of Senators who know more than I about banking who indicate this will be a significant improvement if we can just put it into the law.

So I want to thank everyone for helping on that, and I yield the floor.

Mr. RIEGLE. I would like to say again, I thank the Senator from New Mexico for his diligent efforts over the last several days to work this issue out satisfactorily, and very particularly Senator BRYAN, from Nevada, who happens not to be on the floor. And Senator MCCONNELL was also involved in that.

Mr. DOMENICI. Will the chairman yield?

Mr. RIEGLE. Yes.

Mr. DOMENICI. I forgot to mention, and I do apologize, that Senator MITCH MCCONNELL has been very active in the area with reference to attorneys' fees and court costs, and he was a cosponsor of all of those amendments that I sent to the desk and clearly would have been my ally had we offered them. I am sure he is pleased that we resolved the issue by not extending the statute of limitations on 10(b) type of litigation.

Mr. RIEGLE. Very good.

I now have the amendment, the first managers amendment that I will send to the desk. I want to do that now, but I see the Senator from Missouri on his feet. Did he want to make a comment before I do that?

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank the chairman.

I just want to commend our colleague from New Mexico because, as we talk about all the things that we do to put additional burdens on the system, Senator DOMENICI has been a real leader in pointing out some of the things that we can do to lighten the burdens and help us encourage economic activity. There is a lot of work to be done in this area.

I thank the chairman and the ranking member for making the accommodations. There is much more that we have to do here, but I congratulate the Senator from New Mexico and assure him that I am willing to work with him in these areas in the future.

I express my appreciation again to the chairman for the time.

AMENDMENT NO. 1368

(Purpose: To strike certain portions of the committee amendment)

Mr. RIEGLE. Mr. President, let me now indicate what I am sending to the desk in the manner of the first agreed-to amendment by Senator GARN and myself. It is an amendment that will contain two of the three items that I previously discussed. The third involves some technical changes that are still being put in printed form. We will offer that just a little bit later.

The issue has been resolved. It is a matter of getting it prepared in a proper form so it can go to the desk, and that relates to the Lampf issue. So we will be sending that a little later to the desk but the issue is settled.

The two that I will now send up to the desk and offer in behalf of Senator GARN and myself will narrow the bill down in this respect.

We have agreed to drop title IV of the bill, which would restructure the Board of Directors of the FDIC, which contained the Federal Financial Institutions Coordination Council Act and which addressed the registration of bank securities. So that section will be now taken out of the bill and that is part of what is accomplished in the amendment I now send to the desk.

We also incorporated here the changes that had been worked out in the area of insurance, of interest to the Senator from Delaware and others. But the amendment we have developed and have sent to the desk modifies the provisions of the bill regarding insurance activities of banks. It modifies a provision adopted by the committee during markup that would prohibit a bank from selling insurance outside its chartering State unless specifically authorized by the statute laws of the target State.

As amended, this provision will not apply to bank subsidiaries. Senator DODD and Senator GRAMM of Texas contributed significantly to this compromise and I want to commend them for their efforts. A number of other Senators also, of course, have an interest in that.

I say again I know the Senator from Delaware does. I am sure he will speak to that at an appropriate point. The Riegle-Garn amendment that has been worked out on the Lampf issue, just the subject of the discussion with Senator DOMENICI, has been settled. It is being typed now in its final form. When it is ready to come to the desk it will likewise be sent forward as we have just done with the two I have just described. So those amendments are there.

Mr. President, I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for himself and Mr. GARN, proposes an amendment numbered 1368.

Mr. RIEGLE. Mr. President, I ask further reading of the amendment be dispensed with.

Mr. ROTH. Mr. President, I object.

Mr. RIEGLE. I did not seek a unanimous-consent request. I just sent the amendment to the desk.

The PRESIDING OFFICER. The Chair's understanding was the unanimous consent was requested to call off reading. If consent was not obtained, the regular order is to read the amendment.

Mr. RIEGLE. Does the Senator need it all read or just the part on insurance?

Mr. ROTH. I would like it all read.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read as follows:

Beginning with page 396, line 1, strike all through the end of title IV of the committee amendment.

Beginning with page 669, line 7, strike all through page 676, line 17, and insert the following:

(b) REGULATIONS.—Not later than 210 days after the date of enactment of this Act, the National Credit Union Administration Board shall promulgate final regulations to administer and carry out the purposes of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective immediately upon the effective date of final regulations promulgated under subsection (b), but in no event later than 300 days after the date of enactment of this Act.

SEC. 771. INSURANCE ACTIVITIES OF NATIONAL BANKS.

(a) REPEAL OF OBSOLETE PROVISION.—Chapter 461 of the Act of September 7, 1916 (39 Stat. 753; 12 U.S.C. 92 note), as amended, is further amended by striking "That in addition to the powers vested by law in national banking associations" and all that follows through "filing his application for insurance.".

(b) NEW PROVISION FOR INSURANCE ACTIVITIES OF NATIONAL BANKS.—The Revised Statutes are amended by adding the following new section after section 5136A (12 U.S.C. 24):

"SEC. 5136B. INSURANCE ACTIVITIES OF NATIONAL BANKS.

"(a) IN GENERAL.—A national bank may not provide insurance as agent or broker except pursuant to this section or section 5136 of the Revised Statutes.

"(b) AUTHORITY FOR NATIONAL BANKS TO ENGAGE IN INSURANCE ACTIVITIES PERMITTED FOR STATE BANKS.—

"(1) IN GENERAL.—A national bank or any of its branches may provide insurance as agent or broker in the same manner and to the same extent that a bank chartered in the State in which the national bank or branch is located is permitted to provide insurance as agent or broker.

"(2) SUBSIDIARIES OF NATIONAL BANKS.—A subsidiary of a national bank that is located in the same State as the national bank may provide insurance as agent or broker in the same manner and to the same extent that a subsidiary of a bank chartered in that State is permitted to provide insurance as agent or broker.

"(3) BANK CHARTERED IN THE STATE DEFINED.—For purposes of paragraph (1), the term 'bank chartered in the State' does not include any organization that is excluded from the definition of 'bank' in section 2(c)(2) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)).

"(c) AUTHORITY FOR NATIONAL BANKS TO ENGAGE IN INSURANCE AGENCY ACTIVITIES IN SMALL TOWNS.—

"(1) IN GENERAL.—A national bank may provide insurance as agent or broker in any small town in which the bank or any of its branches is located.

"(2) LIMITATIONS ON PERMISSIBLE CUSTOMERS.—Insurance provided pursuant to paragraph (1) in a small town in which a national bank or branch is located may only be provided to—

"(A) an individual who is a resident of or employed in the small town;

"(B) an individual to whom the bank or branch has provided insurance as agent or broker, without interruption, since such individual ceased to be a resident of, or ceased to be employed in, the small town;

"(C) a person who is engaged in business in the small town and has a business office in such town, so long as such insurance is provided either with respect to—

"(i) an employee (including an owner-employee) who resides in or is principally employed in the small town, or

"(ii) services or products provided in or from the small town; or

"(D) any other person, if the insurance is issued with respect to—

"(i) real property located in the small town; or

"(ii) personal property that is principally located or used in the small town.

"(3) GUARANTEES PROHIBITED.—No national bank that provides insurance pursuant to paragraph (1) may—

"(A) assume or guarantee the payment of any premium on any insurance policy issued through the agency of the bank by the insurance company for which the bank is acting as agent; or

"(B) guarantee the truth of any statement made by an insurance customer in filing such customer's application for insurance.

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.

"(5) SMALL TOWN DEFINED.—For purposes of this subsection (c), the term 'small town' means—

"(A) any place with a population not exceeding 5,000 (as shown by the preceding decennial census); and

"(B) any contiguous rural area, including rural communities, within 7.5 miles of the borders of a place described in subparagraph (A), except to the extent such contiguous rural area includes any part of an incorporated city or town that has a population exceeding 12,500 (as shown by the preceding decennial census).

"(d) AUTHORITY OF NATIONAL BANKS TO CONTINUE CERTAIN AGENCY ACTIVITIES.—

"(1) IN GENERAL.—A national bank or branch providing insurance pursuant to the provision repealed in section 771(a) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 may continue to provide insurance as agent or broker from any place in which the national bank or branch was located on May 1, 1991, if—

"(A) the national bank or branch was actually providing insurance from that place as of May 1, 1991;

"(B) the insurance insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the national bank or branch was actually providing as of May 1, 1991; and

"(C) the insurance is provided only in the contiguous region to the place in which the national bank or branch is located, except that such insurance may not be provided in any county in which the national bank or branch was not actually providing insurance as of May 1, 1991.

"(2) LIMITATIONS ON PERMISSIBLE CUSTOMERS.—Insurance provided in a contiguous region by a national bank or branch pursuant to paragraph (1) may only be provided to—

"(A) an individual who is a resident of or employed in the contiguous region;

"(B) an individual to whom the bank or branch has provided insurance as agent or broker, without interruption, since such individual ceased to be a resident of, or ceased to be employed in, the contiguous region;

"(C) a person who is engaged in business in the contiguous region and has a business office in such contiguous region, so long as such insurance is provided either with respect to—

"(i) an employee (including an owner-employee) who resides in or is principally employed in the contiguous region, or

"(ii) services or products provided in or from the contiguous region; or

"(D) any other person, if the insurance is issued with respect to—

"(i) real property located in the contiguous region; or

"(ii) personal property that is principally located or used in the contiguous region.

"(3) CONTIGUOUS REGION DEFINED.—For purposes of this subsection, the term 'contiguous region' means the county in which the national bank or branch is located and any county bordering on the county in which the national bank or branch is located, except for—

"(A) any incorporated city or town with a population exceeding 30,000 (as shown by the preceding decennial census); or

"(B) any metropolitan area, as determined by the Office of Management and Budget.

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.

"(e) STATE DEFINED.—For purposes of this section, the term 'State' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

(c) NATIONAL BANK INSURANCE ACTIVITIES THAT ARE INCIDENTAL TO BANKING ACTIVITIES.—The paragraph designated the "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)), as redesignated by this section, is amended by adding at the end the following: "A national banking association may engage in activities pursuant to this paragraph that constitute providing insurance as principal, agent, or broker, but only if such activities were lawfully engaged in by one or more national banks before May 1, 1991. For the purposes of the previous sentence, activities were not lawfully engaged in before May 1, 1991, to the extent that they are finally adjudged as unlawful under laws in effect on May 1, 1991. A national banking association providing insurance pursuant to this paragraph shall comply with the laws governing the provision of insurance of the State in which such banking association is located, unless such State law is preempted by Federal law.".

SEC. 772. INTERSTATE INSURANCE AGENCY ACTIVITIES OF BANKING SUBSIDIARIES OF BANK HOLDING COMPANIES.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following new section:

"SEC. 13. INTERSTATE INSURANCE AGENCY ACTIVITIES OF BANKING SUBSIDIARIES.

"(a) IN GENERAL.—No bank holding company may permit any subsidiary bank to provide insurance as agent or broker beyond the borders of the State in which the subsidiary bank is principally located, unless—

"(1) the statutes of the host State expressly authorize a bank principally located in another State to provide insurance in such host State, by language to that effect and not merely by implication;

"(2) the insurance is provided through a branch of the subsidiary bank, so long as the branch—

"(A) is located in the State in which the insurance is provided;

"(B) is otherwise authorized by State or Federal law to provide such insurance; and

"(C) is engaged primarily in banking activities, not insurance activities;

"(3) the insurance is provided pursuant to subsection (d) of section 5136B of the Revised Statutes, except that such insurance may not be provided—

"(A) in any place in the host State that is more than 7.5 miles from the place in which the national bank or branch is located; or

"(B) any incorporated cities or towns with a population exceeding 12,500 (as shown by the preceding decennial census);

"(4) the insurance—

"(A) insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the subsidiary bank or any subsidiary of that bank was providing as of May 1, 1991, beyond the borders of the State in which the subsidiary bank is principally located, and

"(B) is not provided pursuant to a statute enacted by a State after May 1, 1990;

"(5) the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by the bank holding company and any subsidiary (including the subsidiary bank) in the event of the death, disability, or involuntary unemployment of the debtor; or

"(6) the insurance is placed on real or personal property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

"(b) APPLICATION.—The restrictions of subsection (a) shall not apply to any non-bank subsidiary of a bank.

"(c) DEFINITIONS.—

"(1) PLACE IN WHICH INSURANCE IS PROVIDED.—For purposes of this section, the place in which insurance is provided includes the place in which an individual who purchases such insurance is domiciled.

"(2) PRINCIPALLY LOCATED DEFINED.—For purposes of this section, the State in which a bank is principally located is—

"(A) the State in which the bank is chartered; or

"(B) if the bank is a national bank, the State in which the bank has its main office.

"(3) HOST STATE DEFINED.—For purposes of this section, the term 'host State' means a State in which a bank provides insurance other than the State in which the bank is principally located.

"(d) NO EFFECT ON BANK HOLDING COMPANY INSURANCE ACTIVITIES.—Nothing in this section shall be deemed to affect the ability of a bank holding company to engage, directly or indirectly, in insurance activities that are permissible under sections 4(a)(2) and 4(c)(8).".

SEC. 773. SAFEGUARDS FOR SALE OF INSURANCE.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting the following new section at the appropriate place:

"SEC. ____. SAFEGUARDS FOR SALE OF INSURANCE BY INSURED INSTITUTIONS.

"(a) PROMINENT DISCLOSURE THAT INSURANCE PRODUCTS ARE NOT FEDERALLY INSURED.—Pursuant to regulations issued by the Corporation, an insured depository institution shall prominently disclose in writing to each of its customers that insurance products sold, offered, or recommended by the insured depository institution are not deposits and are not insured by the Corporation, and, to the extent applicable, are neither guaranteed by nor otherwise an obligation of an insured depository institution.

"(b) NO FAVORING OF CAPTIVE AGENTS.—No insured depository institution may, directly or indirectly—

"(1) require as a condition of providing any product or service to any customer, or any renewal of any contract for providing such product or service, that the customer acquire, finance, or negotiate any policy or contract of insurance through a particular insurer, agent, or broker;

"(2) in connection with a loan or extension or credit that requires a borrower to obtain insurance, reject an insurance policy solely because such policy has been issued or underwritten by any person who is not an affiliate of such institution; or

"(3) impose any discriminatory requirement on any insurance agent who is not affiliated with the insured depository institution that is not imposed on any insurance agent that is affiliated with such institution.

"(c) NO SOLICITATION OF CERTAIN INSURANCE BEFORE PROVIDING LOAN COMMITMENTS.—

"(1) IN GENERAL.—No insured depository institution may, directly or indirectly, solicit the purchase of any insurance required under the terms of any proposed loan or extension of credit from such insured depository institution to a customer before the customer has received a written commitment with respect to such loan or extension of credit.

"(2) EXCEPTION FOR INSURANCE REQUIRED FOR CREDIT AGREEMENT.—Nothing in this section shall prevent an insured depository institution from placing insurance on real or personal property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

"(d) RESTRICTIONS ON USE OF NONPUBLIC CUSTOMER INFORMATION.—

"(1) IN GENERAL.—No insured depository institution may use, directly or indirectly, any nonpublic customer information for the purpose of providing insurance, except with the prior written consent of the customer.

"(2) EXCEPTION FOR CREDIT-RELATED INSURANCE.—For purposes of paragraph (1), the term 'insurance' does not include insurance—

"(A) provided to assure the repayment of the outstanding balance due on an extension of credit in the event of the death, disability, or involuntary unemployment of the debtor;

"(B) provided on real or personal property obtained by or on behalf of an insured depository institution in the event a debtor has failed to provide reasonable evidence of required insurance in accordance with an extension of credit; or

"(C) provided to assure the repayment of outstanding balances due in connection with an extension of credit in the event of the loss or damage to property used as collateral on such extension of credit.

"(3) RECORDS OF CUSTOMER CONSENT.—Any insured depository institution that obtains the consent of any customer to disclose nonpublic customer information shall maintain appropriate records or other evidence of such consent.

"(4) DEFINITIONS.—

"(A) CUSTOMER DEFINED.—For purposes of this section, the term 'customer' means any person who, after January 1, 1992, establishes a credit relationship with an insured depository institution.

"(B) NONPUBLIC CUSTOMER INFORMATION DEFINED.—For purposes of this section, the term 'nonpublic customer information' means information obtained from an individual by an insured depository institution in connection with a loan or extension of credit, but does not include—

"(i) customers' names and addresses (unless a customer has specified otherwise);

"(ii) information that could be obtained from unaffiliated credit bureaus or similar companies in the ordinary course of business; or

"(iii) information that is customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by insured depository institutions that do not provide insurance.

"(5) ADDITIONAL RESTRICTIONS.—The Corporation may, by regulation or order, prescribe such additional restrictions and requirements as may be necessary or appropriate to avoid any significant risk to insured depository institutions, protect customers, and avoid conflicts of interest or other abuses.".

SEC. 774. INSURANCE UNDERWRITING IN BANK RESTRICTED.

(a) IN GENERAL.—Section 24 of the Federal Deposit Insurance Act (as added by section 211(a) of the Act) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

"(f) INSURANCE UNDERWRITING.—

"(1) IN GENERAL.—No insured State bank or any of its subsidiaries may provide insurance as principal except to the extent that a national bank may lawfully provide insurance as principal.

"(2) CONTINUATION OF EXISTING ACTIVITIES.—Notwithstanding paragraph (1), an insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on July 15, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

"(3) EXCEPTION FOR CERTAIN FEDERALLY REINSURED CROP INSURANCE.—Notwithstanding paragraph (1), an insured State bank or any of its subsidiaries that provided insurance on or before September 30, 1991, that was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to provide such insurance.".

(b) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—The amendment made by this section shall take effect 90 days after the date of enactment of this Act.

(2) TRANSITION RULE.—An insured State bank or subsidiary of an insured State bank that, as of the date of enactment of this Act, was lawfully engaged in any activity prohibited by this section may continue to engage in that activity during the period ending one year after that date of enactment.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Republican leader, Senator DOLE.

Mr. DOLE. Mr. President, as soon as Senator SPECTER arrives, we will interrupt just momentarily to take care of another matter. Senator FORD is here to object to a unanimous-consent request. Senator SPECTER will be here momentarily. I just wanted to first thank the—Senator SPECTER is here.

I will just take a minute to thank the managers for the progress they

have made and indicate to anybody on this side who may have amendments, Senator GARN needs to know very quickly, and hopefully all those who have amendments will understand that if we are going to conclude this session before Thanksgiving, today we need to not only do this bill but the supplemental appropriations bill, which has about 30 amendments to it.

I know the managers are still trying to work out some of the amendments, even those amendments which are listed. That would be helpful, too.

So after the distinguished Senator from Pennsylvania makes his request, anything the leaders can do to help the managers, we are willing to do it.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER].

UNANIMOUS-CONSENT REQUEST

Mr. SPECTER. Mr. President, I thank the managers of the bill for permitting this very brief interruption. I thank my distinguished Republican leader, Senator DOLE, for working this out procedurally.

I am about to make a unanimous-consent request, Mr. President, which I anticipate an objection to. But I think it important to comment about it, albeit briefly.

This request is made on behalf of myself and Senator DOMENICI relating to legislation which we have introduced which would permit the withdrawal of IRA's up to $10,000 for middle-income Americans, the condition on those IRA's being used to purchase consumer goods.

We have at the present time some $450 billion in IRA's, and a considerable sum in 401(k) plans, where there is a total of about $800 billion involved. Those funds cannot be withdrawn until the taxpayers are 59½ without a considerable penalty.

The legislation which Senator DOMENICI and I have introduced, we think, would be realistically directed immediately to have a substantial stimulus in consumer purchasing power which could be significant in helping to take us out of the current economic recession, because if you put billions of dollars into the economy to purchase consumer goods, that could be a very, very significant step forward, with our proposal providing that $10,000 becomes available immediately, with the taxes paid over the next 4 years.

There had been an intention to put this on the unemployment compensation bill. That was not noted before the unemployment compensation bill was handled in a summary fashion in a wrapup yesterday which poses a procedural situation that unanimous consent is required in order to put this amendment on that bill.

The absence of putting the amendment on that bill is not necessarily fatal because there is another vehicle, the supplemental appropriations bill, where this amendment would be doable, but it is more in line on the unemployment compensation bill.

I would anticipate that the distinguished chairman of the Appropriations Committee would not like to have additional amendments on the supplemental appropriations bill. So I feel it is incumbent to make a maximum effort to put it on the unemployment compensation bill.

But this is not just a run-of-the-mill amendment, Mr. President. This is an amendment which would really be very material and a substantial stimulus to the economy, an issue which Senator DOMENICI and I have discussed with the Secretary of the Treasury, Nicholas Brady, the Chairman of the Federal Reserve, Alan Greenspan, the Chairman of the President's Economic Advisers, Michael Boskin, and also the President's Chief of Staff, Governor Sununu, with a great deal of interest being shown in it, although no commitments as of this point.

With that preliminary statement for 3 minutes, I know what the result is going to be, but I do formally, Mr. President, ask unanimous consent that the Senate action disagreeing to the House amendment to H.R. 1724 requesting a conference on the disagreeing votes of the two Houses and appointing conferees on the part of the Senate be vitiated in order to allow Senator DOMENICI and myself to make a motion to concur in the House amendment with an amendment dealing with the issue of withdrawal of IRA's as I have heretofore described.

Before I pause to hear the objection, I just want to say that I will take this up on the floor with the distinguished chairman of the Finance Committee, Senator BENTSEN, later today. He cannot be here until 4 o'clock. But he wanted to proceed at this time. When the objection is made, the bill can proceed through the process to be signed at the earliest possible date.

With that, I thank my colleagues, and do formally make that unanimous-consent request.

The PRESIDING OFFICER. Is there objection?

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, reserving the right to object, I will object, the Senator has a good amendment. But we are talking about $5.6 billion going to those who will have no money at all, and it will go immediately. What we would do is delay this piece of legislation for some time. How long, I do not know, nor do I know whether it would be acceptable by the House, or whether the conference will accept it. It really does not belong on this bill. It belongs on the finance bill, supplemental appropriations bill, whatever.

Therefore, Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SPECTER. Mr. President, I thank my colleague from Kentucky for his comments. It is a worthwhile amendment. Whatever specific language he used, is it not in the affirmative. And I do want to say for the Record that I do not intend to hold up the unemployment compensation bill.

We passed two bills last Friday. One bill has been signed and is in effect so that the payments are being made. Pennsylvania does not get the benefit from the second bill and I know that Kentucky and other States do. I respect and agree with the intent of the second bill in expanding those benefits. But this amendment, I submit, will not hold up in any way any checks going to anybody who is unemployed because Kentucky, for example, gets 6 weeks under the legislation which has been signed. This would be handled in much shorter than 6 weeks so that the additional weeks up to 13 could be effectuated.

But I understand what my distinguished colleague from Kentucky has to say and I respect his right to make the objection. We will purse it on the supplemental appropriation.

Mr. FORD. Mr. President, there is no guarantee that this amendment will be accepted. There is no reason to believe that it could not hold this unemployment extension bill. So without some kind of guarantee that this would fly on through, then we will be here after Thanksgiving, because I am not going to leave here until that bill is passed and my people are taken care of.

So I think there is more than just a good amendment here. There is the possibility of delaying the implementation of this legislation and delaying the ability of Congress to sine die. So there is more here than meets the eye.

I yield the floor.

The PRESIDING OFFICER. The Chair reminds Senators that the pending business is amendment 1368 proposed by the Senator from Michigan and the Senator from Utah.

Mr. SPECTER. Mr. President, I do not disagree with what the distinguished Senator from Kentucky has said. It may be that we would have to be here beyond Thanksgiving. I have made the call for the session to go beyond Thanksgiving and into December to deal with the problems under this session.

I thank the Chair. I thank my colleagues for permitting me to interrupt.

The PRESIDING OFFICER. Who seeks recognition? Is there additional debate on the pending amendment? If not, the question occurs on amendment 1368.

Mr. ROTH. Parliamentary inquiry. What amendment?

The PRESIDING OFFICER. The Chair would remind the Senator that the pending amendment is amendment 1368 which was read in its entirety offered by the Senator from Michigan

and the Senator from Utah. Is there additional debate?

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware [Mr. ROTH].

Mr. ROTH. Mr. President, I am deeply concerned about what this amendment does in the area of insurance. Frankly, the provisions discriminate against the State of Delaware. I might point out that I was just standing here a week ago at which time I was forced to object to a unanimous consent request because of an agreement that had been reached in private on the extension of unemployment benefits.

And as I said at that time, those provisions were unfair; they were unfair to my State of Delaware, and they were unfair in their discrimination against 17 other States, as well.

My concern here today with the so-called management proposal is that, once again, this provision discriminates against my State, and in fact does not accomplish what the original purpose of this reform legislation was.

Mr. President, when the administration submitted its proposal on bank reform, those reforms were to include a number of provisions that would strengthen our banking system. It would strengthen our banking system by enabling them to be involved and engaged in a number of activities which are not currently available to them.

It was thought that, by giving these additional powers, it would not only promote discrimination in a number of activities, including securities and insurance, but it would also enable the banks to attract further capital for their business, which would enable those financial institutions to be strengthened. It is no secret that many of these institutions have difficulty at the current time.

Unfortunately, as the legislation developed, the so-called reform became deform. Rather than strengthening and broadening the authority of our banking institutions to enter new areas of activity, it would, under the present proposal, in effect, moved backward. There were a number of dissents about this legislation as it emerged from our committee just because of that situation.

I point out that the distinguished ranking member of the committee, in a statement of his own, pointed that out. He noted that "the insurance provisions are diametrically opposite from the security provisions." At that time, the legislation included securities as an area of power for the banking institutions. But it pointed out that "whereas the securities provisions are pro-competitive," as I point out, in the bill reported out by the committee, "the insurance provisions seek to restrain competition by restricting banks' ability to compete. As reported, the bill will overturn actions taken by bank regulators and State legislatures to enable banks to enter the insurance business. Attempts to overturn actions by State legislatures are particularly troublesome, given the fact that the State legislatures were presumably acting to reflect the wishes of their constituents. If consumers of insurance products express through State legislatures a desire for more competition in the insurance industry, and/or a desire for the convenience of one-stop shopping for financial services, why should the Federal Government say no?"

At that time, as I said, the insurance provisions were deeply disturbing to me, as well as to the junior Senator from Texas, who wrote, in a separate opinion on page 249, that:

An even more egregious example of the balkanization of our national economy is contained in the insurance provisions of the bill. Here we find barriers to interstate commerce based not only on where a business may have its headquarters, but also on who owns the business.

Currently, all insurance companies conduct their business in each State under the same set of rules. Under this bill, that would all change if an insurance company were acquired by a bank. While the competitors could operate freely across State lines, an insurance company owned by a bank could do so only with the explicit approval of the legislature of each State where it wished to market its product.

This has nothing to do with the sale of insurance by banks, which I do not support. This is a limitation that would apply to the sale of insurance through traditional channels, an unfair limitation based upon nothing more than the ownership of the company.

Mr. President, I noted in my separate opinion in the committee report that:

The economy is failing, in no small part, because of the credit crunch. Banks are not extending credit because of capital shortages. Capital is short because banking is not currently profitable. Banking is not profitable because of the effect of antiquated banking laws, under which the former bank customers were free to go to other providers of banking services, while potential customers of new banking products in securities and insurance have been effectively shut out.

The administration forwarded to Congress a true reform package to increase the profitability of banks by opening doors to securities and insurance customers.

However, in various committee actions in both the House and Senate, the financial competitors of the banks have used the opportunity for reform to further close the doors on competition. That is why what was once heralded as reform is now denounced as retreat.

The most glaring example of this reversal is in the area of insurance. Whereas the Administration bill would have federally authorized banks to have insurance powers, S. 543 not only strikes such federal authorization but turns tail and federally restricts any State authorization. Since the Committee action violates our two-hundred-year commitment to a national economic union, since the very purposes of the Committee action is to stop competition in insurance for reasons totally unrelated to banking policy, and since the Committee action, regressive as it is for all America, specifically discriminates against my State of Delaware, I respectfully dissent from reporting this legislation.

Try as it may to provide a rational policy explanation for the Committee's action, the majority report fails. This is understandable because the insurance lobby took the Committee by storm and dictated the terms of surrender. This is why the majority report embarrassingly justifies the insurance lobby's position by asserting that there is already enough competition in insurance, as if it were common practice for Congress to monitor levels of competition, lest they rise too high, and whenever they do, statutorily cut them off.

As I stated before in my statement:

* * * there are three major problems. First, the committee's action violates one of the paramount principles governing our country——

Mr. GARN. Mr. President, will the Senator from Delaware yield?

Mr. ROTH. Yes; I am happy to yield to my distinguished colleague.

Mr. GARN. I thank the Senator from Delaware.

I ask unanimous consent that this not be counted in the two-speech rule, so that I can enter a quorum call and the Senator's rights to continue to debate this issue would be protected.

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

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

VIOLENT CRIME CONTROL ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 335, H.R. 3371, a bill to control and prevent crime; that all after the enacting clause be stricken and the text of S. 1241 as passed by the Senate on July 11, 1991, be inserted in lieu thereof; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

I further ask unanimous consent that the Senate insist upon its amendment, request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

So the bill (H.R. 3371) was passed.

The Presiding Officer appointed Mr. BIDEN, Mr. KENNEDY, Mr. METZENBAUM, Mr. LEAHY, Mr. DECONCINI, Mr. THURMOND, Mr. HATCH, and Mr. SIMPSON conferees on the part of the Senate.

Mr. MITCHELL. Mr. President, I thank my colleagues. This culminates

approximately 3½ weeks of disagreement on proceeding to the conference. I regret that it took that long and that there remain only a few days prior to the time when we hope to adjourn for this session of Congress. But I hope that the chairman and ranking member and the other conferees will now do everything possible to attempt to reach agreement in conference on a bill so that we can act on a conference report prior to the time that we adjourn for this year.

This is a very important measure. I know that there are no two people in the Senate who have worked longer and harder in trying to make this bill into law than Senators BIDEN and THURMOND. And I know they are committed to that objective.

I thank my colleagues for permitting us to proceed at this point, later than we hoped. But nonetheless we wish better late than never and hopefully still in time that there be action on the bill.

Senator DOLE and I have presented to Senators BIDEN and THURMOND repeatedly over the past couple of years very difficult challenges, and they have risen to meet every challenge. This poses, perhaps, the most difficult of all. But we ask their best effort, and I know we will receive that.

I would like now to yield to the distinguished Republican leader.

Mr. DOLE. Let me indicate this is a very important bill, and there are very important differences, and I want to indicate that before the conference starts. There are very important measures that passed by one or two votes in the Senate. We hope the Senate provisions would be sustained when it comes to habeas corpus and some of the other provisions.

I commend my colleagues from South Carolina, Senator THURMOND, because some will say, "Well, does it make any difference on the conference numbers?" It certainly does make a difference, because these are very, very controversial provisions, and one vote in the conference could make a difference.

But I think we have done the best we could. We are not the majority party. We are working on that, but we are not there now.

I thank the distinguished Senator from South Carolina and the Senator from Delaware for their cooperation last evening. We had a good session. I also want to thank the distinguished Senator from Idaho [Mr. SYMMS], who also has some very strong reservations on a number of the gun provisions in this bill. This morning he authorized me to, in effect, lift his hold on this proceeding and I want to thank him for that; and also the other Senator from Idaho [Mr. CRAIG].

So we are going to start the process now. I thank everyone, the majority leader and others. I think it is something we should do as quickly as we can, knowing that there are very, very sticky issues to be resolved in the conference and it could take awhile.

I am still very optimistic about leaving here tomorrow evening. So I wish Senator THURMOND and Senator BIDEN luck.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Delaware.

Mr. BIDEN. Mr. President, Senator THURMOND and I—I am sure I can speak for him on this one point—are overwhelmed by the vote of confidence our colleagues have placed in us. I think we both would have preferred that vote of confidence next year, maybe passed us.

But let me just say this: No. 1, I respect Senator SYMMS' tenacity. I respect the fact that he said from the outset that he had no intention of wanting to see this bill passed.

The minority leader pointed out that there were some very close votes on the Senate floor, and it is the hope that we will protect all those close votes. Well, the assault weapon bill passed by a couple votes in this bill. Half of the conferees on both sides are against it.

The habeas corpus provision in the Senate passed by a couple of votes here. Half the conferees on both sides are against it. The exclusionary rule provision, which I happen to like, passed only by a couple votes over here if my recollection serves me correctly.

All of them are at odds with one another. The very people who do not support guns support the habeas provision in the Senate, and so on. So it is a very complicated matrix out there. I promise the Senate that I will do, along with the ranking member, all we can to produce a conference report.

Without criticizing anyone, just let me say this: Here we are on Thursday before we go out, with the weekend facing us, attempting to bring back what I think everyone in this body understands is one of the most controversial, complicated pieces of legislation we are going to deliver.

We will do our best. No one has a greater interest in seeing a tough crime bill than the Senator from South Carolina and myself. It is the Biden-Thurmond crime bill. We have a great interest in producing it. I just want to make it clear that the fact we are starting on Thursday afternoon instead of 3 weeks ago increases the degree of difficulty.

If I could say to the majority leader, who is standing here, I know what an athlete he was. I do not know whether he ever dove competitively. But in diving, what you do is, when you dive, you get one score for the degree of perfection with which you complete the dive. You get another score for the degree of difficulty of the dive. If you do a jackknife and you get a perfect 10, it is multiplied by 1. If you do a triple gainer with a full twist, and you do it with a perfect score, you multiply it by three.

I respectfully suggest starting Thursday by doing a triple gainer with a full twist. I cannot promise perfection. All I can promise is all the effort that I can possibly bring, I will bring to this. And I am optimistic. As a friend of mine who is in the medical profession once said, I am a congenital optimist. I think we can get it done, but I do not want anyone to be under any illusion.

Mr. MITCHELL. Mr. President, I thank my colleague from Delaware for his comments. I am satisfied that the best effort of the Senator from Delaware represents the best effort of which the Senate is capable. I believe we are going to get, and hope we will get, a bill.

I must state that these conferees are in the numbers and in the ratio that Senator BIDEN requested 3½ weeks ago. We could have been in conference 3½ weeks ago. But we are starting late. Better late than never. We hope we get the job done. I regret the delay, but we will now proceed to do the best we can.

Mr. President, I yield the floor.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, we did not get the ratio that we should have. We did the best we could. We are in favor of a strong crime bill, and I worked to that end. Unless we get a strong crime bill there is no sense to have any bill. We are going to be handicapped with the ratio from the Senate. We will do the best we can.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. DECONCINI. Mr. President, the pending business is the banking bill?

The PRESIDING OFFICER. The pending business before the Senate now is the Riegle-Garn amendment to the banking bill.

Mr. DECONCINI. Mr. President, I wonder if I can have 5 minutes to make remarks on another subject matter?

Mr. KASTEN. If the Senator would yield just for a moment, I was instructed—both the managers are here now—my understanding is we are in the process of trying to work out an agreement on a question the Senator from Delaware had. The sense of the managers was they wanted to deal with that. I was instructed to try to keep us in a quorum call, but I will yield now to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Arizona has been recognized.

Mr. GARN. Will the Senator from Arizona yield?

Mr. DECONCINI. Without losing the floor I will be glad to yield, Mr. President.

Mr. GARN. How long does the Senator request?

Mr. DECONCINI. Five minutes, six minutes at most.

Mr. GARN. I have no objection as long as we maintain the status quo to protect the rights of the Senator from Delaware, as previously requested in the unanimous-consent agreement.

Mr. DECONCINI. I ask unanimous consent with the approval of the ranking member and approval of the manager of the bill that I can proceed on another subject matter for not to exceed 6 minutes?

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

The Senator from Arizona is recognized.

Mr. DECONCINI. I thank the Chair.

(The remarks of Mr. DECONCINI pertaining to the introduction of S. 2004 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DECONCINI. 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. RIEGLE. 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. RIEGLE. Mr. President, I know we have pending the managers' amendment. Senator ROTH had been speaking. He is agreeable to my moving forward now to send to the desk the amendment that we have worked out on the Lampf issue with Senator DOMENICI and Senator BRYAN which is acceptable to us. Senator ROTH has kindly consented to set his position without losing his right to the floor when we finish this item which is going to be presented now.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment?

Without objection, it is so ordered.

AMENDMENT NO. 1369

(Purpose: To replace certain portions of the committee amendment)

Mr. RIEGLE. Mr. President, with the pending amendment set aside, I send the Lampf compromise to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. RIEGLE] proposes an amendment numbered 1369.

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

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

The amendment is as follows:

Beginning with page 778, line 9, strike all through page 779, line 12, and insert the following:

SEC. 1126. LIMITATION ON SECURITIES PRIVATE RIGHTS OF ACTION.

(a) EFFECT ON PENDING CAUSES OF ACTION.—The limitation for any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that commenced on or before June 19, 1991, shall be the limitation provided by the laws applicable in the jurisdiction in which such civil action was commenced, including principles of retroactivity, as such laws existed on June 19, 1991.

(b) EFFECT ON DISMISSED CAUSES OF ACTION.—Any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that commenced on or before June 19, 1991—

(1) which was dismissed as time barred subsequent to June 19, 1991; and

(2) which would have been timely filed under the limitation provided by the laws applicable in the jurisdiction in which such civil action was commenced, including principles of retroactivity, as they existed on June 19, 1991,

may be refiled and reinstated (included any disposition) not later than 60 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

(c) DEFINITIONS.—The terms used in this section shall have the same meanings as in the Securities Exchange Act of 1934.

Mr. RIEGLE. Mr. President, let me briefly explain what this will do.

This provides protection of investors from securities fraud which is critical to maintaining confidence in and the liquidity of the securities markets. The most important antifraud protection available to investors is the implied right of action under section 10(b) of the Securities Exchange Act. Testifying before the Banking Committee on October 2 of this year, SEC Chairman Breeden noted that "private actions perform a critical role in preserving the integrity of our securities markets and in protecting a system of respect for the law."

On June 20 of this year, the United States Supreme Court in Lampf versus Gilbertson, shortened this statute of limitations significantly. In its 5-to-4 decision, the Court applied this statute of limitations to cases currently pending, even though those cases were timely when they were filed and even on the day prior to the Court's decision.

Lampf's shorter period does not allow individual investors adequate time to discover and pursue violations of securities laws. The SEC has stated that the Court's decision in Lampf "imposes an overly stringent time limit on investors who often are the victims of fraudulent activity that has been deliberately concealed from them." Testifying before the Banking Committee on July 25, 1991, SEC Chairman Breeden stated "the time frame set forth in the [Supreme] Court's decision is unrealistically short and will do undue damage to the ability of private litigation."

To ensure that securities markets are fair and attract individual investors, the Banking Committee unanimously adopted at markup a provision originally introduced by Senator BRYAN that extends the time period for victims of securities fraud to bring suit. The legislation also restores certain lawsuits that have been dismissed as a result of the Supreme Court's decision. In a letter to Senator BRYAN, SEC Chairman Richard Breeden stated that he strongly supports adoption of this bill in part because "[a]doption of these measures would give private litigants a more realistic time frame in which to discover that they have been defrauded, while also accommodating legitimate interests in providing finality to business transactions and avoiding stale claims."

I strongly supported the Bryan amendment during the Banking Committee markup, and I strongly support it today.

As part of a compromise that Senator DOMENICI and I spoke about earlier today however, I have sent to the desk an amendment to the provisions in the bill dealing with Lampf.

Since the Lampf case will result in dismissal of cases that were timely prior to that decision, we simply cannot drop the Bryan amendment and return to it next session. We must take steps to protect those investors who had cases pending prior to that decision. This amendment allows these cases to go forward by applying that limitations period that existed on the day before Lampf.

While I support this compromise, I expect the Banking Committee will again consider extending the limitations period in the next session of Congress.

This Bryan bill will protect investors by providing them with sufficient time to discover and fight violations of the securities laws.

Let me just say now, with that item having been sent to the desk, we now have the three items that were in the managers' amendment this morning sent to the desk. I think we may be very close to resolving an outstanding difference on the insurance issue, and we will know that. There are discussions occurring now here on the floor on that matter. A great effort has been made to resolve that. We should know that within just a matter of a few minutes, hopefully even moments.

If we can get that issue settled, I want to move immediately then to the issue of the Senator from Florida, who is on the floor. I appreciate his coming over at this time because we are under tremendous pressure to finish this bill as early as possible today because other legislation is waiting the disposition of this bill.

May I inquire of the Senator from Florida, pending the resolution of this matter, if we can, in a moment which of the two amendments he intends to offer first?

Mr. GRAHAM. Mr. President, it is my intention to offer first the amendment to limit the funding of the FDIC.

Mr. RIEGLE. As we discussed last night, we had agreed, as my notes re-

flect, that we would take 45 minutes on that, 30 minutes for the Senator from Florida and 15 for the Senator from Michigan. Is that acceptable?

Mr. GRAHAM. We talked about several different timeframes, but those numbers are acceptable.

Mr. RIEGLE. Very good. I appreciate that. I am wondering, without his amendment up right now, if the Senator would be in a position to maybe make some initial comments on what he intends to do with that amendment. I am told that we are within maybe 2, 3, 4 minutes of being able to resolve this other issue and so, if it would not be inconvenient to the Senator from Florida, he might want to start his discussion and then be prepared to suspend in a moment if we can handle this other item of business.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from Florida.

Mr. RIEGLE. I ask unanimous consent that we temporarily set aside the pending matter so that the Senator from Florida might be recognized to begin his comments.

The PRESIDING OFFICER. Is there objection to setting aside the other pending matters before the Senate? If not, the Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

In this truncated initial statement as to my amendment, let me use this as an opportunity to set the context for the policy which my amendment will place before the Senate.

We are about to start a practice with the Federal Deposit Insurance Corporation which is going to be eerily reminiscent of the policy that we have followed over the last several years as it relates to the savings and loan bailout. That deja vu has several forms. One, it has the form we are going to hear that this is not a taxpayers' bailout, that in fact the full cost of the FDIC replenishment will be paid by the industry itself.

Mr. President, those of you who have been here longer than I will recall that those were exactly the statements made, in fact made as recently as 1988, about the savings and loan bailout: It was not going to be at the charge of the taxpayer; that it would be fully paid by the industry.

The second context is the similarity of the structure of the payments. Essentially, as with the savings and loan bailout, the proposed payments will be in two components. The first component is what could be referred to as the loss funds. Those are the funds that are going to be committed to pay off the difference essentially between the amount of the insured deposits and the assets of the failed institutions. It is estimated that those will amount to $25 billion.

The way in which the $25 billion will be raised will be by borrowing from the Treasury and then a repayment of those borrowings over time through a special assessment of the FDIC premium of the participating institutions.

The second component is $45 billion. That is the so-called working capital fund. The working capital fund is intended to be available to finance the assets that will be held by FDIC pending their sale. The working capital fund is not expected under this plan to impose any permanent obligation on the U.S. Government in that those working capital dollars will eventually be recovered through the sale of assets.

We have had, Mr. President, a recent experience with the savings and loan circumstances and with the Resolution Trust Corporation of how this process will work. That has not been a happy experience. It has been characterized by consistently underestimating the real cost of the bailout, as witnessed by the fact that in a few hours or days we are going to be requested to make another substantial commitment to paying the cost of the bailout of the RTC.

The RTC has also been characterized by great public distress as to how it has managed its assets. Assets have continued to accumulate. While there has been some improvement in the last few months, for a long period of time the RTC was ballooning in terms of the assets which it held. Those large asset holdings constituted a major shift of private assets to the public sector and an overhang of what was left of the private real estate market to its detriment.

There was very little incentive within the RTC to want to move its assets expeditiously. In fact, there were a number of counterincentives. One of those was just typically bureaucratic. Every time you sold assets, you put your job in jeopardy, because when the RTC completes the disposition of all of its assets the some 5,000, more or less, people who are employed will have nothing to work about and their positions could conceivably be rendered as unnecessary, redundant, and terminated. That is something which causes a great disincentive to moving the assets.

But there is even a more subtle disincentive, Mr. President. That is the fact that as long as those assets are not sold, they are carried on the books of the RTC at their original book value, that is, the value which they moved from the institution that was held in conservatorship to the RTC in its receivership capacity. There is great suspicion, and in fact the actual results of the sale of those assets which have been made confirm that suspicion, that the values placed on those assets in receivership are substantially overstated, which is to say that if the RTC is carrying on its books, let us say, $70 billion of assets, and in fact those assets have a market value of $50 billion, at some point there is going to have to be another $20 billion recognition of the cost of this whole enterprise.

That is another disincentive to sell the assets, to have to recognize the fact that you have been carrying them at an unrealistic value and then come back to Congress yet again for another increment of the cost of the bailout.

That is, Mr. President, in summary, most of the context in which my amendment is going to be offered. There is one other context that disturbs me, and that is the fact we do not have very good financial data from the FDIC which surprises me. The FDIC as an institution has been around a long time. It has only been recently it has had anywhere near its current level of activity. But I think we would have the right to expect some better, more periodic financial statements than we have. Therefore, Mr. President, I am going to be properly subject to some questions as to the specifics of my proposal to which I will state now I am inadequate to fully respond.

My defense is that nobody else could fully respond to them either, because we are using financial information which is, in some cases, as much as a year out of date. We are using it because that happens to be the best and the latest financial information which is available.

With that context, Mr. President, in light of the fact that negotiations seem to still be proceeding on, I will move to a more specific description of the amendment which I intend to offer.

As I indicated, the basic proposal is to grant to FDIC $25 billion to pay what I would call the loss fund, the difference between what depositors' insured accounts equal, and what the value of the assets in the institution are.

The second $45 billion is the working capital fund. Those are the funds that will be used to pay off the depositors and to hold the assets that have been created, or that have been taken over from the failed institution, which will eventually be sold. Theoretically, since the assets are supposed to represent fair market value, the full amount will be recovered, and therefore the full amount of the $45 billion of working capital will be repaid from the sale of those assets.

The amendment which I offer will do this: It would say that of that $25 billion—that is, the loss fund—that $10 billion would be immediately available to the FDIC. That would give the FDIC the funds that are necessary to meet its pressing, immediate requirement to replenish the fund, and be able to respond to cases that would come in the immediate future.

But for the second $15 billion, the FDIC would be required to first commence the sale of some of those up to $45 billion in assets that it has. And it would be only on a dollar-for-dollar basis of sales of assets, the draw down

dollars from that remaining $15 billion of loss funds.

The principle here is one that would apply to any debtor in distress; that is, the first thing that you are expected to do is to liquidate assets that have a value before you go to your creditors and ask for more money.

If I could use an example that we might relate to of a debtor, of a child in college. Suppose you had a child who was in college, had a car, had a stereo set, and had other things. What he did not have was very good grades. At the end of the semester, when the parents got a copy of the grades, they concluded that maybe their son or daughter needed some greater sense of discipline and inspiration to study hard. One of the ways of doing that is henceforth, the monthly check that was going to the child in college would be reduced or terminated until the child demonstrated a greater intensity of application to his or her studies.

One of the things the parent might suggest to that child is: You can cover your expenses by selling that car and selling that stereo set, and using those proceeds to live on. That might not only help you eat, but will help you do better academically.

That rough analogy is what we are suggesting with this amendment. That is that the FDIC, before it comes back here for additional dollars—in fact, before it can draw down the full amount of the $25 billion that we are being asked to make available to it today—that first it has to turn its attention to disposing of this massive and growing amount of assets that it currently holds.

What do I think will be the benefits of this amendment? I think it would attack two of the disincentives which the RTC has so dramatically indicated are in place to frustrate the sale of assets. It would require that there be a regular assessment of what the real value of these assets were, as opposed to the book value carried, based on some earlier appraisal; and second, it would contribute to a removal of any bureaucratic institutionalization of this FDIC asset management function because it would be forcing the agency to constantly be selling these assets as a precondition to be able to draw down general Treasury resources.

I think that would make a substantial contribution to avoiding a repetition of the negative impact which the large volume of formally private, now public, assets held at the RTC have had on our general economy.

Mr. President, in summary, that is the amendment that I intend to offer. I think it is a very important amendment.

We are about to be asked in the context of this overall banking reform bill to do something that no Congress in the history of this Nation has done in such a short period of time; that is, to provide $70 billion of public funds, albeit with the representation that it is going to be paid off without there ultimately being a charge against the taxpayers, a claim that we all hope will prove to be correct, but which recent history with the savings and loan industry gives us at least some pause for skepticism.

We are also going to be asked in the next few days or hours to provide up to $80 billion for the Resolution Trust Corporation so that it can continue its bailout of the savings and loan industry. That is a total of $150 billion.

Mr. President, think of all the things in the State of Alabama that you could do with $150 billion to enhance the quality of life of the citizens of your State, or of any State in the Union. You are about to be asked to make $150 billion available to bail out and pay off the depositors of failed commercial banks, and savings and loans.

I think that the amendment that I have offered is an appropriate requirement and incentive to proper management of this process, and an incentive to returning the assets back into the private sector.

MODIFICATION TO AMENDMENT 1368

Mr. RIEGLE. Mr. President, will the Senator yield at that point for a moment? I would like to send a correction to the bill, an adjustment to the bill, that reflects the compromise discussions on insurance that will amend the managers' amendment in the insurance section on page 18.

So I am going to send a substitute page 18 to the desk. It contains only one change, and that is the effective date, which has been penciled in. I ask the clerk to take note of that.

I ask now that that amendment to our amendment be made.

The PRESIDING OFFICER. If there is no objection, amendment 1368 is so modified.

The modification to amendment No. 1368 is as follows:

On page 18, line 7, strike "July 15," and insert in lieu there of "November 21,".

Mr. ROTH. Mr. President, will the distinguished manager yield for a question?

Mr. RIEGLE. Yes.

Mr. ROTH. Can he tell me what date is being substituted?

Mr. RIEGLE. Let me have the clerk read the new date per the amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 18, line 7, strike "July 15," and insert in lieu thereof "November 21,".

Mr. ROTH. I thank the Senator.

Mr. RIEGLE. I thank the Senator for this help on this.

Mr. President, I now ask that we move to approve the managers' amendment.

Mr. GRAHAM. Mr. President, will the chairman yield?

Mr. President, for the benefit of us who have not been involved in the negotiations, can we get a summary of what the impact of the modified managers' amendment, as it relates to the insurance issue, is?

Mr. GARN. Mr. President, the current modification is nothing more than a change of date: July 15, until today. That is the only change we made in what was submitted before.

Mr. GRAHAM. Could the Senator give us a summary, with that changing date, as to what is the position in the managers' amendment relative to insurance, and how does that differ from the insurance provision as it was reported by the committee?

Mr. GARN. Well, if I can quickly explain, basically, it was a disagreement over the ability of certain institutions to underwrite insurance, and the final disposition of this would be that, in the State of Delaware, the institutions that are currently doing this could continue underwriting, but only in the State of Delaware.

Mr. GRAHAM. What would the original bill, as reported by the Senate committee, have done to the capacity of an institution in Delaware to underwrite in Delaware?

Mr. GARN. It would have prohibited them from underwriting, even in Delaware.

Mr. GRAHAM. The amendment does not affect the sale of insurance or any other aspect; it is restricted to changes in the underwriting capability of an institution within its own State; is that correct?

Mr. GARN. It is my understanding that there is no change in the sale provisions that were in the original managers' amendment that we introduced last week.

Mr. GRAHAM. Are there any differences in the sale of insurance in the managers' amendment as distinct from the bill as reported by the committee?

Mr. GARN. Yes. Those modifications were made last week when Senator DODD and Senator GRAMM and others came to an agreement, and we presented those last Thursday. Those are different than the original bill. There is no difference in the managers' amendment today, other than what I outlined from what was contained on sales last week.

Mr. RIEGLE. Mr. President, I urge adoption of each of the amendments.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 1368, as modified.

The amendment (No. 1368), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, having settled those issues, I now want to re-

turn to the amendment of the Senator from Florida. I am wondering, how much time does the Senator feel he will need to have, beyond the time that he has had an opportunity to take so far, in order to complete his presentation on this amendment?

Mr. GRAHAM. Mr. President, I have almost completed my presentation. I do not know if anyone else will wish to speak as a proponent of this amendment. So I think 20 minutes on this side would be adequate at this point.

Mr. RIEGLE. Twenty minutes for the Senator from Florida?

Mr. GRAHAM. Yes.

Mr. RIEGLE. I think 5 minutes for myself would be adequate here. If the Senator is in agreement, and that is acceptable to the Senator from Utah, I am going to ask unanimous consent that we enter into a time agreement for 25 minutes on the Graham amendment, which is now under discussion, to be divided 20 minutes for the Senator from Florida and 5 minutes to the Senator from Michigan, with no second-degree amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The pending amendment is amendment No. 1369.

Mr. RIEGLE. Mr. President, I am told that the Senator's amendment has not gone to the desk yet, and it probably ought to at some point. The unanimous-consent request is in order, nevertheless, and I take it that it has been agreed to.

The PRESIDING OFFICER. There was no objection, and it was so ordered.

Is it the intention of the managers to lay aside amendment 1369?

Mr. RIEGLE. Yes. I ask unanimous consent that that amendment be laid aside.

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

Mr. RIEGLE. I am told that the time will not start running until the Senator sends his amendment to the desk.

AMENDMENT NO. 1371

(Purpose: To limit the funding for the FDIC)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 1371.

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

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

The amendment is as follows:

At the end of title II, add the following:

SEC. . TERMS OF ADDITIONAL FUNDING.

(a) DIRECT FUNDING.—

(1) IN GENERAL.—Of the $25,000,000,000 authorized for losses by other provisions of this Act, the Secretary of the Treasury shall make available to the Federal Deposit Insurance Corporation $10,000,000,000 from funds not otherwise appropriated.

(2) LIMITATION.—No sums described in paragraph (1) may be obligated after November 30, 1992.

(b) ADDITIONAL MATCHING FUNDING.—

(1) IN GENERAL.—The Secretary of the Treasury shall make the remaining funds authorized for losses by the other provisions of this Act available to the Federal Deposit Insurance Corporation, from funds not otherwise appropriated, in an amount equal to the amount of cash dividends the Federal Deposit Insurance Corporation receives after September 30, 1991, from receivership estates under its control, that were established on or before September 30, 1991.

(2) LIMITATION.—The matching funds appropriated by paragraph (1) may not exceed $15,000,000,000.

Mr. GRAHAM. Mr. President, just briefly, based on the description of the amendment that I made prior to offering it, this amendment deals with the $25 billion of lost funds that are contained in this bill. It splits that into two components: A $10 billion component, which will be immediately available to FDIC, and a $15 billion component, which will be available as the FDIC begins to sell down its current volume and anticipated increase in volume of assets. As of the latest report from the FDIC, it was holding approximately $40 billion of assets already acquired from failed banks and is estimating a substantial increase in that inventory of assets as additional banks come under FDIC jurisdiction.

The proposal is to provide a strong incentive to avoid with FDIC what we have just experienced with the Resolution Trust Corporation, a tendency toward making the corporation permanent, a forcing of a truer valuation on assets that are being held, a strong inducement to return these assets to the private sector, and a movement from the current public ownership, and to, hopefully, reduce the ultimate costs or to facilitate accomplishment of the objective of this plan, which is to have no cost to the American taxpayer.

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

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. Mr. President, the Lampf amendment I mentioned earlier and sent to the desk needs to be acted upon as part of the managers' amendment. So I ask that, for a moment, the Graham amendment be set aside long enough to have the Lampf amendment presented to the Senate. I urge that we now agree to that.

The PRESIDING OFFICER. The question is on agreeing to amendment 1369.

The amendment (No. 1369) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. Let me comment briefly on the Senator's amendment. I do so with great respect to the Senator from Florida, who has worked very hard on all aspects of this legislation and has expressed concern in this area, going back now for many years. So I have great respect for the strength of his feeling on this issue.

The Graham amendment would initially limit borrowing by the BIF to cover losses of $10 billion instead of $25 billion provided by the committee's bill and requested by the administration. The other $15 billion would be available on a dollar-for-dollar basis to the extent the BIF is able to sell receivership assets it held on September 30. On the 30th of September, the BIF held receivership assets with an original book value of $30 billion. These assets represent the dregs of past resolutions of failed banks. The FDIC expects that the BIF will only recover half of the original book value of those assets, or $15 billion. So to get access to the full $25 billion of lost funds provided by the bill, FDIC will have to sell every receivership asset currently on its books.

The BIF may need that money within the next 2 years. I think that is faster than they can be expected to reasonably sell all of these assets. If they can, fine, but there is no assurance of that. If not, the FDIC is left with two bad choices, either delay shutting down failed banks or to dump assets at a price that really, I think, would be unwise and might make some problems in those markets worse.

The potential delays in providing lost funds to the FDIC under the Graham amendment may have the effect of helping to keep insolvent institutions open longer and potentially delay the cleanup and, in turn, might increase the bank insurance funds' losses.

I fully understand that his concern is about forcing a rapid and efficient effort to dispose of RTC assets or, in this case, BIF fund assets, repossessed assets. I agree with him 100 percent on that issue. My concern is that I am not sure we can do it effectively by means of a set formula that is locked into a timeframe that we have no way of knowing w'll be workable.

S. 543 takes dramatic and important steps to ensure that failing institutions are not kept open by bank regulators because our painful experience is that that raises costs. That is certainly not the Senator from Florida's intent. But if his amendment is adopted and the FDIC is not able to sell assets rapidly enough to meet their need for loss funds, the bank regulators must either leave failing banks open or close them—and delay payment on the Government's obligation to depositors until the funds are provided. I express these concerns about the amendment with all due respect to the goal the Senator seeks which is precisely the goal I seek.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, the Senator from Florida is a very valuable member of the Senate Banking Committee, and what he is attempting to do is commendable. There are a lot of assets out there and it would certainly reduce the cost to the taxpayer if those assets could be sold.

He is also trying to protect and make sure that these borrowings of $5 billion are paid back. Certainly, I or the chairman cannot disagree with that.

What I am worried about is, this would require the FDIC to dump assets and would increase bank insurance fund losses, which is just the opposite of what the Senator intends. The potential delays in providing lost funds to the FDIC under the Graham amendment would only serve to keep insolvent institutions open longer, delay the cleanup, and increase the bank insurance fund's losses. It may reverse this policy and force the regulator to forbear. All of us who went through forbearance, keep those institutions open in 1980's, know that that only increased the cost to the taxpayers.

I believe the required dumping of assets under the Graham amendment may inappropriately impact market prices as well. We already have a depressed real estate market in this country. We have a severe economic slump going on. We need recovery, and one of the basic places we have to have it is in real estate if we are going to produce jobs. And so I really think this would delay economic recovery and in very many critical areas of the country in real estate.

So while I applaud the objectives of the Senator from Florida, I cannot support his amendment because I think of the unintended consequences it would have not only to the RTC but to the real estate markets as well.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

The Senator from Florida has 18 minutes remaining.

Mr. GRAHAM. Mr. President, the walls here are beginning to reverberate with the sounds of past debates. We are about to start down a path that we have been before. The question that we have to ask is are we prepared to accept those same representations and move down that same path, as if we were walking it for the first time? Or are we going to be more cautious? Are we going to be maybe somewhat more skeptical? Are we going to take protections that we did not take before?

As I indicated, I have serious question as to whether the premise of this financing, which is that it will not require taxpayer funds, will in fact prove to be reality.

As recently as late 1988, we were getting the exact same representations relative to the S&L fund. On August 2, 1988, Under Secretary of the Treasury Gould testified before the Senate Banking Committee and he said this:

> In closing, I urge this committee in the strongest terms to resist mounting pleas for an unnecessary budget-busting bailout of the Federal Savings and Loan Insurance Corporation. In my view there is enough money to continue down the path the Federal savings and loan insurance fund is presently on.

On October 5, 1988, the chairman of the Federal savings and loan insurance fund made this statement before the Senate Budget Committee:

> We believe we have the resources if we are permitted to continue as we are.

Those were representations made on the precipice of the greatest collapse in the American financial system's history by two of the most informed, most advantaged to have full access to the facts individuals in America, the Under Secretary of the Treasury and the chairman of the Federal savings and loan insurance fund, that they had enough money within the fund in order to be able to meet its obligations.

Clearly, they were wrong and the American public is about to pay an additional $80 billion to underscore their error. Yet, today we are being asked to accept that there will be enough money in the fund with the industry making the payments to fully pay back the $70 million that we are about to authorize.

I am very skeptical. My skepticism is enhanced by the statement that the chairman just made which is, first, that the FDIC fund has $30 billion in assets. That is not what their latest financial report indicated. Their latest financial report indicated that it had $29.2 billion in the Department of Liquidation and an additional $10.8 billion managed by assisted institutions, or a total of approximately $40 billion in assets.

But, second, the further representation that whether it is $40 billion or $30 billion it is substantially less than that because the real values are not what the paper values are.

Mr. President, that is exactly the path that we have gone down with RTC. We have put on the books values that were under water. And one of the reasons that we kept them on the books, one of the reasons that there has been such reticence to sell those assets, is that when you sell them there is no way to continue to fudge the book. You have a property that you say is worth $1 million, but nobody will pay you more than $600,000. It is worth $600,000. At that point you have to recognize that you carried $400,000 on paper of phantom assets.

The chairman has just indicated that we may be carrying half of the assets in FDIC as phantom assets. Do we really want to go down that path again? How many times, Mr. President, do we have to trod that path of illusion, of deception and of egregious cost to the American taxpayer?

My amendment is a modest one. It says we are going to give to the FDIC $10 billion immediately. So if the chairman is correct, they will now have assets of $30 billion on their books, plus an additional $10 billion, or $40 billion. According to the FDIC's numbers that have been given to us it is actually $50 billion.

(Mr. DODD assumed the chair.)

Mr. GRAHAM. If there is $15 billion of water in that $50 billion, then they have either the $35 billion which their own books would indicate that they have in real value, or $25 billion if their books are as the chairman states them to be. I do not know what the real books are because they are so late and inadequate. Another reason, in my opinion, Mr. President, to approach this whole issue with a great deal of caution and concern.

So my modest amendment would say, we will give them $10 billion immediately but the next $15 billion of loss funds will only come on a dollar-for-dollar basis as they begin to dispose of those assets.

The Senator from Utah has made the argument that was made 3 or 4 years ago, that we do not want to force this agency to have to sell these assets. That is an argument that sounds as if it would be more appropriate to a legislative body in Moscow than one in Washington. They are reluctant to move assets from the public sector back into private hands.

I would not think that this bastion of capitalism would be a place in which we would be reticent to adopt a principle that the management of these assets is going to be better over time in private hands than in public hands, and our own recent experience of the deterioration in value and the high costs that have been imposed and the enormous bureaucracy that has developed as long as we keep these assets in public hands.

Mr. President, I believe that this amendment, in my opinion, is the necessary prerequisite for us to consider appropriating $70 billion of taxpayer funds for the refinancing of the FDIC. I do not know how we can face the American taxpayers, with the bill that we already imposed on them for the savings and loans—a bill that is about to get $80 billion higher—and say, and we are coming again now to the FDIC for commercial banks using the same worn out discredited script that we used for the savings and loans.

I urge the adoption of this amendment.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I will move to table the amendment. I am

wondering if we could agree to have the vote at 1:45? There is a bill signing down at the White House that a number of Senators are attending. I am going to ask unanimous consent, if that is agreeable with the Senator from Florida, that we set the vote for the amendment at 1:45. Would that be agreeable to him?

Mr. GRAHAM. Yes.

Mr. RIEGLE. That will be on the motion to table at that time.

Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. RIEGLE. I ask further then by unanimous consent that that vote occur at 1:45.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. RIEGLE. I might inquire of the Senator from Florida, who is still on the floor, would the Senator from Florida be prepared to take his second amendment up immediately upon the disposition of the vote on the amendment at 1:45?

Mr. GRAHAM. I believe we will be able to do so. There will be other Senators participating in the debate on this issue and I am checking their schedules to see if they will be available at that time. I believe we will be ready to go at 1:45.

Mr. RIEGLE. I might also say, if the Senator wanted to begin any part of that, the time between now and 1:45 would also be available for that purpose if that would be workable for him. I do not suggest that he disadvantage himself in terms of how he wants to proceed. But let me let him think about that.

I know the Senator from Ohio was here a moment ago, too, and I think he has some questions that he wants to pose to us. This would be a good time to do that.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, prior to the Senator from Michigan, the manager of the bill, going forward with his unanimous-consent request, I wonder if he would be good enough to yield for some questions from the Senate from Ohio?

Mr. RIEGLE. Yes, I am pleased to yield to the Senator from Ohio.

Mr. METZENBAUM. As the Senator from Michigan knows, I have been concerned about whether the banks will be required to pay back the $70 billion loan. I offered language to ensure that part of the money would be paid back through the sale of assets of failed institutions. And then, if that is not enough, the rest of the money would come from assessments on the banks. Is that language in the bill?

Mr. RIEGLE. Let me assure the Senator from Ohio that language is in the bill, and it is contained in the managers' amendment. It is a useful addition.

Mr. METZENBAUM. I appreciate that, and I appreciate the action of the comanagers in seeing to it, because I think it is important that the people of the country know that $70 billion is to be repaid by the banks.

I am a strong proponent and coauthor of legislation to give law enforcement officials the tools they need to combat money laundering in our financial institutions. Is that language also included?

Mr. RIEGLE. Yes, it is.

Mr. METZENBAUM. I thank the Senator from Michigan.

I understand that there will be language in the bill that I had previously offered prohibiting a bank from opening a branch solely for the purpose of draining deposits out of a community. Is that correct?

Mr. RIEGLE. Yes, it is.

Mr. METZENBAUM. Is it also true that there is language in the bill protecting retirement benefits of State and local government employees in the event that a bank in which they have their retirement savings fails? I have sponsored legislation to that effect last year.

Mr. RIEGLE. Yes, that is in the bill.

Mr. METZENBAUM. I am very pleased to hear that.

While I am very disappointed that the Government check-cashing and basic banking language did not prevail at this point, I understand that the final bill does include other provisions that we, the manager and I had fought for this week. For instance I am referring to the provision requiring banks to disclose yields and fees on deposit accounts and those provisions which strengthen the tools to combat mortgage discrimination. Am I correct that these measures remain in the unanimous-consent agreement and will be in the bill?

Mr. RIEGLE. The Senator is correct.

Mr. METZENBAUM. Mr. President, I want to say to the manager that I am pleased that these provisions are in the bill. I had hoped that there would be stronger language with respect to certain consumer provisions. The Senate has acted on that subject. I thing they erred, but I certainly recognize the will of the Senate. I do appreciate the consideration and cooperation of the Senator from Michigan in seeing to it that some of these other provisions are in the bill. It is a pleasure to work with him.

Mr. RIEGLE. I thank the Senator from Ohio. It is always a pleasure to work with him, as well.

If I might direct a question to the Senator from Florida [Mr. GRAHAM]. I do not know if we have yet structured a time agreement officially on the second amendment that he intends to offer. When we talked last evening, my notes indicate we were talking in terms of perhaps an hour's time, divided 45 minutes for the Senator from Florida, 15 minutes for the Senator from Michigan. I am wondering if that would be a time acceptable or would he prefer a different amount of time?

I might just say to the Senator, we are under terrific pressure from the majority leader to try to conclude the bill. So I want to try to balance that pressure on the one hand with the need for the Senator to have the time he needs.

Mr. GRAHAM. Senator, if we had 45 minutes to present our amendment, I believe that would be adequate.

Mr. RIEGLE. Very good.

I then ask unanimous consent that a time agreement be entered into with respect to the Graham amendment on broker deposits, to be divided, 45 minutes for the Senator from Florida under his control and 15 minutes under my control, and with no amendments in the second degree to be eligible.

The PRESIDING OFFICER. Is there objection? without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I am wondering, does the Senator prefer to wait and start after the vote?

Mr. GRAHAM. Yes; I prefer to wait until the other Senators who are going to be participating are here.

Mr. RIEGLE. Very good. I thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, I ask unanimous consent to speak as in morning business for a period of time not to exceed 5 minutes.

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

CIVIL RIGHTS

Mr. METZENBAUM. Mr. President, I rise to express my dismay at the latest in a long series of attempts by President Bush to cater to the radical right wing of his party on civil rights issues. I refer, of course, to reports published this morning that the President planned to sign the historic civil rights bill today while at the same time seeking to eliminate the use of all affirmative action programs that have been in existence for decades in the public and

private sectors. The President's announced intentions are an outrageously cynical effort to undermine the clear mandate of the 1991 Civil Rights Act.

Earlier this month, Congress passed a bill reinstating the disparate impact standard set forth two decades ago by the Supreme Court in the Griggs case. The bill provides that employment practices which disproportionately exclude women or minorities are unlawful, unless employers prove both that these practices are "job related for the position in question" and that they are "consistent with business necessity." The bill explicitly states as its purpose to restore the concepts of "job-related" and "business necessity" that were enunciated by the Supreme Court in Griggs and other decisions prior to Wards Cove. The bill also states expressly that it is preserving the lawfulness of voluntary affirmative action programs.

President Bush has spent 2 years fighting the spirit and letter of this legislation. By repeatedly failing to recognize the distinction between unlawful use of quotas and lawful use of affirmative action, he has polarized the electorate on the race issue. By repeatedly insisting that employers should be allowed to require that all workers have high school diplomas, even where there is no basis for concluding that such diplomas are job-related, he has displayed his hostility to Griggs itself; Griggs was a case involving education requirements irrelevant to the jobs in question. Having finally agreed to sign the civil rights measure, he and his White House advisers are still scurrying about trying to undermine its clear purpose. And now, by suggesting that he can abolish affirmative action with the stroke of a pen, he is seeking to accomplish through his Executive powers what Congress clearly rejected in the legislative process.

I understand the White House issued a press release this morning announcing it was changing the statement circulated yesterday, after some administration officials raised objections. The American people should not be fooled. The President may have backed off today, because it might ruin today's photo opportunity. But keep watching. And watch carefully. You will see the White House attempt to undermine the civil rights consensus reached by Congress some time soon, if not this week, perhaps next week, or next month, or early next year. The President may denounce David Duke the man, but he also must renounce the policies David Duke promotes in the civil rights area. This trial balloon did not fly. But there will be others. And I hope the American people will be watching.

Mr. DODD. Mr. President, I ask unanimous consent I be permitted to speak as in morning business.

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

THE ECONOMY

Mr. DODD. Mr. President, as late as yesterday, according to news accounts—the administration continued to suggest that the recession is over.

I wish it were so, Mr. President. For too long the administration has grabbed on to every statistic they could possibly get their hands on, trying to give some false hope to families across this country. When the GNP rose by 2.4 percent in the last quarter, they said the recession was over. But if you ask most families in this country whether the economy has improved at all in the last several months, they would give you a resounding no.

The latest housing start figures are, no doubt, a positive sign. This good news, however, is no excuse for the absence of an economic program on the part of the administration. The Bush administration has done little to stimulate the economy for middle-income families. In my view they have merely allowed this recession to run its course and when the statistics are good, through no effort on their part, they proclaim an end to the hard times.

Unfortunately, the news is not good for most persons. Housing starts may be up, but affordability is down.

The President says that it is a good time to buy a home. I am sure it is if you happen to be among the wealthiest people in the United States. God help you if you are a middle-income family with one income having been lost in the last several months, as is the case for millions of people in this country. For them, the idea of purchasing a new home is just totally out of the question.

Why is this so? Frankly, because millions of Americans are out of work, as we all know, and businesses continue to close their doors.

I do not believe we have done enough to end this recession. Our legislative efforts have been derailed at almost every turn with vetoes and an absence of Presidential leadership on pressing domestic matters. Except for the unemployment bill, we have little else to show for this session in the way of economic reform.

(Mr. REID assumed the chair.)

Mr. DODD. Mr. President, the extension of unemployment benefits is only one important but small part of the solution. In fact, the unemployment bill is evidence of the fact that we have not done anything. The unemployment benefits are merely an effort to provide relief for people who are out of work.

What we need to be doing is talking about an economic program to make it possible to put people back to work, not talking about what sort of extension of benefits we will be able to provide them when they are trying to make ends meet.

What families in my State, and I think in most parts of the country, want most are jobs and a strong economy. They are only going to get that if we start putting our shoulder to the wheel and come up with some creative, innovative ideas that will get this economy moving forward.

It is to understate the case to say that people are still hurting. Thousands of workers continue to lose their jobs each and every month. Unemployed and underemployed families are without health insurance, and over 60,000 long-term unemployed in my State have had a painful wait for extended benefits.

Mr. President, I believe we owe it to the American people to roll up our sleeves and adopt an economic policy that will work regardless of how long that may take. That is what we are elected to do. That is our job. That is what we should be doing as Members of the U.S. Senate.

Mr. President, I am not saying that my colleagues should miss their Thanksgiving dinner or the holiday recess that is approaching, but I certainly, for one, would like to suggest that we stay and try to come up with a economic program that may work. Instead of just talking about unemployment benefits and their extension, we might talk about a program that will actually provide some jobs for people in this country to get the economy moving.

It seems to me we need to pass a highway bill, and if we fail to act on this measure, my own State of Connecticut could lose as many as 3,000 jobs in the coming weeks. I am told over 100,000 jobs could be lost nationwide.

I believe that we ought to finish this banking legislation which is before us, and I believe and hope we will do it in the next day or so. We need to extend the 12 tax credits that are due to expire next month. And we must, in my view, restore fairness to our tax system and adopt tax policies that will encourage economic growth.

Why is tax reform necessary, Mr. President? The economic decisions made during the last decade created a great deal of wealth for some, and obviously a huge pricetag for the many. Today, middle-income families have to foot the bill and, frankly, they just cannot afford it.

Ten years ago, middle-income families were told that they would benefit from lower taxes of the most affluent of our land and increased Federal spending, the so-called trickle-down theory, as it was proposed. They were also led to believe that Reaganomics would provide long-term economic growth and stability for our country.

Mr. President, what really happened during that period of time is, of course, now obvious. Part of the prophecy was correct. Presidents Reagan and Bush kept their campaign promises to the top 1 percent of the most affluent in our country; the very wealthy enjoyed

tax cuts of up to 15 percent and watched their incomes increase by as much as 110 percent during the past 10 years. But, Mr. President, somebody had to pay for that 15-percent tax break for the wealthy. And I might suggest that anyone in this Chamber and across this country could tell you what the answer to that question is. If you suspect that it was the average working man and woman in this country, then you are absolutely correct. Most saw their income stagnate as taxes went up.

Middle-income Americans ended up paying more taxes and watched their real after-tax wages drop while prices on basic necessities in life went through the ceiling.

What else happened? Reaganomics promised that the tax breaks would encourage investment and economic growth in this Nation. Did it create jobs? Certainly some were created. But where are those jobs today? The policies of the 1980's encouraged investment and paper profits, not real profits. They encouraged shortsighted planning, not sound investments in our future.

Mr. President, the economic decisions of the 1980's took shape in the Tax Reform Acts of 1981 and 1986. I am proud to say that I voted against both of those measures and was in a small minority in this Chamber in doing so.

Those measures mortgaged the future of the middle class in this country to give the most affluent in this Nation the tax breaks that they so desperately wanted. I believed then that the passage of those bills would result in reckless deficits, and it did.

The 1980 Tax Act, which was not paid for 10 years ago, is being paid for today. On its own, it was responsible for a drop in Federal revenues of $264 billion in 1988, $291 billion in 1989, and more than $320 billion in 1990.

Because of the deficit spending that resulted from lost revenues, middle-income families are paying more in taxes today and getting far less in return. Fortunately, there appears to be a growing consensus that we need to reverse the trends of the 1980's and once again place this Nation on sound economic ground.

Mr. President, the hour is getting late for economic reform. But as late as the hour is, it is not too late. The American people are experiencing one of the worst and most complicated recessions since World War II. They are tired of hearing politicians say that the recession will be short or, as the administration said, it will be short and shallow, or that the recession is over, or that we cannot afford to make the kind of investments that are needed to jump start the economy.

In my own State of Connecticut, Mr. President, more jobs have been lost in the last 2 years than in any previous recession since the end of World War II, and the unemployment rate continues to rise; 96,000 people in a State of 3.5 million have lost their jobs in the last 12 to 18 months.

Connecticut also ranks among the top 10 States with the highest number of long-term unemployed who have exhausted their unemployment benefits. We have the highest combined rate of personal and business bankruptcies of any State in the country. Business failures for the first half of 1991 are up 220 percent for the same period in 1990.

Mr. President, there is little doubt in the minds of working people in my State and other regions across this country that the recession continues to ravage the economy, and they hold little hope that the end is in sight. For this reason, we desperately need, in my view, basic, fundamental economic reform, and we cannot wait until sometime next year or sometime after the next Presidential election.

In my view, we need to restore fairness to our tax system and provide much needed relief to middle-income families. We can do this by bringing back Senator MOYNIHAN'S proposal to lower payroll taxes for employees and small businesses alike, or we could lower taxes for people who fall in that middle-income range.

When I first introduced my own tax reform bill this spring, I proposed that we could restore equity and fairness to our tax system by shifting some of the tax burden away from the middle income by asking the financially most secure in our country to pay a small bit more. The measure provides for higher personal exemptions for taxpayers in the 15-percent and 28-percent tax brackets.

Unlike other proposals under consideration, Mr. President, this measure would target tax relief to all working Americans in these two lower tax brackets. For low- and middle-income families with children under the age of 5, I also would provide a tax credit of $800.

Unlike the 1981 Tax Act, this legislation would pay for the changes to offset lost revenues. My proposal would raise taxes on the most affluent in our society, the very people who have enjoyed Federal tax cuts of up to 15 percent during the last decade.

Mr. President, the emergency of Senator BENTSEN's tax reform proposal, which I have cosponsored, is one more sign, I believe, that Congress intends to give economic reform serious consideration. I strongly support Senator BENTSEN's efforts to give these families a break. I do, however, believe that all middle-income workers deserve a break, even those with grown children or no children at all. I look forward to working with him and other members of the Finance Committee to achieve this.

Senator BENTSEN would pay for his tax reform bill, as most of my colleagues know, with further cuts in the defense budget. In our changing world, some downsizing of our defense structure is appropriate and necessary. Those cuts, however, must be prudent, with an eye toward the remaining instabilities that exist in our world.

We must also keep in mind the direct impact of cuts on those who work in the defense industry, people I have called the veterans of the cold war. They have served this Nation well and deserve to be treated with dignity.

In addition to providing tax relief to families, of course, we must also restore policies that help to bolster economic growth. Economic reform would not be complete without incentives for long-term investment and planning and job creation. I believe that we can do this by adopting the venture capital bill of Senator BUMPERS of Arkansas, that would encourage long-term equity investments in smaller businesses. Or, as I discussed earlier, we could extend the housing, education, and R&D tax credits, which are due to expire on December 31 of this year.

Part of any economic growth plan should provide assistance to States and cities that today are bearing a larger responsibility for the cost of domestic programs. For this reason, I joined Senator BAUCUS earlier this year as a principal cosponsor of a measure to lower the cost of issuing bonds for our cities and States. Lower bond costs would enable cities and States to better respond to infrastructure needs, roads and bridge repairs, the renovation and construction of schools, highways, and prisons. It is my hope my colleagues will agree that this measure should be a part of our economic recovery package.

These are only a few examples of the proposals I think we should consider this fall; not wait, and put off until next year, or 1993. Economic reform should be our single top priority in this country, and we should not let the President's lack of leadership get in our way of moving forward. The American people need to see that we are not going to give up this fight; and tax relief, relieving some of the burdens of some businesses is absolutely essential if we are going to jump start this economy.

For that reason, Mr. President, I urge, rather than taking the break we would all like to have this coming fall, that we stay here and do some of this work, and send a message to the American people that unlike the President, who seems to believe there is no recession, at least those in Congress understand it.

We may not come up with all the answers, but it is vitally important we not pack our bags and go home at the very hour this country is in one of its most desperate economic conditions in the last 40 years.

And so, Mr. President, I urge we stay here and do some of this work, try at

least to advance some of these ideas, and see if we cannot make a difference in getting this country moving again.

Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I hear my colleague from Connecticut, and I echo those concerns. I would love to see us stay and do something to help the economy. I do not think we are going to help it if we are going to be pointing fingers. There is enough of it to go around.

Some of us wanted to pass an energy bill this year, and we did not even have the courtesy to proceed to the bill that could have provided something like 750,000 jobs in the United States. We did not pass it.

The Senate passed a highway bill months ago, 7 or 8 months ago. We passed a highway bill. We are still waiting on it. The House would not even take it up. We are talking about thousands of jobs in my State, jobs that we need, contracts that will not be let unless we pass the bill.

The PRESIDING OFFICER. Under a previous order, the question now occurs on——

Mr. NICKLES. Mr. President, I ask unanimous consent for 1 more minute.

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

Mr. NICKLES. Mr. President, I think it is vitally important that we not just be pointing partisan guns but we really do work to make some positive strides toward helping the economy, maybe through tax changes but also through passing a highway bill, through making some significant changes that need to be done and not just pointing partisan fingers at the President of the United States.

The PRESIDING OFFICER (Mr. DODD). Does the Senator yield back the remainder of his time?

Mr. NICKLES. I yield back the remainder of my time.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The Senate continued with the amendment of the bill.

AMENDMENT NO. 1371

The PRESIDING OFFICER. The hour of 1:45 having arrived, the question is on agreeing to the motion to table the amendment of the Senator from Florida.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

The result was announced—yeas 77, nays 19, as follows:

[Rollcall Vote No. 261 Leg.]

YEAS—77

Akaka	Glenn	Mikulski
Baucus	Gore	Mitchell
Biden	Gorton	Moynihan
Bond	Gramm	Murkowski
Boren	Grassley	Nickles
Breaux	Hatch	Packwood
Burdick	Hatfield	Pell
Burns	Heflin	Pressler
Byrd	Helms	Riegle
Chafee	Inouye	Rockefeller
Coats	Jeffords	Roth
Cochran	Johnston	Rudman
Cohen	Kasten	Sanford
Craig	Kennedy	Sarbanes
Cranston	Kerry	Seymour
D'Amato	Kohl	Simpson
Danforth	Lautenberg	Smith
Daschle	Leahy	Specter
Dixon	Levin	Stevens
Dodd	Lieberman	Symms
Dole	Lott	Thurmond
Domenici	Lugar	Wallop
Durenberger	Mack	Warner
Exon	McCain	Wirth
Ford	McConnell	Wofford
Garn	Metzenbaum	

NAYS—19

Adams	DeConcini	Robb
Bingaman	Fowler	Sasser
Bradley	Graham	Shelby
Brown	Hollings	Simon
Bryan	Nunn	Wellstone
Bumpers	Pryor	
Conrad	Reid	

NOT VOTING—4

Bentsen	Kassebaum
Harkin	Kerrey

So the motion to table the amendment (No. 1371) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from Michigan.

Mr. RIEGLE. Mr. President, by previous agreement the Senator from Florida has offered and agreed to go next with his brokered deposits amendment. I would hope he could be recognized for that purpose.

The PRESIDING OFFICER. Without objection the pending amendment is laid aside and the Senator from Florida is recognized.

AMENDMENT NO. 1372

(Purpose: To prohibit the insurance of brokered deposits under the Federal Deposit Insurance Act)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 1372.

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

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

The amendment is as follows:

Beginning with page 212, line 6, strike all through page 217, line 4, and insert the following:

SEC. 211. PROHIBITION ON INSURANCE OF BROKERED DEPOSITS.

Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended—

(1) by striking subsections (a) through (e) and insert the following:

"(a) PROHIBITION ON INSURANCE.—Notwithstanding any other provision of law, deposits obtained, directly or indirectly, by or through a deposit broker are not insured deposits under this Act.";

(2) by redesignating subsection (f) as subsection (b); and

(3) by striking subsection (g).

Mr. GRAHAM. Mr. President, this amendment goes to why we are largely here today. While this bill is a bill that contains bank reform measures, the engine that has brought us to our current destination has been the collapse of the bank insurance fund. The reason for most of the concern about bank reform is in order to create an economic environment, climate, financial regulation, financial opportunities which will make the banking system more secure, but the engine has been the collapse of the bank insurance fund.

The reasons for that collapse are multiple. The one that I believe we have inadequately focused upon is the fact that what we are purporting to do semantically and historically is not, in fact, what the reality of our current deposit insurance system is.

Semantically we refer to this as a deposit insurance system. The word "insurance" carries with it certain inferences and certain accepted characteristics. One of those is that there is a transfer of risk, that persons have the risk that they may die, that their house may burn down, or that the bank in which they may deposit their money could go bankrupt. So you pay a premium which is calculated to be the economic value of that risk and you transfer that risk to a third party.

In this instance the risk of our deposit being not there when you go to the bank is transferred to the Federal Government, to the FDIC, by a premium being paid. In this instance the premium is being paid by the bank itself.

Another concept of insurance is risk. Some people are 25 years old, some people are 85 years old. Obviously the price of an equal dollar amount of life insurance is going to be different from those two people because they impose different risks of when they will actually be eligible or their heirs to draw upon that life insurance policy.

In neither of those two fundamental characteristics of insurance is the FDIC fund appropriate.

First, the amounts of premiums paid are not commensurate with the risks that are being assumed in aggregate and there is no differentiation between the riskiest and the most conservatively operated institution.

The Securities and Exchange Commission, Mr. President, has this year

released a study on March 28 estimating the value of the Federal deposit insurance fund. To read from the summary of the report:

The current premium for deposit insurance, which at that time was 19.5 bases points, is much lower than the estimate of what the real cost of providing that insurance coverage would be under the methodologies which were utilized by the economists at the Securities and Exchange Commission.

The study provides evidence that deposit insurance is on average significantly underpriced, thus representing a large contingent liability for the Federal Government.

Mr. President, we are about to find some of that contingent liability because it has moved from contingent to real. That is why we are about to be asked to appropriate $70 billion to replenish the bank insurance fund and will soon thereafter be asked to appropriate $80 billion as the latest installment for the failed savings and loan fund.

The study goes on to estimate that during the 1980's this underpricing averaged, averaged $20 billion annually. That means every year the FDIC collected $20 billion less than it should have collected if it were operating an actuarially sound insurance program.

Second, there is no risk. Every institution pays exactly the same premium, a tremendous incentive as we particularly saw in the savings and loan industry for high-flier operators. It was the greatest of worlds. If a transaction that was risky turned out to be profitable, the profits were privatized by the owners of the institution. If that same transaction proved out to be a dud, it was socialized. The taxpayer paid the cost of failure. So we have had a Federal deposit insurance system which fails to meet two of the basic standards of an insurance program.

Historically, deposit insurance was one of the many innovations of the New Deal, and its purpose was to provide a safe haven for small investors, a place where American families could put their money and be secure that it would be available to them in the future, that they would not have to undertake the individual responsibility to assess the worthiness of a depository institution which was insured by the Federal Government.

That was a very important part of creating the economic recovery from the Great Depression of the 1930's.

Mr. President, we have gone a long way from that historical beginning. We now are insuring deposits of up to $100,000. With any degree of creativity, an individual can have almost an unlimited number of those $100,000 deposits. At one institution, a family—husband, wife, two children—can have a dozen or more accounts each insured up to $100,000. And then, of course, if you have more than that $1.2 million that you want to have insured, you can go to the next institution and repeat the process.

So, virtually, there is no limit as to how much a person can place within a depository institution and have fully insured by the Federal Government. That, Mr. President, I submit was not the rationale that led to the establishment of federally insured deposits.

But beyond that, Mr. President, the focus of the amendment that we are going to offer goes to another and increasingly significant part of the expansion of the Federal Government's vulnerability, and that is brokered deposits. Brokered deposits are where an individual goes to, generally, a securities institution, and says, "I have $50,000 to invest. I want to invest it at the best return I can get, but I want to invest it also with a high degree of security."

And so the securities firm finds that there is an institution, federally insured, which is paying the highest interest rates available—generally rates that are above those in the local community in which the individual happens to live.

He says, "I will place your $50,000 in a federally insured deposit and you will see this rate of interest higher than you can get at a federally insured institution in your community."

We saw this system run completely amok in the 1980's where the institutions that nationally were paying the highest interest rates were those that were in the greatest trouble. They would be like the 85- or 95-year-old man who was able to buy life insurance at the same rate as the 25-year-old man, contributing very substantially to the failure of many of those institutions and the enormous costs that are now imposed upon the American taxpayer.

This bill makes some important reforms. It would limit brokered deposits to those commercial banks which fall into the top two categories of capital adequacy. And I will state that that is a substantial improvement and reduces significantly the prospect of the taxpayers having to pick up that enormous cost for failures from these institutions as a result of brokered deposits.

But, Mr. President, I believe we should go further. I believe that we should not prohibit brokered deposits but provide that those deposits will not be federally insured. If a person wants to go into their local securities office and find where in the Nation they can place their funds at the highest rate of return, they should have the responsibility to also assess the quality of that institution, this financial worthiness. They should not rely upon the Federal insurance system to eliminate from them that necessity at self-protection. And the U.S. taxpayers should not be putting their subsidized deposit insurance behind those accounts.

I think this is an appropriate amendment. At the very minimum, we ought to require that brokered deposits pay the actuarial cost of that insurance. I would ask anyone to defend the proposition of why the American taxpayers, at what may be a subsidy rate of equal to the amount of premiums paid, why we should be subsidizing the insurance behind brokered deposits. What is the public policy that justifies that position?

So, Mr. President, the amendment which I offered would say that brokered deposits can continue, but brokered deposits will no longer be insured by the Federal Government.

Brokered deposits have been one of the most expanding areas of deposits within our system. The Federal Reserve has provided these figures as a percentage of total assets represented by brokered deposits in commercial banks. In 1984, the first year for which statistics were kept, brokered deposits represented 0.147 percent of the total assets. By the first quarter of 1991, it increased approximately sevenfold to 1.036 percent.

So we have had a tremendous growth in brokered deposits, both absolutely and as a proportion of the asset base of insured institutions.

Mr. President, I do not believe that there is a legitimate public policy to continue to provide subsidized Federal deposit insurance behind brokered deposits. The adoption of this amendment would terminate that process.

I thank the Chair.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. Mr. President, I yield to the Senator from Maryland such time as he requires.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, how much time remains?

The PRESIDING OFFICER. Sixteen minutes.

Mr. SARBANES. Would the Chair indicate when 5 minutes has been used?

The PRESIDING OFFICER. Yes.

Mr. SARBANES. Mr. President, I rise in strong support of the amendment offered by Senator GRAHAM of Florida, and I want to commend Senator GRAHAM for a very perceptive and analytical statement about this issue of providing deposit insurance for brokered deposits.

In fact, when this legislation, when the chairman's committee print was first put forward in the Banking Committee, it contained a simple prohibition on extending taxpayer-backed deposit insurance to brokered deposits. It had a provision that was substantially identical to a major deposit insurance reform proposal put forward by the Treasury which had made the judgment that this was a desirable thing to do in terms of strengthening the deposit insurance system.

Unfortunately, it was modified in the committee in significant ways to now

permit brokered deposits under certain conditions. But it is my own view that the limitations are, in a sense, vague and expandable and that the problem, the basic problem, connected with brokered deposits would continue to exist, at least to a significant degree.

Now we are about to put $70 billion into the bank insurance fund, some direct and some to be drawn upon. And if there is anything that ought to be done as part and parcel of that, it is to strengthen the deposit insurance system. That, in the end, ought to be the principal purpose of this legislation.

Now, I know that the banks are not directly analogous to the S&L's, but we have to learn some history and draw at least what lessons are appropriate. One of the leading causes of the savings and loan collapse was the practice of failing S&L's of paying higher interest rates in order to attract brokered deposits from around the country. These brokered deposits can flow into an institution very quickly. We have had testimony where institutions have unraveled in a very short period of time. So you may set up, as the provision in the bill does, capital standards that you think assure you that you are getting institutions that have a lot of strength and all of a sudden it can just erode very quickly. And, of course, it is under the pressure of that erosion that the institution seeks to maximize its use of brokered deposits in order to bring in new money, in order to try to carry them over, over the difficult period.

We had testimony in the committee on the Bank of New England, that even if you applied that standard in this bill, they would have qualified to draw brokered deposits. Yet within a few months they were in very deep trouble indeed.

Since these deposits are insured by the Federal Government, all of the risk associated with the deposit is assumed by the taxpayer. That has to be clearly understood. When people go into Merrill Lynch for a brokered deposit, there is no financial judgment being exercised here. They run a computer to see who is paying the highest rate and they run a computer to make sure the client has not exhausted or partly used up his $100,000 coverage on an account in that institution. Then they locate the high rate and they just shift the money out there.

They never even have to stop to look as to whether the institution to whom the money is being sent is a safe, sound, prudent institution, because the deposit insurance is going to take care of that problem.

We had the President of the Independent Bankers Association who testified before the committee in April of 1990:

> One of the lessons from the thrift crisis is their ability to gather deposits through brokered deposits and increase the size of the institution and the funds they had available very rapidly without additional capital and, quite frankly, without additional management. Then, to take these funds out and invest them in what turned out to be very risky matters, is certainly a lesson America has to learn and look at.

In the hearings before the committee on this legislation, which reviewed the problems of commercial banks and the deposit insurance system, we had some highly respected witnesses testify in opposition to deposit insurance coverage for brokered deposits in commercial banks, the very thing the able Senator from Florida is addressing in his amendment.

Under Secretary of the Treasury Glauber testified before the committee on the Treasury's proposals for deposit insurance reform.

In his testimony Mr. Glauber stated:

> We think insurance coverage behind brokered deposits goes beyond the original intent of deposit insurance.

That is a point which the able Senator from Florida just made in his exceedingly fine statement when he made reference to the purpose of deposit insurance.

Mr. Glauber went on:

> We would eliminate it in our bill. We would just simply say that brokered deposits should not be covered by deposit insurance.

In May of this year Paul Volcker testified before the committee, supporting the Treasury proposal. He said:

> Brokered deposits seem to me to be a way of, in a sense, distorting the purpose of the $100,000 limit, which is to protect a rather sizable deposit for unsophisticated people.

Let me repeat that:

> which is to protect a rather sizable deposit—

And it is sizable—

> for unsophisticated people.
>
> You are now making a machine for collecting funds wholesale, so to speak, and distributing it in a way to take advantage of the insurance system.

That is exactly what this brokered deposit system does.

The advocates for permitting deposit insurance coverage for brokered deposits argue that the risk of abuse is worth the benefit of permitting deposits to flow more easily to institutions with greater lending opportunities. But the problem with this is discussed in a study submitted to the Congress by the Treasury in February of 1991, "Modernizing the Financial System." As that study pointed out, "These deposits are insured rather than uninsured, which means there is no market discipline involved in sending these funds to distant parts of the country to unknown banks and thrifts."

No one has to make any judgment about the institution. You just find out they are paying a higher rate, you make sure that you can get deposit insurance coverage on the amount you are going to put in, and you send it on out there. You do not have to take two breaths to look at the condition of the institution.

This means that financial firms are using the Government's credit rather than their own financial condition to raise funds, which is an obvious invitation for increased risk and increased risk of misallocation of resources. This was never, never a purpose of Federal deposit insurance.

Finally, that Treasury report to which I referred points out that the brokerage of insured deposits has expanded the scope of deposit insurance coverage primarily for wealthier depositors. According to the preliminary result of the 1989 survey of consumer finances, households with more than $100,000 in depository institutions hold almost three-quarters of the insured brokered deposits held by all households.

There is no clear public reason, I submit, no reason whatever—no public policy reason—why the taxpayer, the ordinary taxpayer should routinely protect these large, wealthier depositors from losses. The system was not designed for that purpose.

The system was designed to protect the small depositor. We took it from $40,000 to $100,000, which some people thought was taking it too high. But in any event, it was to provide the sort of ordinary depositors, not highly sophisticated, unable to check out all the alternatives as to where to place their money, a safe place in which to put their money and to assure them that there would be Government insurance upon it.

These large depositors do not need deposit insurance to find a safe way to invest their funds. They ought to engage in a process of making the best judgment they can.

I believe that this amendment offers an opportunity for a fundamental improvement and protection for the Federal Deposit Insurance system and I commend my colleague, Senator GRAHAM of Florida, for offering it and for his very strong statement in support of it.

I strongly urge my colleagues to support this amendment.

The PRESIDING OFFICER. Who yields time? The Senator from Utah.

Mr. GARN. Mr. President, section 211 of S. 543, the provision which addresses brokered deposits, is a result of a very carefully crafted compromise. The brokered deposits provision in S. 543 strikes an appropriate balance between those who wanted to eliminate deposit insurance coverage for brokered funds and those who believe that abuses are not the result of accepting brokered deposits, but rather of not investing them prudently.

Where the money comes from really has not been the problem. It is the bad investing that has taken place. S. 543 would tighten the restrictions put in place by FIRREA. I want to emphasize we reached a compromise in FIRREA to control brokered deposits. Now we

are tightening, in S. 543, those requirements. But it would not turn off the spigot. Only well-capitalized and well-managed banks would still be able to accept brokered funds.

In addition, the FDIC would have the authority to allow banks which are adequately capitalized and which have a CAMEL rating of 1 or 2 to accept brokered deposits upon application.

In addition, to address the problem of undercapitalized institutions bidding up deposit rates, S. 543 limits any inadequately capitalized institution or institution which is in conservatorship from offering rates of interest on brokered funds which are significantly above the prevailing rate in their normal market areas or in the market area in which the deposits would otherwise be accepted.

Further restrictions on brokered deposits would unnecessarily restrain well-managed and well-capitalized institutions from prudently using brokered deposits to manage their short-term liquidity needs.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. I yield 5 minutes to the Senator from Alaska.

Mr. MURKOWSKI. I thank the managers for the time.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I think we have a clear case here of an effort to address a problem that really no longer exists. It did exist at one time and it existed in a manner where there was clearly flagrant abuse of the process. The abuse occurred as a consequence of brokered deposits by unhealthy financial institutions being marketed by the securities industry. It greatly increased the cost of the S&L bailout. And I would have certainly welcomed the presence of my colleagues on this matter prior to 1989 when I debated the issue of brokered deposits on the floor.

I spoke out against the inappropriate use of brokered deposits in that timeframe in 1989. But in 1989, we took the first major step to address the flagrant abuse. I authored a provision of the 1989 S&L cleanup legislation under FIRREA restricting the use of brokered deposits by unhealthy institutions. The provision was controversial at that time, and I ask unanimous consent to print in the RECORD a number of articles specifically addressing that.

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

[From the Washington Post, May 16, 1991]

FLOOR FIGHT LOOMS ON KEY S&L BILL REFORM

(By Jerry Knight)

The savings and loan bailout bill is barely two-thirds of the way down the legislative assembly line, but efforts already are under way to strip off a key reform that restricts the long-criticized use of brokers to raise deposits for troubled S&Ls, according to congressional sources.

As far back as 1985, the heads of the bank and S&L deposit insurance funds called for restricting brokered funds, which they warned were contributing to S&L failures and driving up interest rates.

Both the S&L bailout bill adopted by the Senate last month and the version cleared by the House Banking Committee two weeks ago would prohibit troubled associations from bringing in any new brokered deposits without advance permission from the Federal Deposit Insurance Corp.

As the name implies, brokered deposits are obtained for S&Ls by brokers—usually because the association needs more deposits than it can attract by advertising in its local market. Some funds are raised by professional "money brokers" who do nothing else; most come from securities brokers, who sell high-interest certificates of deposit just as they sell stocks or bonds.

Brokered CDs are now one of the most popular investments for sophisticated savers and are the single biggest source of new business for most securities firms, which are among the leading opponents to the limits. Because they are sold in amounts of less than $100,000, brokered CDs are fully protected by deposit insurance; they can pay rates as high as those on uninsured money market funds.

Sen. Frank H. Murkowski (R-Alaska), author of the Senate's brokered deposit restrictions, said yesterday a move is afoot to remove the limits when the S&L bill reaches the floor of the House later this month.

"I thought we had a clear shot at this," said Murkowski, "but now it looks like the boys who sell them are trying to turn it around."

Securities industry sources argue that restricting brokered deposits would hurt small investors and would compound the problems of struggling S&Ls that need the funds to stay in business.

The effort to remove the restrictions has the backing of FDIC Chief L. William Seidman, who is scheduled to testify Wednesday at a hearing on brokered deposits called by Rep. Carroll Hubbard (D-Ky.), chairman of the House Banking Committee's general oversight subcommittee.

Seidman is expected to testify that brokered deposits themselves are not the problem, FDIC aides said. According to Seidman, the problems with brokered deposits have come when they were used to finance explosive growth by S&Ls investing in risky real estate deals. Now, however, brokered funds are being used primarily to keep afloat troubled S&Ls that otherwise would have to be bailed out directly by the government.

Seidman's view conflicts with that of his predecessor, William Isaac, who along with former Federal Savings and Loan Insurance Corp. Chief Edwin J. Gray tried unsuccessfully to get Congress to do something about brokered funds.

At a Senate hearing four years ago, Isaac warned, "I cannot overstate the case. Fully insured brokered deposits represent a clear and present threat to the Federal Deposit Insurance System." Troubled institutions make much greater use of brokered funds than healthy ones, he said, and "when these institutions fail, the cost to the deposit insurance fund is greatly increased."

Gray told the same hearing that brokered deposits were "the single most important factor in a rising number of thrift institution failures."

Murkowski said yesterday he considers brokered deposits "a risky game that has been played with the taxpayers' money." When troubled S&Ls turn to brokers to sell their high interest CDs, it drains money out of local financial institutions, which then are under pressure to raise their own rates to compete, he added.

Murkowski's measure—and a virtually identical amendment to the Senate bill authorized by Rep. Stephen Neal (D-N.C.)—would authorize the FDIC to permit institutions to use brokered funds, but FDIC officials said that would be too restrictive.

Congressional banking committee staffers said the most persuasive argument in favor of lifting the broker deposit rules is that the government has no choice: If troubled S&Ls can't raise deposits through brokers, they will go broke and then the deposit insurance fund will have to pick up their losses.

[From the Wall Street Journal, Apr. 20, 1989]

SENATE OVERWHELMINGLY PASSES S&L BILL CONTAINING $50 BILLION IN RESCUE MONEY

(By Paulette Thomas)

WASHINGTON.—The Senate overwhelmingly approved the Bush administration's landmark savings-and-loan bill, after toughening accounting standards for banks and thrifts and limiting their authority to engage in risky growth practices.

The bill, approved 91-8, would provide $50 billion to close or merge insolvent savings and loans, tighten the industry's permissive accounting standards, and put some distance in the traditionally cozy relationship between the industry and its regulators.

The House Banking Committee will take up the issue next week. Its chairman, Rep. Henry Gonzalez (D., Texas) has promised to seek a similarly tough bill.

In the final minutes of debate yesterday, senators approved an amendment pushed by Sen. Howard Metzenbaum (D., Ohio) to require thrifts to maintain real capital equal to 1.5% of assets. Earlier, the bill called for a minimum capital requirement of 3% of assets, but it provided that "good will," the intangible value of the thrift, could be counted as capital up to the entire amount required.

"Good will isn't worth doodly-doo," Sen. Metzenbaum said. In exchange for the speedy approval of the capital provision, he agreed to drop amendments designed to help low-income consumers.

One part of the last-minute, 76-page compromise amendment—which was sponsored by Sens. Donald Riegle (D., Mich.) and Jake Garn (R., Utah), the chairman and ranking Republican, respectively, on the Senate Banking Committee—would prevent the Bush administration from reversing certain regulatory exemptions the Federal Home Loan Bank Board previously granted to several large thrifts. White House officials have said some of the exemptions, spelled out in Bank Board letters, needn't bind future regulators and could be rescinded.

The amendment specifically would exclude the Bass Brothers' American Savings & Loan Association of Stockton, Calif., Western Federal Savings & Loan Association of Phoenix, Ariz., and Gibraltar Savings, of Beverly Hills, Calif., from a change in regulations to the extent that "they relied in good faith" on letters the Bank Board provided them in connection with acquisitions or enforcement cases. In the Bass Brothers case, the letters related to the treatment of securities transactions.

The Senator also approved an amendment proposed by Sen. Frank Murkowski (R., Alaska) that would prohibit sick thrifts or

banks from expanding their deposit bases by using so-called brokered deposits. Many sick thrifts deepened their insolvencies—and the Federal Savings and Loan Insurance Corp.'s liabilities—by offering through deposit brokers to pay higher-than-market interest rates and investing the funds thus raised in risky ventures.

The bill would require undercapitalized institutions to obtain a waiver from federal regulators before trying to attract highrate deposits through brokers.

The Senate's speedy approval of such a far-reaching and costly bill was a huge victory for President Bush, who made the legislation an early priority for his administration. "The Senate deserves a great deal of credit for acting swiftly to pass President Bush's savings and loan reform plan," said Treasury Secretary Nicholas Brady. "We particularly appreciate the bipartisanship and cooperation shown in this effort."

More than 60 amendments were proposed over three days of Senate debate, but most were withdrawn in deference to Sen. Riegle, who warned that he would fight extraneous amendments to the "emergency legislation."

An amendment that would have required reconfirmation of Danny Wall as chairman of a restructured Federal Home Loan Bank Board failed in the face of opposition by Sen. Garn. Mr. Wall formerly was the committee's staff director when Sen. Garn was its chairman. The House bill, however, would require reconfirmation of Mr. Wall, the controversial Bank Board chairman who presided over the thrift industry during its period of record insolvencies and fraud.

Assuming the House passes its version of the bill, the House and Senate will have to work out differences over capital standards, the cash cushion that institutions must maintain to absorb possible losses. Tougher capital standards are considered one of the ending legislation's most important regulatory changes to prevent widespread insolvencies in the future.

The House version would require a minimum of 1.5% real cash capital, and another 1.5% that may include such items as good will and deferred loan losses. It also would allow thrifts to continue to use insured deposits in risky ventures, such as commercial loans made through subsidiaries. The Senate bill wouldn't allow use of deferred loan losses and would curtail riskier investments.

Under both the Senate and House bills, a new agency, the Resolution Trust Corp., would raise $50 billion by selling bonds to pay off depositors at insolvent institutions. Thrifts would pay higher insurance premiums and a portion of the earnings of regional home loan banks, which they own, to pay the bonds' principal. But taxpayers would pay the greatest share of the roughly $157 billion total cost over 10 years.

[From the Washington Post, Mar. 20, 1991]

HIGH-RATE DEPOSITS POSE RISK TO AILING AREA BANKS

(By Joel Glenn Brenner)

Troubled banks in Washington and New England, forced to offer unusually high interest rates to get customers, have attracted billions of dollars of volatile deposits from around the country, increasing the financial risks they face, according to industry analysts and regulators.

These deposits, raised by Wall Street brokers, have poured into these institutions in the past year, financial documents show. Federal banking regulators are concerned that these high-cost deposits may increase losses at the banks and could boost the government's cost of rescuing the banks if they fail.

The banks are obliged to pay high interest rates for deposits because many local customers, concerned about the health of these banks, are withdrawing their money. But such high rates typically attract so-called "hot money" from customers who move their funds in and out of various institutions, looking around the country for the best rates.

The increase in deposits raised by brokers nationwide has been most dramatic at banks in economically depressed New England and at local institutions, including the largest bank company in the Washington area, MNC Financial Inc.

At American Security Bank, one of MNC's subsidiaries, for example, brokered deposits increased sixfold in the first nine months of 1990, to $1.4 billion from $195 million. Maryland National Bank, another subsidiary, experienced a similar increase to $2.4 billion from $630 million.

"Those increases are staggering," said George M. Salem, an analyst with Prudential Securities Inc. in New York. "For the banks using brokered deposits, they have no choice—you can either starve to death or eat expensive food. But it does cause significant problems for the institution and tends to weaken the banking system overall."

An MNC official said loss of customer funds and increasing reliance on brokered deposits is the "most pressing issue" facing the bank company, which has suffered heavy losses due to the real estate downturn.

Recently, federal regulators placed special restraints on MNC that limit growth of brokered deposits.

Most of the brokered funds are certificates of deposit sold in amounts less than $100,000 and insured by the federal government.

The relatively high rates on these CDs increase the ultimate loss if an institution fails, a cost that is picked up by the federal deposit insurance fund. The heavy use of brokered deposits by savings and loan associations substantially increased the cost of the S&L debacle.

"Brokered deposits contributed enormously to the savings and loan mess and could contribute enormously to a bank crisis in the future," said Ken Guenther, executive vice president of the Independent Bankers Association of America, the trade group that represents community banks.

"We're concerned about the use of brokered deposits, especially by troubled banks," said Ellen Stockdale, spokeswoman for the federal Office of the Comptroller of the Currency, which oversees national banks.

A recent survey by the Securities Industry Association showed that banks surpassed thrifts for the first time last year in the sales of certificates of deposit through brokerage firms. However, the banking industry is much larger than the S&L industry, and on a percentage basis the use of brokered deposits by troubled banks is far less prevalent than it was among troubled savings and loans.

According to data supplied by banks nationwide, brokered deposits increased $5 billion in the first nine months of 1990 to an all-time high of $77.3 billion. Final figures for last year are not yet available from the banks.

Although some of these funds are raised by professional "money brokers" who sell only CDs, most of the money is raised by securities brokers, who sell high-interest certificates of deposit for Merrill Lynch & Co. and other brokerage houses just as they sell stocks or bonds. Brokered CDs have become one of the most popular investments for sophisticated savers and are the single biggest source of new business for many securities firms, which search out the highest available rates for investors. Brokers receive commissions from the investors for the service.

The high interest rates on brokered deposits typically prompt a bidding war for funds among all banks and S&Ls, thus weakening the entire financial system, regulators and analysts agree.

In the Washington area, for example, local banks and savings and loans are paying the highest interest rates in the country on certificates of deposit, according to Bank Rate Monitor, a Florida newsletter that tracks rates nationwide.

For six-month certificates of deposit, Washington area institutions are paying interest rates with a yield of 6.86 percent, compared with the national average of 6.37 percent.

For one-year CDs, the Washington market is currently the only market in the nation paying interest rates yielding in the 7 percent range. Local institutions are paying an average yield of 7.14 percent, compared with the national average of 6.57 percent.

William Isaac, former chairman of the Federal Deposit Insurance Corp. (FDIC) and a longtime critic of brokered deposits, pointed out that when hundreds of savings and loans in Texas began paying high rates in the mid-1980s, large Texas banks tried to offer competitive rates. That factor, Isaac said, ultimately contributed to the failure of nine out of 10 of the largest Texas banks.

"While brokered deposit might make sense from the standpoint of an individual institution that can't survive without this money, it spells big trouble for the banking systems," Isaac said, "You end up with too many marginal institutions bidding for funds and the whole system gets weaker."

Because of this threat to the industry, the Treasury Department has recommended as part of its massive legislative package on banking reform that brokered deposits not be covered by federal deposit insurance. A final draft of the reform package is expected to be sent to Congress this week.

However the FCIC, which must give permission for troubled institutions to use brokered deposits, has advised the Treasury that it has concerns about taking such action because revoking insurance on brokered deposits could dry up such funding for banks that need cash.

Sen. Frank H. Murkowski (R-Alaska), who authored legislation that required the FDIC to give permission for the use of brokered deposits, criticized the agency yesterday for allowing the level of brokered deposits at banks to increase.

Alan J. Whitney, an FDIC spokesman, said yesterday that his agency carefully reviews all applications for permission to use the expensive deposits.

The problem is not the brokered deposits per se," Whitney said, "The problem is why the institution is using brokered deposits in the first place. In some situations, they simply have no other option."

However, Isaac said banks could borrow their funds from the Federal Reserve's Discount Window, which was created to help fund banks at low rates of interest. Banks always have been reluctant to borrow from the Fed because of the stigma attached to it.

Mr. MURKOWSKI. Mr. President, the provision prohibited banks and thrifts that did not meet minimum capital re-

quirements from using brokered deposits unless the institutions received a waiver from the Federal Deposit Insurance Corporation.

In other words, rather than micromanaged by the Senate or the Congress, we put it with the oversight agencies and the insurance agencies, the Comptroller of the Currency, and FDIC. They had to have a waiver to basically accept a brokered deposit under my legislation, which became law in 1989. The waiver would be available if the Federal Deposit Insurance Corporation made a determination that the use of the brokered deposit by that institution did not constitute an unsound banking practice.

The enactment of this provision has worked. It stopped the bleeding of the insurance fund. What the committee does, and I commend the committe for its action, it fine-tunes the process that I started in 1989, and I did it basically alone. The committee was not there on this issue. We were a little bit ahead of ourselves. Because of my particular knowledge and expertise, I knew what was happening out there. It was clear.

The securities groups were making hundreds of millions of dollars by simply finding banks that were unsound, soliciting from their customers amounts under $100,000, and then placing them under the FDIC insurance and simply escalating the price that these organizations had to pay for money. The higher risk the organization, the higher the interest rate.

While I sympathize with the objective of the Senator from Florida, unfortunately there are legitimate short-term liquidity needs that the banking system should have available to it. And with the provisions under what the committee bill does, by limiting that to only well-capitalized, well-managed institutions, and provision of the law that I invoked in 1989, we have that oversight, we have a responsible agency that can direct. They basically put their reputation on the line if they allow an organization to accept a brokered deposit. They do it on the basis of their analysis of the soundness of the institution, the fact that there may be a temporary liquidity shortage and, as a consequence of that, the justification for approval.

The action of my friend from Florida—and his amendment solves a problem that really does not exist anymore, but he throws the baby out with the bathwater, so to speak, by simply meat-axing this allowance, legitimately available for liquidity, now that it is no longer flagrantly abused by the security industry and limited to a responsible oversight by the committee.

So I suggest to my colleagues that we reflect a little bit on the reality that we are really shutting the door after the house has left. The big problem existed during the time when we had the S&L's who were sick, sick, sick. And, as a consequence, the security industry was ready, at the expense of the taxpayers, to make unhealthy institutions available brokered deposits. We have secured that action.

It is the opinion of the Senator from Alaska that this legislation proposed by the Senator from Florida simply is not necessary under the current disposition of the marketplace.

I thank the Chair.

I thank my friend from Florida, and please understand that my criticism is based on my analysis that the problem really does not exist anymore.

Mr. RIEGLE. Mr. President, can I inquire as to the amount of time left on both sides?

The PRESIDING OFFICER. Five minutes and 50 seconds; on the side of the Senator from Florida, 7 minutes 14 seconds.

Mr. RIEGLE. Mr. President, I yield myself 3 minutes on this issue, if I may.

I must say that I have great sympathy for the amendment offered by the Senator from Florida. In fact, as he will recall, in the original committee print of the bill, it contained the language that is contained in his amendment now. We ended up striking a compromise on this issue in the committee. I think we have struck a reasonable compromise. There are lots of parts of this bill that if I could do myself in a single, unilateral fashion I would do differently than we find. But that is not the nature of how we work these issues through and balance them out one by one.

So I will not be able to support the Senator's amendment, despite the fact that I can appreciate the points that he makes, and I feel it is very important that we maintain the provision that is in the bill as a part of the fabric of the bill.

But let me just indicate what the protections are in here, because no one feels more strongly than I about preventing abuses with brokered deposits. We had that in the past. We should not under any circumstances tolerate that in the future. That is why the use of brokered deposits are very sharply restricted within this legislation.

First of all, only well-capitalized institutions with a CAMEL or 1 or 2, two top ratings, would be eligible to accept funds through a deposit broker. You have to bear in mind, in other parts of the bill, we are much tougher in terms of how we monitor the banks, how we insist on them meeting capital standards, so we are much less likely to have the CAMEL rating be misleading in terms of what it actually tells us.

There are other parts of the bill unrelated to this that reinforce the strengths in the prohibitions and protections we have in here. The bill, as it is written now, also restricts the number of institutions that can accept brokered deposits by waiver of the FDIC. The FDIC may allow only adequately capitalized institutions and institutions in conservatorship to accept brokered deposits for successive periods for up to 90 days.

The bill restricts the interest rate on such brokered deposits to the prevailing rate in the bank's area of operation, or the national rate paid on comparable rates of maturities. This deals with the problem of creating artificially high rates and creating a way to vacuum funds into an institution that ought not to have them and is operating in a way that is clearly uncompetitive with others in the area.

It also restricts the interest rates that weak institutions can offer. Undercapitalized institutions may not offer rates of interest on insured deposits that significantly exceed the prevailing rate in their normal market areas.

I think restricting brokered deposits to only the healthiest institutions and restricting the interest rates of weak institutions works again in tandem to encourage banks to operate safety and soundly. It means that in some situations, brokered deposits will still be available as a source of liquidity. But I think we have, in a sense, screened out the prospect for the kind of abuse that we have seen in the past and which has clearly been a problem.

Having said that, I understand the sentiment of the Senator from Florida. I certainly understand the argument on his side. I think we have struck a reasonable approach to, in effect, put the safeguards in place which otherwise I would not be able to support.

So I think they are there, and I hope that the Senate will stay with the committee provision and not take the amendment offered by the Senator from Florida.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. Mr. President, I yield myself such time as required.

What we have not heard in the comments thus far, and in the time remaining maybe it will be offered, is what is the public policy that justifies the taxpayers of America providing heavily subsidized deposit insurance to funds which flow through a security wholesale operation out to the area of the country which in paying the highest interest rates. What is the public policy? How does that relate to the rationale upon which deposit insurance was established almost 50 years ago to provide that small, unsophisticated depositor a safe haven, where a family could go to sleep another night not having to worry that their $1,0000 or $2,000 life savings were going to be placed in jeopardy because of the failure of their local bank, that the Federal Government would provide them

that degree of assurance? What is the public policy that justifies the Federal taxpayers now providing this heavily subsidized deposit insurance to brokered deposits?

It has been said, well, even if there in no pubic rationale for it, at least there is not much of a problem; there will not be many abuses. As the Senator from Maryland pointed out, the Bank of New England would have qualified for brokered deposits just a few months before it went under. This very bill indicates that capital standards are not in and of themselves sufficient real time indicators of the health of an institution.

Mr. President, as you well know as a member of the Banking Committee, the committee rejected the concept of relying totally on capital standards and inserted what were referred to as noncapital trip wires, that is, standards that did not relate to capital but which the committee, on expert testimony, found to be better indicators of the real financial health of that institution.

We are not applying any of those trip wires to institutions which are now going to be eligible to receive brokered deposits. And so we are going to have more Bank of New Englands waiting out there in the weeds to be vacuuming up money, taking it into their deposits, putting the stamp of "fully federally insured" on top of it, and then facing the prospect of going into bankruptcy with the taxpayers picking up the costs.

I might also point out that the language, as this provision came from the committee, provides that that interest rate limitation is not the limitation in the community in which the money is gathered; it is the interest rate in the community of the institution in which it is deposited. So we are still going to have that vacuum sweeper effect without any legitimate public policy.

As indicated, this proposal was the the proposal of the President of the United States and the Secretary of the Treasury and their representatives before the committee and has consistently been the position of the Treasury. Those who are most responsible for protecting the insurance fund have urged exactly the amendment that is now before us.

Mr. President, let us do something for the American taxpayer as we ask that taxpayer to write a check for $70 billion. At least we should remove from the backs of the taxpayer the burden of providing subsidized deposit insurance to brokered deposits, which have no legitimate public policy purpose.

I thank the Chair.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. How much time does the Senator from Michigan have at this point?

The PRESIDING OFFICER. Three minutes.

Mr. RIEGLE. How much time does the Senator want; 2, 3 minutes?

Mr. MURKOWSKI. One and a half minutes.

Mr. RIEGLE. I yield 1½ minutes.

Mr. MURKOWSKI. Mr. President, I would like to try to answer the questions raised by the Senator from Florida. First of all, as to the Bank of New England, under the policy existing as a consequence of the action taken by Congress on the legislation of the Senator from Alaska, which strictly limited brokered deposits, it would not allow the institution to have brokered deposits without the oversight of the Federal Deposit Insurance Corporation. So I am not debating the issue whether it was done or not, but it was simply not allowed unless there was the oversight of the insuring agency. And they have the responsibility for the soundness of the banking system.

From the standpoint of public policy, clearly public policy is that it is not in the public interest to have unscrupulous dealers dealing in brokered deposits. But that is no longer the case. My point is that there is a legitimate justification for the approval, with the regulatory authorities' concurrence, to allow a very limited amount. But the illegitimate business that was out there and was functioning is no longer there. The securities industry is not flagrantly taking and soliciting individuals with under $100,000 to invest their money and get a 12- or 13-percent return. That is gone by the legislation. That is the point I think my friend from Florida fails to recognize. The abuse has been addressed, and it is no longer in existence. It is in the realm of the authorities now to regulate and limit when they think it is in the interest of the institution's liquidity.

Mr. GRAHAM. Will the Senator yield for a question?

Mr. MURKOWSKI. I am happy to yield for a question.

Mr. GRAHAM. Will the Senator give me what he thinks is the strongest affirmative public policy rationale of why the American taxpayer should provide subsidized deposit insurance to brokered deposits?

Mr. MURKOWSKI. The limitation, I would respond to my friend from Florida, Mr. President, is so narrow now, it is no different than an individual receiving insurance on $99,000 in a commercial bank, which the Senator from Florida might suggest is subsidized, but in reality the banks pay for that insurance and that insurance premium is going up as a consequence of the Banking Committee action.

I would also advise my friend from Florida, when you use a general assertion that this is a $70 billion giveaway to the banking institutions, the banks are going to pay that back over an extended period of time. So we are not writing a check for the benefit of the banks; we are authorizing a recapitalization of a fund that will be paid back over an extended period of time.

Mr. GRAHAM. If I could pursue the question, we know what the rationale was initially for Federal deposit insurance being made available. Could the Senator from Alaska tell us what he thinks is the strongest public policy rationale for providing subsidized insurance deposits for brokered deposits?

Mr. MURKOWSKI. I think I have explained it adequately but one more time, the rationale the Comptroller or the FDIC would see in an individual bank coming to them asking for permission to accept some brokered deposits would be to get over some short-term liquidity. Let us assume that there was an economic decline that had a seasonal variation. Let us say it was a fishing industry where there was a need for increased borrowings in the summertime period. Obviously, the loans would increase. They would be repaid in the fall. If the bank could get permission to get some brokered deposits during that time, that is in the interest of serving the public in the fishing industry, which is significant in both Florida and Alaska. So there are specific cases on seasonal variations where it is quite appropriate and the public is not subsidizing anything any more than the public is subsidizing the individual with a passbook savings account that has $50,000 in it and he or she is receiving FDIC insurance.

I thank the Chair. I thank my colleague, and I appreciate the extra time.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Is there any time remaining, Mr. President?

The PRESIDING OFFICER. One minute, twenty eight seconds.

Mr. RIEGLE. On my side?

The PRESIDING OFFICER. Yes.

Mr. RIEGLE. Is there any time remaining for the Senator from Florida?

The PRESIDING OFFICER. No.

Mr. RIEGLE. Mr. President, I understand the direction the Senator is moving on the amendment. I have sympathy with it. I think we have addressed the issue. We have addressed it in more ways than one. I think we have resolved the problem that previously existed in this area. I think the committee provision is a sound, solid provision, and I strongly recommend it to the Senate.

I yield back the remainder of my time.

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

The PRESIDING OFFICER (Mr. LIEBERMAN). Is there a sufficient second?

The yeas and nays were ordered.

Mr. RIEGLE. Mr. President, I move to table the amendment and I ask also for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second on the motion to table? There is a sufficient second.

The yeas and nays were ordered.

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

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Illinois [Mr. DIXON], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY], are necessarily absent.

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

The result was announced—yeas 64, nays 32, as follows:

[Rollcall Vote No. 262 Leg.]

YEAS—64

Baucus	Glenn	Packwood
Bingaman	Gorton	Pell
Bond	Gramm	Pressler
Brown	Grassley	Pryor
Bumpers	Hatch	Riegle
Burns	Hatfield	Robb
Chafee	Heflin	Roth
Coats	Helms	Rudman
Cochran	Hollings	Sanford
Cohen	Inouye	Seymour
Craig	Johnston	Shelby
Cranston	Kasten	Simpson
D'Amato	Kennedy	Smith
Danforth	Kerry	Specter
Daschle	Lautenberg	Stevens
Dodd	Leahy	Symms
Dole	Lieberman	Thurmond
Domenici	Lott	Wallop
Durenberger	Lugar	Warner
Exon	Mack	Wirth
Ford	McConnell	
Garn	Murkowski	

NAYS—32

Adams	Fowler	Moynihan
Akaka	Gore	Nickles
Bentsen	Graham	Nunn
Biden	Jeffords	Reid
Bradley	Kassebaum	Rockefeller
Breaux	Kohl	Sarbanes
Bryan	Levin	Sasser
Burdick	McCain	Simon
Byrd	Metzenbaum	Wellstone
Conrad	Mikulski	Wofford
DeConcini	Mitchell	

NOT VOTING—4

Boren	Harkin
Dixon	Kerrey

So the motion to table the amendment (No. 1372) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Senator from Wisconsin now be recognized for a 20-minute time limit, equally divided, for his amendment with no second-degree amendments.

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

The Senator from Wisconsin.

AMENDMENT NO. 1373

(Purpose: To express the sense of the Senate that the Congress should immediately adopt legislation to repeal the luxury excise tax on boats)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KASTEN], for himself, Mr. MACK, Mr. COATS, Mr. HELMS, Mr. BURNS, Mr. NICKLES, Mr. SMITH, Mr. SEYMOUR, Mr. LOTT, Mr. DURENBERGER, Mr. SANFORD, Mr. GRAHAM, Mr. CHAFEE, Mr. PELL, and Mr. LAUTENBERG, proposes an amendment numbered 1373.

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

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

The amendment is as follows:

At the end of the bill add the following new section:

SEC. . SENSE OF THE SENATE REGARDING THE REPEAL OF THE LUXURY EXCISE TAX ON BOATS.

It is the sense of the Senate that—

(1) the luxury excise tax on boats has imposed an unfair burden on boat workers, manufacturers, and retailers;

(2) the luxury excise tax on boats has caused the loss of up to 19,000 jobs in the boat building industry and thousands more in the retailing industry;

(3) middle-class workers and small businesses, not the wealthy, are harmed by the tax;

(4) the luxury excise tax on boats is costing the Government more in lost income tax receipts, payroll tax receipts, additional unemployment compensation, and compliance and enforcement costs than the revenue generated by such tax on boats;

(5) the luxury excise tax forces small business people to become tax collectors and enforcers for the Internal Revenue Service;

(6) the luxury excise tax on boats is harming one of America's strongest domestic industries and aiding our foreign competitors;

(7) the luxury excise tax on boats is contributing to the depth and severity of the recession and helping ensure that economic recovery will be more difficult; and

(8) the Congress should immediately adopt legislation to repeal the luxury excise tax on boats.

Mr. KASTEN. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KASTEN. Mr. President, I rise today on behalf of myself, Senators MACK, COATS, HELMS, BURNS, NICKLES, SMITH, SEYMOUR, and LOTT to propose an amendment in the form of a sense-of-the-Senate resolution calling for the repeal of the so-called luxury tax on boats.

Some have argued that we need to pass a banking bill in order to strengthen the economy and in order to create jobs. The amendment is related to economic growth and jobs in the boat-building industry.

The luxury tax on boats is anything but a luxury for the 19,000 middle-class workers who have lost their jobs this year because of it.

I voted against this tax a year ago when it was approved, and I have been pushing for its repeal for months, and now time is running out.

I propose that under the 1990 Budget Act, the Congress declare an emergency and immediately repeal the luxury tax on boats.

In addition to putting thousands of middle-class workers in the unemployment lines, the boat tax is forcing plant closures, and it is aiding foreign competitors by destroying one of America's finest manufacturing industries.

It is costing the Government far more in lost tax revenue and collection costs than it will raise.

This tax must go now. Every month the Congress delays, more workers lose their jobs.

During this past summer and fall, there has been no shortage of evidence concerning the tremendous destruction that this tax has brought to the marine industry. Congress heard testimony from unemployed boat workers and from boat builders. Businesses have closed. The unemployment lines have grown and grown longer, and still Congress has done nothing.

This inaction is no longer acceptable and I believe we have to push forward for some kind of action now before we leave.

Another ironic aspect of this tax is that the Federal Government is losing millions of dollars from this tax. A report put out in July by the minority staff of the Joint Economic Committee shows a minimum net loss to the Federal Government of $15.2 million in 1991.

While the Joint Tax Committee has projected only $3 million in revenue from this tax, this figure includes no offset for the job loss that has resulted from the tax. Using an extremely conservative job loss number, the Government will lose $8 million in income tax receipts, $8.1 million in lost payroll tax receipts, and $2.1 million in Federal unemployment payments.

Mr. President, I ask unanimous consent that a report on the luxury tax costs and actual revenues be printed at this point in the RECORD.

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

UPDATE ON LUXURY TAX COSTS AND ACTUAL REVENUES BASED ON IRS COLLECTIONS TO DATE

(Joint Economic Committee Republican Staff Estimate, November 20, 1991)

Actual revenue from the luxury taxes on boats, planes and jewels contained in the Omnibus Budget Reconciliation Act of 1990, are unlikely to meet the Joint Committee on Taxation's projections, and the cost of job loss that results from their imposition negates by a large margin what revenue gain there may be.

Because of these luxury taxes, 9,400 Americans will find themselves unemployed this year, at a cost to the government of more than $9 million (see Table 1). The effect of this tax when only the cost to the federal government of increased unemployment is taken into account is to spend nearly $1.60 to raise one.

TABLE 1—EFFECT OF LUXURY TAXES ON BOATS, PLANES AND JEWELRY IN FISCAL 1991

[Tax-related unemployment costs, dollar amounts in millions]

Taxed item	Job loss[1]	Receipts	Outlays	Total	Estimate[2]	Revenue[3]
Boats	7,600	−$16.1	−$2.1	−$18.2	$5.9	−$12.3
Planes	1,470	−4.5	−.6	−5.1	.1	−5.0
Jewelry	330	−.8	−.1	−.9	9.2	8.3
Total	9,400	−21.4	−2.8	−24.2	15.2	−9.0

[1] 1991 tax-related job loss.
[2] Estimated IRS revenue, fiscal year 1991.
[3] Net revenue effect.

Source: Joint Economic Committee Republican staff estimate of October 20, 1991. Estimated IRS revenue based on actual collections through September 30, 1991 and adjusted upward for full fiscal year 1991 estimate.

Repealing these counterproductive taxes could alleviate some of the economic stress suffered in these three industries, all of which were already feeling the sting of recession prior to the enactment of the new excise taxes. Allowing workers in the boating, aircraft and jewelry industries to return to their jobs would benefit government coffers to a far greater extent than the revenue occurring from the taxes. Just as consumers reacted adversely to the tax, purchases will increase if the tax is removed.

Unfortunately, revenue estimators ignore the business employment consequences of new taxes when projecting tax revenue. Even demonstrable evidence of job loss will not make a difference given current revenue estimating procedures. If boat dealers sold only one luxury boat in 1991 to reap a single tax payment of $30,000 and all blue-collar workers in the boat manufacturing industry lost their jobs as a result, revenue estimators would stubbornly insist that this tax is a $30,000 revenue gainer. What excuse will the revenue estimators make when the tax on boats brings in less than one-third of the $18.2 million that it costs the federal treasury? For airplanes, the tax will bring in less than $100,000 and yet its' opportunity cost to just the federal government is over $5 million. States are losing additional direct revenues from boat and aircraft activity, but the real victims are the small businessman being put out of business, and the blue-collar workers whose jobs and wages have been taken by this misguided social experiment.

The Office of Tax Analysis (OTA) has responded, partially, to a request of October 4, 1991 that resulted from a July 23 letter requesting that OTA re-estimate the impact of the luxury tax. Below is a copy of this most recent OTA estimate, which breaks down OTA's luxury tax revenue by product. Congress's Joint Committee on Taxation (JCT) has only recently replied to the original letter of July 23 in its letter dated October 25, 1991. As indicated in an earlier letter to you, the breakdown shows clearly that offsetting mis-estimates of different industries lower the error in the total estimate for both OTA and JCT, who claim to use similar revenue estimating techniques. Shear luck bails-out faulty methodololgy. The aggregate estimates of both organizations, compared with the likely fiscal year (FY) 1991 total, are off by less than 20 percent each, almost close enough for government work. Looking at the estimates for each of the affected industries, however, show very disturbing errors for both estimators. OTA's airplane revenue estimate is likely to be over-estimated in FY 1991 by a whopping 7,400 percent! JCT, which did not break down their most recent FY 1991 estimate, was extremely low in the total in their original estimate, but still had revenue on airplanes over-estimated by 1,150 percent. The JCT has since re-estimated total revenue for FY 1991 at $121 million, up almost five-fold over the original, without giving us the breakdown of these numbers.

[Dollar Amounts in Thousands]

Luxury tax receipts on	OTA[1]	JCT[2]	IRS[3]	Estimate[4]	Error[5]
Airplanes	$6,000	$1,000	$53	$80	$7,400
Boats	7,000	3,000	3,910	5,865	19
Vehicles	82,000	20,000	88,000	132,000	(38)
Furs	4,000	1,000	279	419	854
Jewelry	20,000	1,000	6,126	9,189	118
Total	119,000	25,000	98,368	147,352	(19)

[1] OTA estimate, fiscal year 1991.
[2] JCT estimate of fiscal year 1991 on Jan. 30, 1991.
[3] Actual IRS collections through Sept. 30, 1991.
[4] Full fiscal year 1991 estimate.
[5] Estimated OTA percentage error, fiscal year (under).
[6] Now $121,000.

Source: Office of Tax Analysis letter of Oct. 30, 1991 and JCT letter of Oct. 25, 1991 to Rep. Dick Armey; IRS, Returns Processing and Accounting Division, memo of Nov. 13, 1991; and JEC Republican staff calculations. The latest Office of Tax Analysis, U.S. Treasury estimate ($ Mil.) appears below.

	1991	1992	1993	1994	1995	1996
Receipts:						
Airplanes	6	10	12	13	15	17
Boats	7	15	18	21	23	26
Vehicles	82	158	209	262	322	368
Furs	4	8	11	13	15	17
Jewelry	20	38	48	57	68	77
Total	119	229	298	366	443	505

Mr. KASTEN. Mr. President, I understand that the Finance Committee may bring legislative vehicles to the floor before we recess—MFN for the Baltics or possibly a tax-credit extenders bill.

This Sense of the Senate underscores the need to repeal this tax now. Unless we repeal it now, several boat builders in Wisconsin—and throughout the country—will go out of business in the next few months.

My constituents—Wisconsin's workers—along with the workers in Maine, Louisiana, Rhode Island, Connecticut, Florida, Michigan, and other States—are losing their jobs. They cannot wait another year, another month, another day, they need our help and they need it now.

That is why the bill to repeal the boat tax enjoys the broad bipartisan support of 29 Senators, including the majority leader. If everyone agrees that this tax must go, then I see no reason why we cannot knock it out now before the recess.

In effect, what we are saying in this sense-of-the-Senate resolution is that we want to move forward. This, in itself, will not repeal the tax. But what this says is it is the sense of the Senate that we must move forward to repeal this tax before we continue to have people all across the country lose their jobs.

Mr. KASTEN. Mr. President, I would like to also add the Senator from Maine [Mr. COHEN] as a cosponsor of this resolution.

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

Who yields time?

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

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

The legislative clerk proceeded to call the roll.

Mr. RIEGLE. 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. RIEGLE. I yield 2 minutes to the Senator from Texas.

Mr. BENTSEN. Mr. President, I certainly understand the concerns of the Senator from Wisconsin. I share the concerns of my friend from Louisiana, and my friend from Kansas, whether we are talking about boats, about airplanes, or about the other items subject to the luxury tax—luxury cars, jewelry, and furs. When we get into this, we need to repeal the entire luxury tax, not just the tax on boats.

My problem is, does the resolution say how you are going to pay for repeal? We have the budget agreement and I would like to have an understanding as to how repeal will be paid for, because that is the problem obviously we will face in the Finance Committee. When this comes up, there will need to be revenue to pay for repealing the entire tax. Paying for boat tax repeal is not enough.

Mr. KASTEN. Will the Senator yield?

Mr. BENTSEN. Yes.

Mr. KASTEN. I understand that there has been discussion in the Finance Committee about different kinds of ways of paying for this, including a fee on diesel fuel and all sorts of other kinds of things that have been worked out. We are not specific in this sense-of-the-Senate resolution. What I am saying is we have to move forward and do this. I know the Senator from Texas understands this. This was supposed to pick up a certain amount of revenue and it is not picking up much revenue.

Mr. BENTSEN. Let me state in my 2 minutes, my problem is we have to finally get specific as to how that is to be done. It behooves me, and it behooves you, to get specific. It is the pain that comes in paying for these things that is the real problem.

I recognize the legitimacy of the argument that this tax has added to problems created by the recession for the boating industry, the aircraft industry, and the other affected industries—the serious loss of jobs and the problems that result therefrom. We will be giving this consideration in the Finance Committee. The question is whether we can do it this quickly at this late date with the controversy that will arise over raising the funds to pay for it. That is my problem. That is my concern.

I share with the Senator the concerns of the unemployed that have resulted from this. The problems in the economy have grown far beyond what was anticipated when the luxury tax was enacted. We had no idea we would be

dealing with these kinds of economic conditions, with a recession that would be so deep or last so long. And, of course, conventional economic wisdom is that sales of luxury goods are not price-sensitive. There is a CRS study showing that is true in the boat industry.

So, the major factor here, whether you are talking about boats, airplanes or other luxury goods in this recession. People do not by new boats when they are in a recession. They do not look on that as a necessity. They don't buy used boats either, and sales of used boats are also down. That's one factor that tells you this recession has been the major cause of job losses in these industries.

As I said, this terrible recession was never anticipated when the luxury tax was passed. But coupling that increased tax with a recession has led to concern about hitting these industries when they are down. That's why the tax issue must be address. When we do that, again let me emphasize that, we need to look at the repealing the entire tax, not just the boat tax.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the majority leader.

Mr. MITCHELL. Will the Senator from Wisconsin yield me 3 minutes in support of his resolution?

Mr. KASTEN. I am happy to yield to the majority leader.

Mr. MITCHELL. Mr. President, as all Members of the Senate are aware, the Constitution prohibits the Senate from initiating tax legislation. Therefore, we cannot originate in the Senate legislation to change the tax laws, including legislation to repeal the luxury boat tax. This resolution will not have that effect. However, if it is adopted, it will have the effect of conveying a clear sense of the Senate that action should be taken in a constitutional way to repeal this unfortunate and unfair provision of law.

I support the resolution for that reason. It is a combination of a very long and deep recession and the luxury boat tax which has resulted in very substantial increases in unemployment in the boat building industry. It has affected the State of Maine, which Senator COHEN and I represent, and many other States, and thousands of people all across this country.

Whatever may have been the theoretical reason for advancing this—and there were sound theoretical reasons at the time—it has proven in its implementation not to have worked as intended. Therefore, all of us ought to acknowledge and say that when a step is taken, for whatever reasons, that demonstrably does not accomplish its objective, and in fact has a negative effect, then it ought to be changed, and in this case repealed.

So in behalf of the many thousands of people in my own State and in other States who have been adversely affected, I ask unanimous consent that I be added as a cosponsor of the resolution and I urge Senators to support it, even as we recognize its limitations.

We are not here repealing the law. We cannot constitutionally do that. That can only occur if we act on a tax bill that originates in the House. But a clear, strong signal by a large majority of the Senate may be helpful in encouraging us to reach that point when we can and to repeal this tax.

The PRESIDING OFFICER. Without objection the Senate majority leader is added as an original cosponsor.

Mr. KASTEN. Mr. President, parliamentary inquiry. How much time remains on each side?

The PRESIDING OFFICER. The Senator from Wisconsin has 2 minutes and 40 seconds; the Senator from Michigan 6 minutes and 40 seconds.

Mr. KASTEN. I yield 1½ minutes to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. I thank the Senator for yielding.

Mr. President, let me associate myself with my colleague from Maine, the majority leader, and further say that I am pleased to join my colleague from Wisconsin, Senator KASTEN, in offering this sense-of-the-Senate resolution to repeal the luxury tax on recreational boats.

Because the Constitution prohibits the Senate from initiating a tax bill, we are unable to offer an amendment today that would, in fact, repeal this tax. This sense-of-the-Senate amendment, however, is designed to send a clear message to our colleagues in the House that the Senate strongly supports a repeal of the luxury tax on boats.

I am deeply concerned about the condition of the boat building and related industries in my State of Maine. Since enactment of the new luxury tax, I have heard from many representatives of and workers in the boating industry, both in my State and across the country, on the serious toll that this new tax is taking on their industry. The pleasure boat industry has experienced declining sales over the past 2 years due to the economic recession, and this new tax is sharply exacerbating the industry's decline.

A recent report prepared by the staff of the Joint Economic Committee confirms that the luxury boat tax will result in massive job losses nationwide in boat manufacturing and related industries. This report estimates that, even using conservative estimates, over 7,600 jobs will be lost this year directly because of the 10-percent excise tax on boats. Boat builders and employers in boat related industries in my State of Maine are already feeling the devastating effects of lost boat sales, in large part due to the new excise tax. The Hinckley Co. in Southwest Harbor, ME, for example, has been forced to lay off at least 10 percent of its work force. As the second largest employer in Hancock County, reductions at Hinckley have taken a great toll on this part of my State.

This case is certainly not unique: Every Maine boat builder has reported worker layoffs and significant slowdowns in production due to this tax. Customers are backing out of contracts once they realize that a tax is being applied to their boat purchases, thus affecting even those sales that were generated before the tax went into effect.

These job losses in my State are particularly difficult to bear since the workers who lose their jobs due to the slowdown often have no transferable skills, and are unable to find other jobs in the State. The demise of the boating industry will quickly have a wide ripple effect on other parts of the Maine economy, from the State government which depends upon revenues from new and used boat sales, to the hotels, restaurants, marinas, and other Maine industries that rely on a thriving recreational boat industry for their survival.

The recent staff report of the Joint Economic Committee also provides important evidence to support a concern that boat builders, their workers, and I have shared for some time, namely, that the luxury tax will not yield the $3 million in revenues that were estimated to be gained by the tax when it was included in the Budget Reconciliation Act of 1990. In fact, this report estimates that the luxury tax on boats will actually cost the Government $18.2 million in lost income taxes, employer and employee FICA contributions, and unemployment outlays in fiscal year 1991. In other words, this tax will cost the Government over six times the amount of money that it was supposed to raise.

To me, this is convincing evidence that the luxury tax on boats is costing far more than it is worth, and should be repealed.

I would further point out that this tax is not meeting the other goal for which it was intended, that is, to impose a greater portion of the tax burden on high-income taxpayers. It is abundantly clear that this tax will not be borne solely by wealthy taxpayers. These people often have the financial means to pay the 10-percent tax, but choose to spend their money on some other item that is not taxed. Instead, the real burden of this tax falls on the hardworking men and women of the boating industry who are losing their jobs.

Mr. President, I recognize that some may misconstrue efforts to repeal this tax as simply an attempt to help rich taxpayers. Nothing could be further from the truth. I, for one, fully support proposals to make wealthy taxpayers

pay more in Federal taxes. During the Senate debate on the budget reconciliation bill that contained this excise tax, for example, I supported amendments to increase the tax burden on upper-income taxpayers, and ultimately, I did not support the final bill because I believed that the deficit reduction package, as a whole, disproportionately hurt low- and middle-income taxpayers, and did not place enough of the burden on the wealthy. A luxury tax on recreational boats, however, is not simply a tax on the wealthy, but rather threatens severe, harsh consequences on an already troubled industry.

The many comments of concern that I have received from my constituents in these industries, the recent staff report of the Joint Economic Committee, and the compelling testimony of industry representatives at hearings before the Senate Finance Committee have more than convinced me that the luxury tax on boats must be repealed. I hope that the Senate will pass this amendment and send a clear message to the Congress.

Mr. BREAUX. Mr. President, will the Senator from Michigan yield to me?

Mr. RIEGLE. Mr. President, how much time does the Senator require?

Mr. BREAUX. Two minutes.

Mr. RIEGLE. I yield the Senator 2 minutes.

Mr. BREAUX. I thank the Senator for yielding. I want to commend Senator KASTEN for bringing this to the attention of the Senate.

Senator KASTEN and others have joined with me on legislation to repeal the luxury tax on yachts. I think when the Congress enacted this legislation, we really missed the boat—pardon the pun—in the sense we were thinking we were going to require millionaires in this country to pay extra revenues to help reduce the deficit when, in effect, we are just putting workers who work on vessels out of work.

The very wealthy are not buying the boats. As a result, the workers who do the electrical work and the pipefitting and the plumbing and the cabinet work on yachts simply have lost their jobs.

Instead of increasing the revenues, we have caused approximately 18,000 to 20,000 people to lose their jobs. I have introduced a bill to repeal it.

We have an offset, I would say, Mr. President, to the distinguished chairman of the Finance Committee. If we have a vehicle, I think we can offer it. Then I think we can solve the problem. Since we do not have a vehicle to do it, I think a strong vote for the resolution would at least indicate the support in the Senate to correct what obviously was a mistake when it was enacted.

Hopefully, we will find, in the future, a way of getting this brought to the attention of the Senate in a real repeal form, which is something I support and hope we will have a chance to vote on.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I do not know who has control of the time. I will take just 30 seconds.

I do not have any quarrel with the sense-of-the-Senate resolution. But if we are going to do this, we ought to include everything that is covered by luxury taxes. In my view the luxury tax is not a very good idea, and has not raised a great deal of money. There are people in the jewelry business, there are furriers, people in the automobile business, and people in the airplane business that feel just as strongly as those in the boating industry.

I certainly agree with the Senator from Wisconsin, the majority leader, my colleague from Maine, and others who are being hit pretty hard because of the luxury tax on boats. But my view is that we ought to abolish the whole luxury tax.

In the short time that the tax has been in effect, it has directly affected middle-class workers. It's the middle-class working men and women, Kansas consumers and manufacturers who are paying the price for this mistake.

The luxury tax was put in the bill to go after the rich. It backfired and is going after the working people.

The PRESIDING OFFICER. The Senator from Michigan has 4 minutes and 26 seconds.

Mr. RIEGLE. Let me yield myself 2 minutes.

Mr. President, I think it is important to note this issue is obviously not germane to this bill. This is a banking bill. The issue that has been raised is within the jurisdiction of the Finance Committee, which is a different committee. So, while I understand the purpose of the Senator in offering it here, in cold point of fact it ought not be on this bill.

Second, while there is always a question as to the fairness or the unfairness of special taxes and how they affect the economy and others, the amendment is not paid for in the sense there is a revenue offset put in the amendment to keep it budget neutral.

Some way or another, some source of revenue would have to be found to replace that which is scored by the Budget Office as coming from this item. Obviously, that issue is not addressed or settled in this particular amendment.

I, for one, think the tax laws do need to be reviewed. We have some expiring tax law provisions that I think ought to be extended. I think we need a middle-class tax cut to try to get more equity into the tax laws and some more strength out into the economy.

So I think, in the broader context of a revision of some of our tax laws, that this is the kind of issue that can be looked at and should be looked at in terms of how it is actually affecting the economy; is it gaining jobs, losing jobs, and so forth.

This is not the right bill for it, as I know the Senator from Wisconsin would acknowledge, in terms of the jurisdictional arrangements. In any event, I think it is important we try to keep the focus in this bill on the items that relate to the banking reform issue.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. KASTEN. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Wisconsin has 1 minute and 32 seconds.

Mr. KASTEN. Mr. President, very quickly, the Senator from Louisiana has indicated that he and the Senator from Rhode Island [Mr. CHAFEE] are trying to work this issue in the Finance Committee. It is just that a number of us have been waiting for months to find a vehicle. I know they have been waiting in the Finance Committee. It is not clear what is happening.

This is the only way right now—and it is not a perfect vehicle—it is the only way for us in the Senate to indicate that it is our sense, it is the sense of the Senate, that this is a bad law, that this is a bad tax.

With regard to the revenue questions, they say they are going to get $3 million from this, but it has not raised $3 million because people are not buying the boats. The Government, in fact, has lost $8 million in income tax receipts; $8.1 million lost in payroll tax receipts, and $2.1 million in unemployment payments which are going out now. So this is costing the Government money.

Finally, I associate myself with the view of the Senator from Kansas, the Republican leader: airplanes, automobiles, furs, jewelry—this entire tax ought to be repealed. This is just a beginning.

On September 18, I submitted Senate Resolution 183 which calls for the repeal of the luxury tax on automobiles, aircraft, jewelry, and furs. The people that are hurt are the working men and women who build and produce these products.

I am confident we will prevail. I believe that repeal of the boat tax is the first step toward repealing all the luxury taxes which have hurt many small businesses in the automobile, fur, aircraft manufacturing, and jewelry industries. I look forward to working with all of you in the fight ahead to save American jobs.

The PRESIDING OFFICER. Who yields time? The Senator from New York.

Mr. D'AMATO. Mr. President, I am wondering if I might have 30 seconds.

Mr. RIEGLE. I yield 30 seconds to the Senator from New York.

Mr. D'AMATO. Mr. President, I voted against this initially, as it related to

so-called soak the rich. This is hurting people. This is costing little people jobs. Who builds these boats? Who operates these boats?

We should, absolutely, if we want to help this economy, see to it that we repeal this so-called soak the rich tax. It is wrong; it does not make sense. It is counterproductive.

I would like to be a cosponsor, and I share the sentiments of my colleague from Wisconsin.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New York [Mr. D'AMATO] is entered as cosponsor. Who yields time?

Mr. KASTEN. I also ask unanimous consent the Senator from Rhode Island [Mr. PELL], be added as an original cosponsor of this sense-of-the-Senate amendment.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. I see no one seeking time at this point, so I yield back the remainder of my time and suggest we go to a vote.

Will the Senator accept a voice vote on this issue?

Mr. KASTEN. We have the rollcall vote ordered. I asked for the yeas and nays. I think it is important that the Senate make a statement here.

Mr. FORD. It will save a half-hour.

Mr. KASTEN. I also ask unanimous consent that Senator CHAFEE be added as a cosponsor.

Ms. MIKULSKI. Mr. President, I rise in strong support of the resolution to express the Senate's desire that the boat luxury tax be repealed. I want to be clear on why I support the Senator from Wisconsin's resolution.

When the luxury tax on boats was put into the 1990 budget reconciliation bill, I was on the Senate floor telling this Congress that "we have to go get it from those who got it." I meant that. America needs a tax system that makes people pay their fair share. Those who are benefiting most from this country's success have a responsibility to give something back.

But America doesn't need a tax system that puts people out of work. That's just what the luxury tax on boats is doing. We thought we were going after the Donald Trumps and the Leona Helmsleys when we put this tax into the budget package. It turns out that we're just hurting the mom-and-pop small businesses in Maryland and across the country. These are the people who build the boats, insure the boats, sell the boats—and they are hurting. That's why I am a cosponsor of the Boating Jobs Preservation Act of 1991.

When I was first asked to support this bill, I was pretty skeptical. Removing a tax on boats costing over $100,000 didn't seem like a good idea. I decided to meet with members of Maryland's boating industry to get their point of view on the tax. They let me know how this tax is hurting the people of Maryland and costing us jobs and revenue.

In just the last year, Maryland has lost over 50 boating businesses and hundreds of boating jobs. These are small companies, employing hard-working Marylanders, and they deserve fair treatment from the Government. I don't want to see any other Marylanders put out of work.

The boat luxury tax isn't just putting people out of work, it isn't even raising the revenue it was supposed to. Studies show that the lost tax revenues from decreased boat sales may be larger than that collected from the luxury tax. If this tax isn't raising any money to help balance our budget, why do we have it?

I hear that Bermuda has eliminated all taxes on new boats sold there to lure business out of this country. That means more American jobs moving overseas. I've seen enough of that and it must stop. We need to create good jobs in this country, not keep shipping them overseas.

This resolution tells the House of Representatives, which under the Constitution has to originate all tax legislation, to get moving on passing a repeal of the boat luxury tax. It also lets the President know that the Senate strongly wants this part of our Tax Code repealed. I hope all my colleagues will join me in supporting this resolution.

We must stand up and admit that the boat luxury tax is hurting Maryland and hurting America. Let's repeal this tax before any more boating jobs are lost. Let's put people back to work.

Mr. LAUTENBERG. Mr. President, I rise in support of the Kasten amendment, calling for repeal of the luxury tax on boats. The evidence is clear—verified by independent economic analyses—that this is a tax that loses revenue and hurts an industry and its workers.

Mr. President, the boat industry in my State of New Jersey is hurting, and hurting badly. Thousands of New Jersey workers in the boat industry will be laid off this year. In fact, the impact on the State's economy will be much greater as related businesses are affected by the boating industry's problems. A New Jersey Department of Commerce and Economic Development study concluded that, based on the estimate of 3,250 job losses in the industry, the State stands to lose a total of 6,250 jobs and about $140 million in income in 1991.

Of course, Mr. President, these numbers fail to convey the real personal pain experienced by the men and women in the industry, and their families. I have met personally with these workers, and I must tell you the experience was deeply moving. These are proud, hard-working, decent people. Most are far from rich. And, as jobs continue to slip away, they feel an increasing sense of desperation.

Compounding matters, Mr. President, many of those thrown out of work have few places to turn. At least in my State, much of the boatbuilding industry is located in fairly small towns. There are no jobs to replace the boatbuilding jobs. So not only are workers losing their jobs and their incomes, some tragically may be forced to leave their homes and their hometowns.

Mr. President, the luxury tax on boats was intended to make our Tax Code more fair. That is a goal I believe in. As I see it, the middle class is already being burdened with an unfair portion of the tax burden. That needs to change.

Yet, ironically, as independent analysis has established, the tax is actually striking hardest at ordinary working Americans.

The people losing their jobs because of this tax are not fat cats. They are small-business owners, electricians, carpenters, painters, and other manual and clerical workers. Most live modestly and work hard for their money.

Meanwhile, most real fat cats are escaping the tax altogether. Many are buying their boats overseas. Others are buying used boats, on which no luxury taxes are imposed. Either way, the Government gains nothing, while the American boatbuilding industry, and the people who work in that industry, lose out.

Mr. President, my opposition to this tax is not based on speculation, nor on unsubstantiated claims or questionable reports sponsored by an affected industry. It is based on hard, objective analysis by reputable independent experts.

Most importantly, I would point to a study I noted earlier that was performed by the New Jersey Department of Commerce and Economic Development. The report produced by this State government agency provides independent documentation of the severity of the problem in New Jersey. Its findings are striking and very disturbing.

I also would note an interesting, though somewhat less authoritative, report that was prepared for members of the Joint Economic Committee. According to that report, the luxury tax on boats will result in the elimination of at least 7,600 boat manufacturing and retail jobs in 1991. The report also concluded that the combined cost of the revenue lost and the increased outlays from this job loss is $18.2 million, substantially higher than the $3 million revenue increase projected by the Joint Committee on Taxation.

In sum, Mr. President, I have become firmly convinced that Congress must act to repeal this tax, and quickly. It is hurting workers in my State. It is costing ordinary, middle-class taxpayers money because of increased Govern-

ment outlays for the unemployed. And it is increasing the deficit by reducing payroll and income tax revenues.

Mr. President, it is a tax that does not make sense.

Mr. SANFORD. Mr. President, I rise today to speak in support of the sense-of-the-Senate amendment regarding the repeal of the luxury excise tax on boats introduced by Senator KASTEN. I appreicate the intent of this amendment—to bring this matter to the attention of the Senate. Indeed, my only regret is that a sense-of-the-Senate amendment carries no weight in this body other than to bring attention to an issue.

This so-called luxury tax was introduced to the public as a part of the Omnibus Budget Reconciliation Act of 1990. As my colleagues will remember, I voted against the budget agreement at that time. Since then, the boating industry in my State of North Carolina has witnessed an 80-percent decline in both unit and dollar sales, which has thus far caused a drop in the boating industry employment of over 50 percent in my State. These figures are staggering. While some of this industry decline can arguably be attributed to a recessionary economic climate, this tax is undoubtedly causing severe damage to the boating industry in North Carolina and the rest of the country.

This tax was designed to reach those in the upper-income levels. It has not. It was designed to reach those who could most afford it. Instead, it has reached those who could afford it least. It has taken jobs away from the manufacturing, maintenance, and retail sectors of the industry. And, ironically, estimates by the Joint Committee on Taxation show that the revenue loss from lost payroll taxes could be as much as 5 to 10 times higher than the luxury tax actually being collected. Mr. President, not only can the people of the boating industry not afford this tax, our country cannot afford this tax.

Mr. President, there comes a time when this body must admit that, while our intentions are noble, the fruit of our labor is not always successful. Such is the case with the luxury excise tax on boats. As my colleagues might know, I wholeheartedly support and am a cosponsor of the Boating Jobs Preservation Act of 1991 as introduced by the Senator from Louisiana [Mr. BREAUX]. I urge that, instead of paying lipservice to the very real problem of a tax that is costing jobs in my State and so many others, as we do here today, we act on the problem by eliminating the luxury tax on boats.

The Boating Jobs Preservation Act will help correct a great injustice done to those employed in the marine manufacturing, maintenance, and sales industries across the Nation by the so-called luxury taxes which were instated as a part of the budget reconciliation package of 1990. I urge my colleagues to support the effort to repeal this ill-advised tax and begin to repair the damage that this body has incumbered upon the boating industry.

In the meantime, however, I support Senator KASTEN'S efforts to bring this issue to the attention of this body. While a sense-of-the-Senate amendment that only addresses this problem with rhetoric is no answer, and is not going to help those people in my State who have lost their jobs, I do support the message it carries. I now urge my colleagues to go the step further that is necessary to repeal this tax as quickly as possible, and put so many of the people of North Carolina and the rest of our country back to work.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Wisconsin.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Illinois [Mr. DIXON], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois [Mr. DIXON] would vote "aye."

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

The result was announced, yeas 82, nays 14, as follows:

[Rollcall Vote No. 263 Leg.]

YEAS—82

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

NAYS—14

Bingaman	Gore	Sasser
Byrd	Jeffords	Simon
Conrad	Leahy	Wellstone
Daschle	Metzenbaum	Wofford
Exon	Rockefeller	

NOT VOTING—4

Boren	Harkin
Dixon	Kerrey

So the amendment (No. 1373) was agreed to.

Mr. KASTEN. I move to reconsider the vote.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, I ask now that the Senator from Connecticut [Mr. DODD] be recognized to offer an amendment; there be 20 minutes equally divided; that there be no amendments in order thereto; and with a vote at the end of the 20-minute period.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1347

(Purpose: To authorize the Small Business Administration to participate in the purchase of eligible securities issued by qualified commercial banks or qualified mutual savings banks)

Mr. DODD. Mr. President, I would like to call up amendment No. 1347.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD] for himself, Mr. CHAFEE, Mr. LIEBERMAN, Mr. RUDMAN, Mr. SMITH, and Mr. KENNEDY, proposes an amendment numbered 1347.

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

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

The amendment is as follows:

On page 796, immediately after line 17, insert the following:

Subtitle C—Small Business Recovery

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the "Small Business Recovery Act of 1991".

SEC. 1152. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) IN GENERAL.—Economic recession, coupled with asset devaluation of the banking industry, has led to a severe tightening of available credit for small business concerns. Community banks cannot meet Federal capital and asset standards without calling in existing good loans or ceasing to extend credit to qualified borrowers, particularly small business concerns, thereby further constricting the available credit and constraining economic activity and recovery.

(2) CAPITAL SHORTAGES.—In the wake of recent concerns over the safety and soundness of banks and thrifts and the economic recession, community banks are finding it increasingly difficult to attract new capital needed to meet Federal and State requirements and promote economic growth and expansion.

(3) EFFECT ON SMALL BUSINESSES.—Small business concerns now employ nearly 60 percent of the United States work force, and are expected to generate 50 percent of all new jobs through the year 2000. Since small business concerns are also the primary providers of employee training, restricting small business startup and growth could have profound implications for overall growth in national productivity and for research and development.

(4) SMALL BUSINESS FINANCING SOURCES.—Community banks have historically been,

and remain, the primary source of small business debt capital. Other sources of small business financing, such as venture capital markets, public markets, or institutional investors, such as pension funds or insurance companies, are not viable alternatives for many small business concerns.

(5) CREDIT DEMAND.—As the Nation begins to recover from the recession, demand for credit will become even greater, thus exacerbating the credit crunch during the initial stages of economic recovery.

(6) INFUSION OF PRIVATE CAPITAL.—Banks must have a significant infusion of private capital in order to effectuate a long-term economic recovery.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to infuse private capital into banks under a pilot program that would also reinvigorate lending to credit-worthy small business concerns, thereby easing the credit crunch, stimulating job growth, and promoting economic recovery;

(2) to provide loans to small businesses by facilitating the creation of a self-insured pool of private capital, protected by a Small Business Administration guarantee, to be used by community banks for loans to small business concerns; and

(3) to strengthen smaller community banks by increasing their available capital levels, which have been dramatically reduced over the past 3 years.

SEC. 1153. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Administration" means the Small Business Administration;

(2) the term "approved securities" means any eligible security that has been approved for sale by the Administration under this subtitle;

(3) the term "eligible securities" means any new issue of preferred or common stock issued by a qualified commercial bank or any new debenture issued by a qualified mutual savings bank;

(4) the term "eligible State" means a State in which, during the period between January 1, 1989 and December 31, 1989 the total number of banking institutions located in the State experienced an overall decrease in tier 1 bank capital;

(5) the term "Panel" means the Regional Small Business Recovery Panel established under section 1157;

(6) the term "qualified financial institution" means any commercial bank or mutual savings bank that—

(A) has total assets of less than $1,000,000,000;

(B) has an equity capital to asset ratio of not less than 3 percent, nor more than 8 percent;

(C) has held a charter issued by the Comptroller of the Currency or a State banking authority for not less than 3 years; and

(7) the term "small business concern" has the same meaning as in section 2 of the Small Business Act.

SEC. 1154. AUTHORIZATION.

(a) IN GENERAL.—The Administration is authorized to enter into agreements to participate, on a guaranteed basis, in the purchase of eligible securities issued under this subtitle by a qualified financial institution that is located in an eligible State.

(b) LIMITATIONS.—

(1) PRIOR APPROVAL OF SALE.—A sale of eligible securities must be registered and approved, prior to the sale or offering, by the Administration in accordance with section 1155.

(2) COMPLIANCE WITH APPLICATION AND APPROVAL REQUIREMENTS.—A qualified financial institution must fully comply, prior to the sale or offering, with the requirements of section 1155.

(3) PARTICIPATION AMOUNT.—Participation by the Administration in the purchase of eligible securities by a qualified financial institution in the form of a guarantee under subsection (a) shall not exceed the lesser of—

(A) 75 percent of the initial offering price of the approved securities; or

(B) $3,750,000.

(4) PARTICIPATION LIMIT.—The Administration's total participation in the purchase of eligible securities in the form of a guarantee under this subtitle may not exceed $375,000,000.

(5) DURATION OF PARTICIPATION.—The term of a guarantee by the Administration, authorized under subsection (a), shall not exceed 6 years from the date of the initial offering of approved securities.

(c) TYPES OF SECURITIES.—Eligible securities issued in accordance with this subtitle may be either of the preferred or common stock type in the case of a commercial bank, or a debenture in the case of a mutual savings bank. Prior to being offered for sale, all eligible securities issued in accordance with this subtitle shall—

(1) be classified as tier 1 capital by the primary Federal or State regulator of the qualified financial institution; and

(2) be approved by the Administration.

SEC. 1155. APPLICATION PROCESS AND PARTICIPATION CRITERIA.

(a) LOAN POOL AND OUTREACH PROGRAM.—Prior to receiving a guarantee under this subtitle, a qualified financial institution shall—

(1) establish a small business loan pool, equal to the dollar amount of the approved securities guaranteed by the Administration, which shall be utilized for extending loans to small business concerns; and

(2) establish a small business outreach program designed to increase the institution's overall lending to small business concerns.

(b) APPLICATION.—A qualified financial institution that proposes to issue approved securities that are guaranteed in accordance with this subtitle shall submit an application and business plan to the Panel for review, including—

(1) a detailed description of planned uses of additional capital resulting from the sale of approved securities;

(2) a detailed description of the type and terms of the proposed securities offering, the planned price of the issue, and any other information relating to the securities sale;

(3) a detailed description of past and present levels of the applicant's capital, including the applicant's capital to asset ratio and any applicable risk-based ratio;

(4) documentation of the applicant's past and present lending patterns to small business concerns;

(5) the applicant's balance sheets for each of the 5 years preceding the date of application; and

(6) certification that the sale of eligible securities will not violate any past or pending State or Federal regulatory rulings or orders.

(c) PARTICIPATION FEES AND ANNUAL PREMIUMS.—

(1) INSTITUTION'S PARTICIPATION FEE.—Upon approval by the Administration of an application and business plan under subsection (a), based on the recommendation of the Panel, each qualified institution shall—

(A) pay a participation fee equal to 0.6 percent of the total dollar amount of any issue of approved securities that are guaranteed under this subtitle; and

(B) pay an annual premium equal to 2 percent of the total dollar amount of any issue of approved securities during each year for which a guarantee is provided for such issue under this subtitle.

(2) PURCHASER'S PARTICIPATION FEE.—Upon the sale of any approved securities guaranteed under this subtitle the purchaser of the securities shall pay a participation fee equal to 2 percent of the total purchase price of the approved securities.

(3) FEES AND PREMIUMS TO BE PAID INTO TREASURY.—The participation fee and annual premiums required under paragraph (1) shall—

(A) be paid into the Treasury of the United States in accordance with section 1159; and

(B) be used to defer the costs of any repurchase by the Administration of approved securities under section 1156.

(4) FEE SCHEDULE.—Fees established under this subsection shall be payable immediately upon the sale of approved securities and at 12-month intervals thereafter (as applicable).

(d) DISCLOSURES.—Each qualified institution that offers approved securities for sale that are guaranteed in accordance with this subtitle shall fully disclose to the Administration the identity of all holders of such securities and the quantity of such holdings.

(e) COMPLIANCE WITH APPLICABLE LAW.—Any application or business plan submitted in accordance with this section, must conform to the requirements of all applicable State and Federal banking laws and regulations for approval.

(f) PARTICIPATION BY INSTITUTIONS LOCATED IN ELIGIBLE STATES.—The Administration shall establish procedures to ensure that guarantees provided under this subtitle are reasonably distributed among applicants located in all eligible States.

(g) DISPOSITION.—Upon satisfaction of all requirements of this section and after evaluating the recommendations of the Panel, the Administration shall approve or disapprove of all applications submitted in accordance with this section.

SEC. 1156. REPURCHASE BY ADMINISTRATION.

No claim may be made for the repurchase by the Administration of approved securities issued in accordance with this subtitle unless—

(1) the qualified financial institution has issued a declaration of insolvency;

(2) the primary regulator of the qualified financial institution has declared the institution to be insolvent;

(3) the Panel has determined that by the end of the 12-month period beginning on the date on which an institution becomes insolvent, there is little likelihood—

(A) that the holders of approved securities will recover not less than 75 percent of the initial investment cost of the approved securities through the complete liquidation or sale of the institution's assets; and

(B)(i) that the holders of approved securities will recover not less than 75 percent of their initial investment through a merger or sale agreement with another federally or State-chartered financial institution; or

(ii) that the approved securities will retain not less than 75 percent of their initial investment cost through a merger or sale agreement with another federally or State-chartered financial institution; and

(4) such claim is made not more than 6 years after the date of the initial sale or offering of the securities.

SEC. 1157. ESTABLISHMENT OF REGIONAL SMALL BUSINESS RECOVERY PANEL.

(a) ESTABLISHMENT.—There is established a Regional Small Business Recovery Panel which shall be composed of—

(1) the Administrator of the Small Business Administration;

(2) the chairperson of the Federal Deposit Insurance Corporation;

(3) the chairman of the Board of Governors of the Federal Reserve System;

(4) the Comptroller of the Currency; and

(5) the Secretary of the Treasury.

(b) APPOINTMENT OF DESIGNEE.—Any member of the Panel may appoint a designee to serve on the Panel to the same extent and with the same authority as the original member.

(c) DUTIES.—The Panel shall—

(1) evaluate all applications submitted in accordance with this subtitle, and recommend to the Administration the approval or disapproval of such applications;

(2) evaluate the type of proposed debt or equity security and, in consultation with the primary regulator of the qualified financial institution, determine whether or not eligible securities should be classified as tier 1 capital; and

(3) evaluate claims for the repurchase of approved securities by the Administration and recommend the repurchase of approved securities under section 1156 in appropriate cases.

(d) FACTORS FOR CONSIDERATION.—In carrying out its duties under subsection (c), the Panel shall consider, among other appropriate factors—

(1) the relative strength of the qualified financial institution at the time of application (as compared to other similarly sized financial institutions in the same geographic area);

(2) the present capital position, equity to asset ratio, and any applicable risk-based ratio of the institution, particularly as compared to other similarly sized institutions in the same geographic area;

(3) whether or not participation by the Administration under section 1154(a) would substantially improve the capital position and strength of the qualified financial institution;

(4) whether or not the qualified financial institution would be able to secure equity capital (in the case of a qualified commercial bank) or debt capital (in the case of a qualified mutual savings bank) without participation by the Administration;

(5) the degree to which the qualified financial institution has demonstrated an historical commitment to small business lending;

(6) the degree to which external national, regional, and State economic conditions have had a negative impact on the institution and the valuation of the institution's assets;

(7) the management of the qualified financial institution; and

(8) the qualified financial institution's compliance with all applicable State and Federal laws and regulations.

(e) EXAMINATION AUTHORITY.—To carry out its duties under this section, the Panel is authorized to review all bank examiners' reports and related regulatory materials of a qualified financial institution.

SEC. 1158. CONSULTATION AND REPORT.

(a) REPORT.—Not later than 2 years after the date of enactment of this subtitle, the Administration shall submit a report to the Congress evaluating the progress of the Administration in achieving the purposes of this subtitle, particularly with regard to—

(1) the small business loan pools established in accordance with section 1155(a);

(2) the types, terms, and amounts of loans made by qualified financial institutions in accordance with this subtitle;

(3) the functioning of the Panel; and

(4) the impact of guarantees provided under this subtitle on community lending to small business concerns.

(b) CONSULTATION.—Prior to submitting the report required by subsection (a), the Administration shall consult with individuals from the private sector representing each eligible State, small business concerns, and the financial services industry, for the purpose of making the evaluations referred to in subsection (a).

SEC. 1159. ESTABLISHMENT OF FUND.

There is established in the Treasury of the United States the Regional Small Business Recovery Fund. All fees and premiums referred to in section 1155(c) shall be paid into the fund, to be used to defer the costs of program defaults in connection with any repurchase by the Administration under section 1156, to the extent approved in an appropriations Act.

SEC. 1160. REGULATIONS.

The Administration, in consultation with the chairperson of the Federal Deposit Insurance Corporation, the chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Secretary of the Treasury, shall promulgate appropriate regulations to implement this subtitle.

AUTHORIZATION.—This bill is subject to appropriations as required under section 504(b) of the Budget Enforcement Act of 1990.

Mr. DODD. Mr. President, I would also send a modification to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The modification is as follows:

On page 4, strike lines 20 thru 24, and insert in lieu thereof the following:

"(4) the term 'eligible State' means a State in which, during the period between December 31, 1989 and December 31, 1990, the total number of insured commercial banks located in the State experienced an overall decrease in tier 1 bank capital;"

Between lines 17 and 18 on page 5, insert the following new paragraph:

"(8) the term "State" means any State of the United States, and the District of Columbia."

On Page six, line 20, strike "$375,000,000" and insert in lieu thereof "$75,000,000."

After line 24 on page 6, add the following new paragraphs:

"(6) EXHAUSTION OF REGIONAL SMALL BUSINESS RECOVERY FUND.—If the costs of program defaults in connection with repurchase by the Administration under section 1156 have exhausted the Regional Small Business Recovery Fund established under section 1159, then the Administration shall not enter into further participations pursuant to this section until the Regional Small Business Recovery Fund has attained a positive balance.

"(7) PROGRAM SUNSET.—The Administration shall not enter into new participation pursuant to this section after June 30, 1994."

On page 16, line 5, strike "The," the first time it appears and insert in lieu thereof the following:

"No later than 180 days after enactment of this subtitle, the"

Mr. DODD. Mr. President, I offer this amendment on behalf of myself, and Senator CHAFEE, from Rhode Island; Senator LIEBERMAN, from Connecticut; Senator RUDMAN, from New Hamsphire; Senator SMITH, from New Hampshire; and Senator KENNEDY, from Massachusetts.

Mr. President, we represent States in which businesses are suffering bankruptcies at rates far above the national average. Our States are absolutely ravaged by this recession. In fact, we have lost some 96,000 jobs in the State of Connecticut in the last 12 to 18 months.

Our business failures are up 220 percent the first half of this year, as opposed to the first half of last year. Connecticut is now among the top 10 States in the Nation in terms of the number of unemployed who have exhausted their unemployment benefits.

Suffice it to say, Mr. President, our part of the country is in the worst economic condition in decades—the same is now happening in other parts of the Nation.

Add that to the fact that our banks have been absolutely ravaged as well. We now have lost almost $13 billion in assets; 10 percent of all the bank failures in the Nation have occurred in Connecticut. We lost another one last week.

One of the major problems is getting capital into those institutions. This amendment is designed to make an effort to attract some capital to banks. It would strengthen those lending institutions that are not brain dead, and are in fairly good condition, but could end up in that column of brain-dead institutions if they don't see some capital coming in.

This amendment is designed to strengthen some of these institutions before they fail and ultimately cost the American taxpayer millions more in dollars, such as we are having to provide here today with this legislation.

The amendment, Mr. President, is not a panacea. It is not going to solve all our economic difficulties. But it would offer a ray of hope to the small business community that cannot find any credit available, any credit at all, and as a result are in dire conditions, and are failing in many instances. As I mentioned at the outset Connecticut is suffering bankruptcies at rates far above the national average.

I would point out that what we are facing in Connecticut and New England is going to happen in other parts of the country as well if we do not begin to take some positive steps in a progressive way to put this country back in economic shape. We have to take some action to create jobs and spur economic growth—in addition to extending unemployment benefits to help people who have lost jobs.

Let me limit myself to 5 minutes. I ask unanimous consent that my remarks be limited to 5 minutes.

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

Mr. DODD. Mr. President, we will hear several arguments against this

amendment by my good friend from Arkansas, and others, who are concerned about this legislation. I understand that.

First, it may be alleged that this amendment would put Federal money at risk by helping banks that are about to fail. In fact, Mr. President, under this amendment, banks with capital of less than 3 percent would not be eligible for the assistance.

Second, those banks who do apply for this assistance will have to submit a detailed business plan spelling out their plans for using the capital they would get under the provision.

Third, the application for the guarantee in no way relieves a bank of its responsibility to comply with any and all restrictions imposed upon it by the banking regulators.

Basically what we are doing here is providing a guarantee of capital into banks with assets of less than a billion. No more than $5 million would be guaranteed per bank. The entire amount of money would have to be raised by the private institutions themselves.

According to the Budget Office, there is no budget impact with this amendment whatsoever. It is totally budget neutral.

In fact, we provide an additional safeguard—in the form of a provision that would terminate the program in the extremely unlikely event that losses exceed the amount generated by the fees levied to offset them.

In short, we are limiting this to smaller banks, and limiting it to institutions that are relatively healthy.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. Mr. President, I know the chairman of the Banking Committee wished to move this process along. I know that my colleague from Arkansas wants to raise some questions about this. I will reserve the remainder of my time on this amendment.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I yield myself such time as I may use.

I want to say I feel like I used to when your mother used to whack you, and say that "This hurts me more than it does you." I have such an immense respect for my distinguished colleagues from Connecticut.

I find myself in a very difficult position in not just resisting this, but strongly resisting it, at least at this time.

No. 1, there have been no hearings on it.

No. 2, it totally changes the mandate of the Small Business Administration.

No. 3, it puts the Small Business Administration in the bank bailout business.

No. 4, it is double dipping at its worst.

No. 5, it applies to the banks of New England, Maryland, the District of Columbia, and New Mexico. All you other folks do not get any of this. That is not unusual or unheard of around here.

But let me just say very briefly what it does. It says that any bank with $1 billion in assets or less whose capital requirements do not meet the present requirements may issue up to $5 million worth of stock, and the SBA, the Small Business Administration, will guarantee any purchaser of that stock up to 75 percent of any loss he may sustain as a result of having invested in this bank.

The $5 million will then be placed into a fund in that particular bank to make loans to small businesses. Laudatory.

But the double dipping comes because the loans they make will almost certainly be guaranteed by the Small Business Administration to the tune of 90 percent. So you put the SBA in the bank bailout business. You make the taxpayers of this country guarantee 75 percent of a stock issue, a stock issue in a bank—we are going to guarantee 75 percent of up to $5 million, put it in a fund, and let the banks loan it out, and then guarantee them 90 percent of any loss that they may sustain on the loan.

Mr. President, I have told my dear friends and colleagues I will be delighted to hold hearings on this when we come back here after the first of the year. I will be delighted to have a study done on it. I might even support it.

But on the face of it, I can tell you, Mrs. Saiki, who is the head of the Small Business Administration, is about to go ballistic about the whole concept.

As difficult, as painful as this is to me, I cannot as chairman of the Small Business Committee accede to this, even though I know Connecticut, Rhode Island, Massachusetts, New Hampshire, I know that those States have a lot of banks failing.

But to put us—I say "us," and I use that term advisedly, as I am talking about the Small Business Administration. To add the Small Business Administration to the Resolution Trust Corporation and OTC and everybody else, and these banks, and it certainly makes no since whatever, without at least having a hearing, and you are starting down a whole new path. I must reluctantly, for the reason just stated, strongly resist this amendment.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Will the Senator yield?

Mr. DODD. I will be glad to yield time to my colleague from Connecticut.

Mr. LIEBERMAN. Mr. President, we are in the midst of a very serious recession that is drastically hurting American businesses and American people. At the heart of it, I think everyone agrees, is the credit crunch.

Chairman Alan Greenspan recently stated that "The economy is moving, but it is moving against a 50-mile-per-hour headwind, which is the credit crunch." And, Michael Boskin, Chairman of the President's Council on Economic Advisers, stated that "the serious problem of the availability of credit in the United States is probably the single biggest threat to a sustained recovery."

The Chairman of the Federal Reserve Bank of Boston testified before the Small Business Committee and said that the credit crunch is a capital crunch. Banks are not lending to small- and medium-sized businesses. They do not have the capital to do it. Some of the reasons go to the Basel accords and the new capital asset requirements imposed on banks. But the fact is, behind all the rhetoric and all of the theorizing and all of the laws is that American businesses wanting to come out of this recovery cannot borrow. As a result, they are closing down, cutting back, and they are laying off people. The only way to break this cycle is to get capital into the banks.

My colleague from Connecticut and I have tried a dozen different ways of appealing to the administration to have net worth certificates and open bank assistance. None of it has happened.

Finally, this idea emerged, not from us, but from the New England Council, a group of business leaders in our region, that felt this was the most appropriate way to get capital back into the banks. Our friend and colleague from Arkansas has raised questions about this proposal.

Let me try to briefly answer them. In the first place, this is the banking bill. I cannot think of anything the American people need or want more from this bill than some help with the credit crunch to get us out of this recession.

Second, this amendment relates directly to the purpose of the SBA, which is to help small business, because as has been indicated, the money put into these banks under these guaranteed investments will be loaned out to small businesses.

The SBA is not new to this field; it is its mission, and it has used the guarantee authority it has in many programs—the SBIC Program, for instance—to back up and leverage private sector investments. That is what this amendment intends to do. Tier 1 capital is used as a standard. Right now only the New England States, Maryland, and New Mexico happen to qualify. But if this is put in place, any State that suffers an overall loss in the preceding year in tier 1 bank capital would qualify. I am afraid that, as time goes on, more and more States will qualify.

My friend from Arkansas says this would amount to double dipping. Let me say that it is my understanding that very little of the money that would be loaned out by the banks, once they receive this capital infusion, would be loaned out under existing SBA programs.

It is a remarkably fashioned amendment. I am troubled by the opposition to it. It is completely self-financing. It is not a bailout of failing banks or failed banks. It is, in fact, assistance to banks that are determined by all of the Federal regulators to have the capacity to go up. There are loads of banks out there that are still strong but, because of the existing capital asset requirement, simply cannot make loans.

This amendment is aimed at helping them. It will create a guarantee fund of its own by charging fees to the banks and the borrowers that will be there if any defaults occur. It has been certified by the Congressional Budget Office, working with OMB, as completely budget neutral. And its leverage potential is enormous. We figured out that every $5 million that is invested in a bank will be multiplied many times over, according to bank procedures $60 million per bank, up to $233 million in new economic activity per institution.

Mr. President, we are in a crisis. This is an amendment that responds responsibly to that crisis. I urge my colleagues to vote for it.

The PRESIDING OFFICER. All time allotted to the senior Senator from Connecticut has expired.

Mr. BUMPERS. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Five minutes, 3 seconds remain.

Mr. BUMPERS. First, Mr. President, I want to put into the RECORD a letter from Pat Saiki, who is Administrator of the SBA. She strongly objects to this.

Also, I have a letter from G. Thomas Cator, Washington representative of National Small Business United, strongly opposing this.

I ask unanimous consent to have these letters printed in the RECORD.

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

SMALL BUSINESS ADMINISTRATION,
Washington, DC, November 14, 1991.

Hon. DALE BUMPERS,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am compelled to write to you in strong opposition to Senator Lieberman's amendment to the banking reform bill (S. 543) that would authorize the Small Business Administration [SBA] to guaranty the stock and debentures of financial institutions.

The agency is adamantly opposed to any SBA involvement as a guarantor of individual investors equity. This fundamental premise is in conflict with the free enterprise system. While this legislation is described as a small business recovery act, it will benefit only the investors in financial institutions identified as the recipients of this assistance rather than any small business.

Further, the estimate of losses projected by the Congressional Budget Office [CBO] relevant to this legislation are based on unknown factors and the SBA believes them to be unrealistically low.

The action contemplated by Senator Lieberman's amendment will further mask the true problems experienced by financial institutions. While this administration wholeheartedly embraces measures to relieve the credit crunch, this amendment does not represent a reasonable solution to the problem. I appreciate this opportunity to provide you with my comments on this legislation.

Sincerely,

PATRICIA SAIKI,
Administrator.

NATIONAL SMALL BUSINESS UNITED,
Washington, DC, November 14, 1991.

Hon. DALE BUMPERS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BUMPERS: We are writing to express our grave concern and strong opposition to the Dodd-Lieberman amendment to the banking bill which would utilize an SBA guarantee to recapitalize failing banks. Although we are keenly aware of the severe credit crisis facing small businesses and understand that this amendment is being offered under the guise of increasing small business lending, the amendment really amounts to a bank bail out which is not the role or responsibility of SBA. This amendment is another example of Congress requiring SBA to fulfill a function it should not and cannot do. If congress wants to increase small business lending, then it should increase funding for SBA's 7(a) and 504 loan programs. It should aid potential small business borrowers directly utilizing programs SBA knows and manages well.

We appreciate your listening to our concerns.

Sincerely,

G. THOMAS CATOR,
Washington Representative.

Mr. BUMPERS. Mr. President, there are a couple of more points to be made.

First, I do not know what the budget impact of this is, but OMB will be the final arbiter and determiner of the budget impact. And if the budget impact is greater than provided in this amendment, there is going to be a sequester.

Second, in 1988, I guess it was when we passed what we commonly referred to as the FIRREA bill, we put a provision in there that the OTS, the Office of Thrift Supervision, and now the FDIC, could provide what we call open thrift assistance to any bank or S&L that has a chance of making it, in the FDIC Director's opinion.

Unhappily, he has not used that authority. I think it is a tragedy. I wrote him telling them they ought to use it, and he made a speech saying they were going to start using it, but they have not done it.

Here is a case where if $5 million would save a $1 billion bank, surely the head of the FDIC would be charitable enough—he has $100 billion assets in his inventory—to transfer $5 million over to these people to help their capital requirement.

Mr. DODD. If the Senator will yield, he is right. We have tried for 2 years to get the administration to consider all sorts of ways of helping our economy in New England, but they sit on their hands. If they actually took action, we would not have offered this amendment.

Mr. BUMPERS. I say to my colleague that I am sympathetic on that point, because we put open thrift assistance in that bill for precisely this kind of situation. They have $100 billion in assets, and they refuse to use it. I am hoping this debate will come to the attention of the FDIC, so they will know that Congress is concerned about it.

Mr. President, just to finish the debate up, because I do not want to belabor this, never in the history of man—or as we lawyers like to say, since the memory of man runneth not—has the U.S. Government ever guaranteed a stock issue. I do not know what the market would do with it. I am not sure anybody would buy stock in some of those banks up there, even with the Government guaranteeing 75 percent of it. But if we were ever going to get into this kind of a mess, we should have done it back during the S&L debacle. We should have been guaranteeing stock issues by them and trying to save them.

Finally, Mr. President, this is a very limited bill. It takes care of Connecticut, Rhode Island, Maryland, District of Columbia, New Mexico, and other New England States, but it does not do anything for Arkansas, Georgia, Louisiana, and North Dakota. It is just a narrowly construed bill to help banks in New England. These others just happen to get caught in the formula, but it is really for New England, and I do not oppose that. I am saying that the Small Business Administration is in business to help small businesses and loan money to them.

Make no mistake about it. This amendment has one purpose and one purpose only, and that is to bail the banks out in New England by guaranteeing stock issues on those banks. We have never done it before. It changes the whole SBA mandate.

Mr. DODD. Mr. President, will my colleague yield?

Mr. BUMPERS. Do I have any time remaining?

The PRESIDING OFFICER. Thirty seconds.

Mr. BUMPERS. I yield.

Mr. DODD. Mr. President, I ask unanimous consent to print in the RECORD a letter from Bob Reischauer of the Congressional Budget Office.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 14, 1991.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Washington, DC.

DEAR SENATOR: At your request, the Congressional Budget Office has estimated the cost of a program similar to the one authorized by S. 1753, which would allow the Small Business Administration to guarantee a portion of the cost of stock for debentures issued by qualified banks. As you specified, we used the following parameters provided in your letter: $500 million in total stock issues; 75 percent federal coverage; 0.6 percent origination fee; 2 percent annual premiums paid by banks; 2 percent purchaser payment, due upon purchase; 6-year guarantee; and all fees based on the total amount of the issue, not only on the insured amount.

CBO estimates that receipts from fees would cover the costs of the program, which would result from the failure of participating banks. This estimate is based on an estimated loss rate of about 15 percent. On this basis, we estimate that such a program would result in no net additional cost to the federal government, when valued using the procedures specified in the Federal Credit Reform Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb, who can be reached at 228-2860.

Sincerely,

ROBERT D. REISCHAUER.

Mr. DODD. Mr. President, this amendment is budget neutral. All funds are put up by lending institutions. There is no Federal money here.

I appreciate my colleague's concern. If the amendment does not carry, I would hope that we might have hearings next year.

Mr. KASTEN. Mr. President, I rise today to associate myself with the remarks of the chairman of the Small Business Committee in his efforts to table the Dodd-Lieberman amendment.

This amendment is bad policy for the Small Business Administration. The SBA should not be in the business of guaranteeing stock purchases—the SBA is set up to guarantee loans made by banks, not stocks in banks.

The Dodd-Lieberman amendment is strongly opposed by the SBA, the administration, and several small business groups including National Small Business United.

If my colleagues want to revive New England's economy, I would suggest the Senate pass an economic growth package to turn the Nation's economy around. A growth package would sustain long-term economic prosperity and create jobs.

A progrowth package should contain a capital gains tax cut. This one provision—reducing the tax on capital gains—will do more to promote long-term economic growth than anything else we can act on this Congress.

Again, Mr. President, as the ranking member of the Small Business Committee, I join the distinguished chairman in his motion to table this amendment.

Mr. BUMPERS. Mr. President, I move to table.

Mr. DODD. I ask for the yeas and nays.

Mr. BUMPERS. And I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BUMPERS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BUMPERS. Did the Chair hear my motion to table.

The PRESIDING OFFICER. The Chair did here the Senator's motion to table.

Mr. BUMPERS. Were the yeas and nays ordered on that?

The PRESIDING OFFICER. No.

Mr. BUMPERS. I ask for the yeas and nays on the motion to table the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE. Mr. President, I ask unanimous consent that I might speak for 1 minute.

The PRESIDING OFFICER. The Senator may proceed.

Mr. CHAFEE. Mr. President, I join with enthusiasm in support of this amendment. The suggestion is made that it is solely limited to New England. That is not accurate. It applies to many States across the Nation that lost so-called tier 1 capital.

It is true that many of the States in New England particularly are affected by it. But it seems to me what we are tying to do is to encourage these ones to get some capital into these banks and this does that by saying to the individuals who invest this capital that 75 percent will be guaranteed. They still take the risk for 25 percent of it. Second, when that capital is invested, then these small banks make the commitment to make small business loans.

We are trying to get this recession defeated. We are trying to get things going. Is there a better way? There might well be. I would hope at least we could embrace this way.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arkansas to lay on the table the amendment of the Senator from Connecticut. On this motion the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Oklahoma [Mr. BOREN], the Senator from Illinois [Mr. DIXON], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 23, as follows:

[Rollcall Vote No. 264 Leg.]

YEAS—73

Adams	Ford	Packwood
Akaka	Fowler	Pressler
Baucus	Garn	Pryor
Bentsen	Glenn	Reid
Biden	Gore	Riegle
Bond	Gorton	Robb
Bradley	Graham	Rockefeller
Breaux	Gramm	Roth
Brown	Grassley	Sanford
Bryan	Hatch	Sarbanes
Bumpers	Hatfield	Sasser
Burdick	Helms	Seymour
Burns	Hollings	Shelby
Byrd	Johnston	Simon
Coats	Kassebaum	Simpson
Cochran	Kasten	Specter
Conrad	Kohl	Stevens
Craig	Levin	Thurmond
Cranston	Lott	Wallop
Danforth	Lugar	Warner
Daschle	Mack	Wellstone
DeConcini	McConnell	Wirth
Dole	Metzenbaum	Wofford
Durenberger	Nickles	
Exon	Nunn	

NAYS—23

Bingaman	Jeffords	Mitchell
Chafee	Kennedy	Moynihan
Cohen	Kerry	Murkowski
D'Amato	Lautenberg	Pell
Dodd	Leahy	Rudman
Domenici	Lieberman	Smith
Heflin	McCain	Symms
Inouye	Mikulski	

NOT VOTING—4

Boren	Harkin
Dixon	Kerrey

So the motion to lay on the table the amendment (No. 1347), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank my colleagues for at least considering this amendment. I realize it came up at a late hour, when the banking bill was moving. It was a complicated amendment. I also want to thank my colleague from Arkansas, who graciously offered to have hearings on this proposal. I think he understands the seriousness of the credit crunch in our States, and recognizes how it is spreading across this country.

Regretfully, the administration over the last 2 years has been unwilling to consider a variety of available options. They had the tools at their disposal, but they refused to use them.

I just inquire of the Senator from Arkansas whether or not we could hold some hearings—possibly jointly in the Banking Committee and Small Business Committee—to look at this proposal and others that could help provide needed lift to the small banks that are the lifelines to small business in our States. Again, he mentioned that in our earlier debate, but I raise it again with him now, Mr. President.

Mr. BUMPERS. Mr. President, I am happy to assure the Senator from Connecticut that, so far as the Small Busi-

ness Committee is concerned, we would be delighted to have a joint hearing with the Banking Committee to try to develop something creative.

I regret, as I said in my remarks during the debate, that the OTC—or RTC has refused to provide open thrift assistance, despite the fact that Congress was very specific about the reasons for it. And this would be an ideal situation in New England where banks still have a chance to make it.

But, barring that, if we have to continue assuming that the FDIC is not going to provide open assistance, then we have to come up with something creative, and I applaud the Senator for what is, obviously, a very creative idea. As he knows, my objection to it is simply I did not want to get the Small Business Administration into the business of bank bailouts. But the Senator is showing a great deal of creativity and certainly great concern for the banks in New England and especially in Connecticut, and he is to be applauded for that. And I applaud him for that. And I certainly will hold the hearings at the very earliest possible time that the Senator from Michigan [Mr. RIEGLE] and I can agree upon a date and time. We will be delighted to do that. We will get back to the Senator at the earliest possible time.

Mr. DODD. I thank my colleague from Arkansas, and I thank my colleague from Michigan as well. I look forward at the earliest possible time, in January possibly, to hearings on this subject matter to see if we cannot come up with some creative ideas that provide needed assistance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I am going to now attempt to construct a unanimous-consent request that would limit and outline the number of amendments that are left. I want to indicate the ones that are on our side of the aisle of which I am aware. I will name those now. I am not going to try to set times with those at the moment but simply to list the amendments so we have them fully identified. Then Senator GARN will identify those that exist on his side of the aisle.

At this point, on our side, I have remaining only four amendments. Some of these may not, in fact, be offered. We have two from Senator KERRY, of Massachusetts; we have the potential of one from Senator BUMPERS, of Arkansas; and we have the potential of one from Senator CONRAD, of North Dakota. So I ask that those four items be listed on the list for those three Senators.

Let me just leave the discussion open for a moment here and let the Senator from Utah go through his list.

Mr. GARN. Mr. President, I emphasize at this point we are not asking for any time agreements on the bill or on anybody's amendment. We just need to know where we are, and we have tried as hard as we can with all of our colleagues during this vote. So we are simply trying to limit the amendments, so everything else is still unlimited. So I hope no one will object because that is all we are attempting to do.

First of all, on our side of the aisle, one amendment, Senator MACK; one amendment, Senator D'AMATO; one amendment, Senator GORTON; one amendment, Senator DOLE; one amendment, Senator GRASSLEY; three amendments, Senator HELMS; one amendment, Senator DANFORTH.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I am wondering if I might ask my friend and colleague from Utah if he might not put down another amendment for me, which the managers may or may not take up.

Mr. GARN. Two amendments from Senator D'AMATO.

Mr. RIEGLE. Let me indicate that Senator GORE also has an amendment he would like to have listed. I would like that added to my list. That may be one that is cleared, so it may not necessitate a debate and vote, but in any event he wants to be protected, so he should be on the list.

Mr. GORE. Will the manager of the bill yield?

Mr. RIEGLE. Yes.

Mr. GORE. It will probably not be offered at all. There is a separate resolution that is in the process of being cleared. I expect it will be cleared, but in order to protect my prerogatives, I wish to remain on the list.

Mr. GARN. Very good, and it is a sense-of-the-Senate resolution, as I understand it.

That is the list, 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. MITCHELL. 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.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that with respect to the pending legislation, S. 543, the banking bill, the only amendments remaining in order to the bill, in addition to the committee substitute amendment, be the following listed amendments and that the pending Dixon amendment, No. 1352, be withdrawn: A managers' amendment; an amendment by Senator GORE, a sense of the Senate regarding Yugoslavia; an amendment by Senator KERRY of Massachusetts regarding pay-as-you-go; an amendment by Senator KERRY of Massachusetts deleting the prohibition on State bank investments; an amendment by Senator BUMPERS that will be relevant to the bill; an amendment by Senator STEVENS regarding red lining.

Mr. GARN. No; Senator STEVENS has now been taken off the list.

Mr. MITCHELL. Mr. President, I withdraw the reference to Senator STEVENS' amendment.

An amendment by Senator CONRAD, a sense of the Senate regarding FDIC legal expenses; an amendment by Senator MACK that will be relevant to the bill; two amendments by Senator D'AMATO, one regarding freedom national and one regarding capital standards; an amendment by Senator GORTON regarding insurance; an amendment by Senator DOLE that will be relevant to the bill; three amendments by Senator HELMS, one regarding slave labor, one regarding chemical weapons, one regarding foreign banks; an amendment by Senator DANFORTH regarding TWA [PBGC]; an amendment by Senator GRASSLEY regarding credit cards.

I further ask unanimous consent that there be 30 minutes of debate remaining on the manager's amendment, the committee reported substitute and the bill inclusive; that no other amendments or motions to commit be in order except the second-degree amendments that are relevant to amendments on this list that are not relevant to this bill; and that at the conclusion or yielding back of time, the Senate proceed to vote without any intervening action or debate on final passage of the bill.

Mr. President, I withhold the request for one moment.

Mr. President, I renew my request.

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

Mr. MITCHELL. Mr. President, I want to make clear just so there is no misunderstanding, this agreement provides that there are 30 minutes of debate remaining on the managers' amendment, the committee-reported substitute and the bill itself inclusive. That is the only time limitation in this agreement. There is no time limitation on any of the amendments contained on the list.

With respect to those amendments on the list which are relevant to the bill, second-degree amendments will not be in order. With respect to those amendments which are not relevant to this bill, second-degree amendments will be in order, so long as they are relevant to the first-degree amendment being offered. There is no time limitation on either the first-degree amendments or on any second-degree amendments permitted under this agreement.

And so, Mr. President, this is progress of a sort, but the list of amendments is still very long, and I hope that now, although we do not

have time agreements here, the managers, who have been pursuing this with such diligence and perseverance, for which I commend them, will now proceed to try to complete action on this bill as soon as possible.

Mr. GARN. Will the leader yield?

Mr. MITCHELL. Yes.

Mr. GARN. I thank the leader for his help. I expect many of these, even though they have been locked in, will not be offered. But I do have a request for the majority leader simply to have one more relevant amendment for Senator DOLE, if the Senator could ask consent for that.

Mr. MITCHELL. Mr. President, I will add one for Senator DOLE to make that two, and one for myself.

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

Mr. MITCHELL. Mr. President, I thank my colleagues, and I thank the managers particularly for their perseverance and encourage any Senators who have amendments to offer them and if they can do so with time agreements.

We are going to be very late, with a lot of votes, because we have other measures to take up after this, if Senators want to have any hope whatsoever of being able to adjourn sine die before Thanksgiving. And so we have devoted a lot of time to this bill. It is very important. But we now have to proceed and complete action on these amendments and on the bill as soon as possible.

Mr. RIEGLE. I thank the majority leader, and I thank my colleagues.

The PRESIDING OFFICER. If the Senator from Michigan will withhold, in part of the agreement, it was understood that the Dixon amendment was withdrawn. It was felt that that should be made clear here.

Mr. MITCHELL. Mr. President, that was included in the text of the agreement as drafted.

The PRESIDING OFFICER. Correct. The Parliamentarian requested that that be acknowledged.

Mr. MITCHELL. Yes. The pending Dixon amendment No. 1352 be withdrawn.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I can put some times on some of these. On capital standards, D'Amato amendment, I understand he is prepared to agree to 20 minutes equally divided. I ask unanimous consent that that time be agreed to on that amendment, capital standards amendment by Senator D'AMATO.

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

Mr. RIEGLE. I am hopeful that we are going to be able to accept Senator CONRAD's amendment. How much time did Senator CONRAD feel he needed?

Mr. CONRAD. Ten minutes on my side.

Mr. RIEGLE. Why not say 20 minutes equally divided. I am not sure we are going to need any time. I hope we could in the course of discussion decide we could accept that. Maybe we could shorten that down because, as the majority leader said, we really have to move here. Is that acceptable to the Senator?

Mr. CONRAD. Absolutely.

Mr. RIEGLE. I ask unanimous consent then that the Conrad amendment be 20 minutes equally divided.

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

Mr. RIEGLE. I am also told that Senator HELMS is willing to agree to 10 minutes on each of his three amendments equally divided. I ask unanimous consent then that that be approved.

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

Mr. RIEGLE. Let me indicate that Senator KERRY on his pay-as-you-go amendment has indicated that he would agree to 40 minutes, divided 30 minutes for him, 10 minutes for me. I think he will not offer that amendment, but in any event let us enter that agreement for unanimous consent.

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

Mr. RIEGLE. I am told that Senator D'AMATO is prepared to agree to a 20-minute time limit equally divided on his Freedom National Bank amendment, which is his second amendment. I would ask unanimous consent that it be so ordered.

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

Mr. RIEGLE. I urge other Senators to come and chat with us and see if we can set both time periods and perhaps work out amendments so they can go into the package of amendments agreed to by the committee. I thank the Chair and yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. We have all heard a lot of talk about capital standards, capital adequacy, and the fact that lately there is a credit crunch, and this credit crunch is exacerbating any hoped-for recovery. As a matter of fact, this credit crunch is, indeed, devastating to the economy.

Here is what I am concerned about. In this bill, I believe that inadvertently what we do is set out standards to the regulators which will, indeed, create a manifest question and require them to seek more capital from banks than what would be necessary, and what will eventually require even the callback of that credit that is existing today to credit-worthy applicants.

Let me tell you why. Banks have been calling in loans and lines of credit. Individuals and small businesses have been having a difficult time obtaining their credit.

This bill seeks to potentially increase capital tenfold, and I say potentially tenfold. This bill requires regulators to set capital standards to a level that, "Will prevent or minimize loss to the deposit insurance funds."

The FDIC has said that the assets of failed small banks decrease in value as much as 30 percent. This means that when small banks fail, the assets of the institutions could be worth negative 30 percent.

I should like to ask the chairman, does this mean the regulators must require small banks to maintain a capital level of 30 percent in order to prevent or minimize loss to the deposit insurance fund? And if the Senator wants, I would give the question to the Senator again.

The FDIC says that the assets of small banks decrease as much as 30 percent. Does the section of the bill which says that we have to set standards at a level that will prevent or minimize loss to the deposit insurance funds then mean we will have to maintain a capital level of 30 percent in order to prevent or minimize loss to the deposit insurance fund?

And let me continue. The FDIC has said that assets of medium banks decrease as much as 18 percent. This means that when medium banks fail the assets of the institution can be worth a negative 18.

Mr. President, the same question. Does this mean that the regulators must require medium-sized banks to maintain a capital level of 18 percent in order to prevent or minimize loss to the deposit insurance fund?

What am I concerned about?

I am concerned, Mr. President, about the implications of the FDIC statistics. What do the numbers actually mean in terms of what the final capital levels will be? Will not the regulators be faced with fulfilling inconsistent goals?

Regulators will want to set capital levels high enough to give a comfortable margin of protection to the deposit insurance fund. Indeed, the language suggests that. If the regulators set capital too high, the results may actually be to cause more banks to fail. They are going to have to call in more money.

What guidance will be given regulators to help them balance these two competing interests?

Mr. President, banks already are having such a hard time meeting their current capital requirements and as a result available credit is already restricted. I am concerned that the capital standards provided for in this bill will further exacerbate the credit crunch.

I would like to know what is our estimate of how high the regulators will have to go to set capital levels to prevent or minimize loss to the fund. What impact will the new capital levels have on the availability of credit?

That is why I will send an amendment, Mr. President, to the desk that

says "to ensure the safety and soundness of the institutions."

I would suggest to you that if we could accept this language, we would be sending a clear signal about the safety and soundness of the institution. But if you have the language that is presently in the bill that they will say we have to look to the safety and soundness of the FDIC and given the various ratios—by the way, the regulators have indicated this is of concern to them. I would hope that we will send a very clear signal. I just see their credit situation being exacerbated as a result of this legislation.

AMENDMENT NO. 1374

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO] proposes an amendment numbered 1374.

On page 131, delete lines 1 through 3, and insert in lieu thereof "to ensure the safety and soundness of the institution."

Mr. D'AMATO. Mr. President, that is the essence of the legislation. If we are going to ensure the safety and soundness of the institution, we will be indeed protecting the FDIC, the taxpayers, and I would suggest that while this is maybe a legislative change it is one that will inure to the benefit of the taxpayers, the FDIC, and the institution, and provide adequate capital without endangering taxpayers and without creating further risks to the small business community.

Mr. President, today I would like to offer as an amendment to S. 543 this small piece of legislation that will rectify a large injustice created by the Federal Deposit Insurance Corporation when it refused to reimburse in full certain not-for-profit corporations' accounts located at Freedom National Bank.

My amendment seeks to protect the intended beneficiaries of the charitable not-for-profit organizations who believe they had fully insured and fully protected accounts at Freedom National Bank.

Freedom National was one of the Nation's largest minority-owned banks with deposits of approximately $90.8 million and branches in the Harlem and Bedford Stuyvesant communities of New York City.

In an effort to support economic independence in the black community, many local charitable groups had maintained their operating accounts at Freedom National. I have been informed that at least nine charitable groups had multiple accounts, exceeding $100,000 in the aggregate.

On November 9, 1990, the Office of the Comptroller of the Currency declared Freedom National Bank insolvent and appointed the FDIC as its receiver. In the process of liquidating the bank, the FDIC determined that the multiple accounts belonged to a single depositor—the charitable organization behind the accounts.

As a result, the FDIC only paid each not-for-profit organization a total of $100,000, notwithstanding the fact that the organization may have had multiple accounts, each designated for a separate purpose, and each with a balance under $100,000.

On November 29, 1990, I wrote to Bill Seidman, Chairman of the FDIC, to urge the FDIC to look behind the charitable organization to see the intended beneficiaries of the separately designated accounts. On November 30, 1990, the FDIC Board agreed to an advance payment of 50 percent of the proven claims of uninsured depositors and other creditors of the bank, allegedly as an attempt to minimize the effects of the bank's closing on the community.

On January 15, 1991, the FDIC announced that it "lacked the authority and the flexibility under existing law to fully reimburse all depositors at Freedom National."

Mr. President, my amendment carves out the not-for-profit organizations as an exception to the FDIC's policy not to fully reimburse all of the depositors at Freedom National Bank.

Depriving these not-for-profit organizations full reimbursement is effectively denying many of my constituents valuable and important community services that the account funds were earmarked for.

I have a list of these accounts that were sent to me by the Fort Greene Senior Citizens Council of Brooklyn, NY. Among the accounts listed are day care facilities for more than 200 children from low-income families, and services providing for serving daily meals to over 8,000 elderly people. The United Negro College Fund also had set up separate accounts for 50 different colleges which the FDIC treated as a single account.

Although S. 543 seeks to eliminate the practice of paying uninsured depositors in cases where institutions are deemed too big to fail, the inequity of not making whole the charitable organizations with accounts at Freedom National must first be put to rest.

My amendment would protect the people who had entrusted the funds of charitable, not-for-profit organizations at a small community bank that was not too big to fail.

The FDIC estimates the cost of making whole these charitable organizations at between $5 to 7 million. This is a negligible amount in a bill that seeks $70 billion to recapitalize the bank insurance fund.

I agree that S. 543 should drastically reduce the practice of paying uninsured depositors but let us not make the mistake of making a lesson of Freedom National. Congress should move toward implementing this policy prospectively, and in an even-handed manner.

Just about this time last year, the FDIC made sure that the charitable organizations with accounts at Freedom National had nothing to be thankful for. My amendment would truly give these organizations something to be thankful for this Thanksgiving.

Thank you, Mr. President.

Mr. President, I yield the floor.

I know the chairman is reviewing this.

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. GARN. 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. GARN. Mr. President, I appreciate the cooperation of my colleagues. The distinguished Senator from Washington [Mr. GORTON] would agree to 20 minutes equally divided on his amendment, and Senator GRASSLEY would agree to 20 minutes equally divided on his amendment.

I ask unanimous consent that those two be approved.

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

Mr. RIEGLE. Senator BUMPERS would agree to 40 minutes equally divided on his amendment.

I ask unanimous consent that be agreed to.

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

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

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

Mr. D'AMATO. Mr. President, I am wondering if my friends would yield me 2 minutes of time. How much time do I have?

The PRESIDING OFFICER. There are 9 minutes on each side remaining.

Mr. D'AMATO. Mr. President, if I might suggest to the chairman that we lay this over because there is no pride of authorship as it relates to the language which we suggest.

There is a very real concern though that, if we adopt this bill with this language, we are going to have the regulators breathing down the necks of the banks saying Congress told us that we have to set these capital levels. These levels are going to be in some cases tenfold higher than what may be necessary to ensure the soundness of a bank. We are, inadvertently, going to be creating some very real trouble and exacerbating the credit crunch.

I know the chairman and the ranking member have worked very diligently to avoid this. I would be willing to lay this over, we could pick it up, and maybe the staffs could work it out.

Mr. RIEGLE. If the Senator will yield, I think that is a constructive suggestion. I think there is a possibility in that area. I would like to suggest on that basis that the Senator's amendment be temporarily laid aside while we have a chance to discuss this and find a satisfaction answer.

I will ask that we go to work with staff and see if we can resolve that, and if so, bring it back at the earliest moment and settle that.

Mr. D'AMATO. I thank the chairman.

Mr. President, I ask unanimous consent that the amendment be laid aside so that other business can be undertaken.

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

Mr. D'AMATO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. RIEGLE. Mr. President, I wonder if we might go to the Senator from North Dakota.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, we are here debating providing $70 billion of coverage to the bank insurance fund and will be asked soon to give an additional $80 billion to the RTC, a total of $150 billion of taxpayers' money. At the very time we are being asked to extend $150 billion of taxpayers' money, we are finding that these two agencies are not using the money we have already extended to them prudently or wisely and, in fact, are wasting millions and millions on legal fees.

Mr. President, I am referring to a series of articles which appeared in the press in recent days reporting that FDIC and the RTC are spending $1 billion a year on outside lawyers. It is not $1 million, Mr. President. That is $1 billion.

Unfortunately, much of that time is being wasted.

Mr. President, I have an amendment to address this question of wasting hundreds of millions of dollars potentially in taxpayers' money on legal fees. I send an amendment to the desk and ask for its immediate consideration.

AMENDMENT NO. 1375

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. CONRAD] proposes an amendment numbered 1375.

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

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

The amendment is as follows:

At the end of title II, add the following new section:

SEC. 232. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) The Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) should protect insured depositors of banks and savings and loans at the least possible cost to the American taxpayer;

(2) Two recent studies by Price Waterhouse and Altman & Weil on behalf of the FDIC have concluded that—

(i) the FDIC and RTC may spend more than $1 billion this year on legal fees and expenses yet there is in effective oversight or management of these expenses;

(ii) outside counsel are generally not selected on a competitive basis;

(iii) the FDIC and RTC have not instituted policies to insure that tasks are assigned to the firm best able to perform them in a cost-effective manner;

(iv) the FDIC generally pays hourly rates rather than arranging less costly fixed rate contracts;

(v) outside attorneys spend significant amounts of time performing tasks which do not require attorneys' skills; and

(vi) the FDIC and RTC have allowed persons and firms whose activities contributed to the decline of the banking and thrift industries to contract with and profit from the activities of the FDIC and RTC; and

(3) These practices undermine the faith of the American taxpayers in the use of taxpayer dollars to finance the cleanup of the banking and thrift industries.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the FDIC and RTC should take immediate steps to ensure that outside counsel are selected competitively on the basis of their ability to perform required tasks at the lowest possible cost to the taxpayer; and

(2) the FDIC and RTC should not contract with persons or firms whose activities contributed to the decline of the banking or thrift industries.

Mr. CONRAD. Mr. President, in pointing out that we are spending $1 billion a year of taxpayer's money on outside lawyers, there has been an accounting report done by the firm of Price Waterhouse that accuses FDIC of passing out hundreds of millions of dollars in legal work to law firms chosen without competitive bidding, and suggests that legal expenses could be slashed if the agency made lawyers compete for its business. That is a pretty novel idea—have lawyers compete for the business instead of just handing it out.

Mr. President, an article that appeared in the New York Times on November 16, last Saturday, is headlined "U.S. Said to Squander Millions for Legal Work on the Bailout."

The studies found among other things that the "FDIC and its affiliated agency, the Resolution Trust Corporation, failed to use competitive bidding or to negotiate steep enough discounts or fixed fees when hiring lawyers even though many lawyers are eager for the work."

Mr. President, I direct my colleagues to the Wall Street Journal article that appeared on Monday: "FDIC's Legal Unit is Criticized in Study in Handing Jobs to Outside Law Firms."

Mr. President, if this evidence were not enough, in the last few hours, we have new evidence, evidence that has not yet been publicly released that is contained in a series of audit reports, done by the Office of Inspector General.

Mr. President, the Office of Inspector General today has released eight new reports, eight individual audits on the work of individual law firms on behalf of the FDIC.

Mr. President, I have agreed not to release the names of these law firms. But the details contained in these reports are stunning. Again, I say to my colleagues that these reports have not yet been made public. But they record a system of abuse and neglect that should outrage every one of my colleagues and, I believe, outrage the American people, as well.

Let me just share a few of the examples. One law firm included billings for professional time for which there were no time sheets. Overcharged to the American taxpayer: $285,000. That is one law firm.

Mr. President, this is the audit report on a second law firm, a series of overcharges from this law firm found in these audit reports just released. In this case, the law firm gave a discount in order to reflect what they would have paid if they were paying the standard professional rate. But they did not apply the discount to get to the standard rate on all of their billings. The overcharge to the taxpayers on this one case, Mr. President, is $257,000. One law firm. But it did not end there with that law firm.

Next we find duplicate payments. They submitted duplicate bills. Overcharge to the American taxpayer: $252,000. It did not end there, Mr. President.

Next, we have hourly rate discrepancies, because they were charging higher than the prevailing contract fees. Overcharge on this item to the taxpayers: $161,000. It does not end there, Mr. President.

Excessive conferences. Well, this overcharge is not as great; it is only $39,000 in overcharges.

Use of personnel without approved rate. Overcharges: $153,000.

Marked up photocopy expenses—Mr. President, you have to hand it to them. These folks have been ingenious. Not only did they file duplicate payments, not only did they overcharge on hourly rates, not only did they charge for excessive conferences, not only did they charge for use of personnel without approved rates, they marked up the photocopy expenses. The overcharge for this one firm to the American taxpayers: $81,000.

Mr. President, here is another audit just released today, not made public yet. These people were ingenious on photocopying, too; there were $34,000 in bills over and above their actual cost. Stuck to the American taxpayer: $34,000.

Here is another law firm. Legal assistant time reports indicate the firm was billed for assistant services at rates ranging between $17 and $20 per hour. What did they charge the taxpayer? They charged the taxpayers $40 an hour. I do not know what the loss is on this company.

Mr. President, it does not stop there. Not only do we have these very large amounts, but we have personal telephone calls being charged to the American taxpayer, hotel movies being charged to the American taxpayer; all of these things were found in audits.

What is the solution, Mr. President? The solution is to tell our friends that they have to bid on a competitive basis. That is what this sense-of-the-Senate resolution does. It says that the FDIC and Resolution Trust Corporation should protect the insured depositors of banks and savings and loans at the least possible cost to the American taxpayer. That ought to be the goal.

Mr. President, to accomplish that goal, we suggest, No. 1, the FDIC and RTC should take immediate steps to ensure that outside counsel are selected competitively, on the basis of their ability to perform, and require tasks at the lowest possible cost to taxpayers; No. 2, that the FDIC and RTC should not contract the person or firms whose activities contributed to the decline of the banking and thrift industry.

Mr. President, that second point is necessary because, lo and behold, we find out that not only have we got hundreds of thousands of dollars, and millions of dollars, and perhaps hundreds of millions of dollars being wasted by the law firms that have been hired to help clean up this mess; but, in addition to that, we find that many of the firms that are profiting were involved in creating the problem in the first place.

Mr. President, one accounting firm that has been hired was involved in covering up the problems at Silverado S&L. This failure will cost the Government $1 billion to clean up. Yet, the accounting firm that was involved is now right at the trough getting fees to help clean up the mess that they helped create.

Mr. President, there is something wrong about that. I think if the American taxpayers would go through these audit reports, report after report after report after report, which demonstrate the kind of abuse that is occurring, and the law fees that are being charged the American taxpayers to clean up the mess, they would be outraged. These are the people we have hired to clean up the mess. Now we find out they are part of the mess.

Mr. President, I hope that my colleagues will join with me and send a very clear signal: This is unacceptable to the American taxpayer. It is outrageous. The people of this country know this mess has to be cleaned up. But it ought to be cleaned up on a basis that is as least costly as possible to the American taxpayer.

Mr. President, again, I hope this amendment will be accepted, and that we will send a message to the FDIC and the RTC that this is unacceptable operations. Overcharge after overcharge, no management, no oversight, nobody minding the store. It is no wonder the American people are outraged.

We have an opportunity right now to pass an amendment that will do something about it. I hope my colleagues will agree.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator from North Dakota has expired. There are 10 minutes remaining for a response.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I have conferred with the ranking member, and he tells me that he feels this amendment can be worked out and accepted, and that if his staff will undertake now to meet with the minority staff, in very short order, we should be able to resolve this and accept this amendment.

So, if the Senator finds that acceptable, I suggest that I reserve the remainder of the time here, ask that this amendment be temporarily set aside for the purpose of seeing if we can reach an agreement and accept this amendment.

Mr. CONRAD. I would be glad to work with the chairman and ranking member to seek to do that.

Mr. RIEGLE. Fine. May I suggest we start immediately beyond that, because I would like to get this done in the next 10 minutes, if possible.

Mr. GARN. Mr. President, if the Senator will yield, I will tell the Senator that I do not think there is any problem. There is just some language we need to clarify. That can probably be done in 5 or 10 minutes.

Mr. CONRAD. We will be happy to participate in the effort.

Mr. RIEGLE. Mr. President, then I ask unanimous consent that the Conrad amendment be temporarily set aside.

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

The Senator from Utah.

AMENDMENT NO. 1376

(Purpose: To amend the Employment Retirement Income Security Act of 1974)

Mr. GARN. Mr. President, I send an amendment on behalf of Senator DANFORTH to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah [Mr. GARN], for Mr. DANFORTH, for himself, Mr. BOND, and Mr. KENNEDY, proposes an amendment numbered 1376.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . Section 4001(a)(14) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(14)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end the following new subparagraph:

"(C)(i) notwithstanding any other provision of this title, during any period in which an individual possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an affected air carrier of which he was an accountable owner, whether through the ownership of voting securities, by contract, or otherwise, the affected air carrier shall be considered to be under common control not only with those persons described in subparagraph (B), but also with all related persons; and

"(ii) for purposes of this subparagraph, the term—

"(I) 'affected air carrier' means an air carrier, as defined in section 101(3) of the Federal Aviation Act of 1958, that holds a certificate of public convenience and necessity under section 401 of such Act for route number 147, as of November 12, 1991;

"(II) 'related person' means any person which was under common control (as determined under subparagraph (B)) with an affected air carrier on October 10, 1991, or any successor to such related person;

"(III) 'accountable owner' means any individual who on October 10, 1991, owned directly or indirectly through the application of section 318 of the Internal Revenue Code of 1986 more than 50 percent of the total voting power of the stock of an affected air carrier;

"(IV) 'successor' means any person that acquires, directly or indirectly through the application of section 318 of the Internal Revenue Code of 1986, more than 50 percent of the total voting power of the stock of a related person, more than 50 percent of the total value of the securities (as defined in section 3(20) of this Act) of the related person, more than 50 percent of the total value of the assets of the related person, or any person into which such related person shall be merged or consolidated; and

"(V) 'individual' means a living human being;".

Mr. GARN. Mr. President, I am offering this amendment for Senator DANFORTH on behalf of himself, Senator BOND, and Senator KENNEDY. The amendment has been cleared by myself and the chairman of the Banking Committee.

The amendment is narrow and straightforward, and provides that Carl Icahn, through control of TWA, should

not be permitted to insulate himself by means of a slick legal maneuver and leave the Federal taxpayer responsible for picking up the tab.

The amendment has been cleared on each side. I ask that we approve it.

Mr. DANFORTH. Mr. President, Carl Icahn, the owner of Trans World Airlines, is presently negotiating with the creditors of the carrier in an attempt to put together a prepackaged plan before filing for reorganization under chapter 11 of the Federal bankruptcy laws.

A very troubling prospect has arisen during the course of these negotiations. It is troubling for the employees of TWA; it is troubling for the Federal taxpayer. According to the Pension Benefit Guarantee Corporation, TWA has substantial unfunded pension liabilities. Estimates range from $150 to $900 million. Because Carl Icahn today holds more than 80 percent of the common stock of TWA, the law deems him to be in control of TWA, and holds the other businesses he controls in common with TWA liable for the pension obligations. As part of this prepackaged plan, Mr. Icahn is proposing to decrease his ownership of TWA below 80 percent, but to retain control of the TWA board and TWA management. The effect of this proposal, if successful, will be to insulate Mr. Icahn's financial empire from liability for the unfunded pension obligations. Ultimately, the Federal taxpayer could end up holding the bag.

This amendment is narrow, simple, and straightforward. Narrow in that it applies only to this one unconscionable proposal. Simple in that it says if Mr. Icahn controls TWA, either through ownership of the airline or by directing its management, he is liable for the pension obligations. Straightforward in that it provides the PBGC with the type of protection any private guarantor would require in a similar situation.

In this bill, the Federal taxpayer is providing over $70 billion in guarantees for recapitalization of the bank insurance fund. Should Carl Icahn be allowed to stick the Federal taxpayer for perhaps close to another $1 billion in liability? The answer is "no." The Federal taxpayer should not have to assume liability for TWA's unfunded pension obligations so long as Mr. Icahn has assets available and either owns the carrier or controls its destiny.

In summary, Mr. President, the issue presented by this amendment is simply this:

Do you believe that Carl Icahn should be able to take a business he now owns, continue to run it, but through a slick legal maneuver, insulate his financial empire from liability for perhaps close to $1 billion in unfunded pension obligations, and turn over this liability, ultimately, to the Federal taxpayer?

If not, then support this amendment.

Mr. KENNEDY. Mr. President, I commend Senator DANFORTH for his leadership on this issue and his tireless efforts to protect TWA's employees and retirees against the attempt by Carl Icahn to dismantle TWA.

Most recently, we have seen reports of Mr. Icahn's negotiations with creditors to put together a prepackaged bankruptcy reorganization plan as a preliminary to filing for reorganization under chapter 11 of the bankruptcy laws.

Under this plan, Mr. Icahn would reduce his actual stock ownership in TWA to below 80 percent, but would retain control of 6 of the 11 seats on the board of directors and the management of the company.

By reducing his stock ownership below 80 percent, Icahn and the other businesses he controls would effectively shed their current liabilities under TWA's pension plans.

Estimates of the current unfunded liabilities of the TWA pension funds range from $150 to $900 million. If Mr. Icahn is allowed to rid himself of these pension obligations in this way, there is a good chance that these pension liabilities will end up being dumped on the PBGC, and perhaps ultimately on the taxpayer.

Mr. Icahn should not be allowed to insulate his financial empire from these unfunded liabilities through clever manipulation of the bankruptcy laws.

We have seen this kind of thing happen all too often in recent years in the airline industry, both with Mr. Icahn and with Frank Lorenzo and Continental and Eastern Airlines.

This is a simple amendment to ERISA that will make clear that if Mr. Icahn retains control over the direction and management of TWA, then he and his other businesses will also retain responsibility for TWA's pension obligations.

The amendment is narrowly drafted in that it applies only to TWA, and is aimed only at preventing Mr. Icahn from getting away with this unfair legal maneuver.

Again, I commend Senator DANFORTH for his work on this amendment and I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. Mr. President, I reviewed the amendment and checked it with other Members concerned with this issue on other committees, and I am prepared to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment

The amendment (No. 1376) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

AMENDMENT NO. 1377

(Purpose: To make certain technical and conforming changes in the bill, and for other purposes).

Mr. RIEGLE. Mr. President, we have worked at some length to develop a managers' amendment that has resolved a number of issues that were in contention by various Senators.

I now send that manager's amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for himself and Mr. GARN, proposes an amendment numbered 1377.

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

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

(The text of the amendment (No. 1377) is printed in today's RECORD under "Amendments Submitted.")

EXPLANATION OF MANAGERS' AMENDMENTS, S. 543

Mr. RIEGLE. Mr. President, I rise to offer for myself and the distinguished Senator from Utah a set of amendments to S. 543. For the convenience of my colleagues, I will briefly summarize the key points of these amendments.

The amendments require that Bank Insurance Fund borrowing from the Federal Financing Bank be repaid by the sale of assets of failed institutions.

The limit on the FDIC's outstanding obligations is amended to distinguish between contingent and noncontingent liabilities. The FDIC must include the expected cost of any contingent liability.

The provision governing the deadline for FDIC to notify an institution of the amount of its semiannual assessment are modified to eliminate any rigid deadline.

Risk-based capital standards are required to reflect the actual performance and expected risk of loss of multifamily mortgages in addition to the factors already required to be reflected.

The bill's use of the defined terms "Federal banking agency" and "appropriate Federal banking agency" is made consistent.

There is a clarification that the Federal banking agencies' authority over accounting principles for FDIC insured depository institutions does not affect

the Securities and Exchange Commission's authority over accounting and financial disclosure under the Federal securities laws.

Regulators are provided additional flexibility for dealing with critically undercapitalized institutions. Savings associations with capital plans approved under FIRREA are exempted from the bill's provison requiring appointment of a conservator or receiver for critically undercapitalized institutions.

The Federal banking agencies are given expanded authority to require significantly undercapitalized institutions to merge with healthy institutions. This will facilitate efforts to resolve troubled institutions before they fail.

The amendments clarify the application of passthrough deposit insurance to retirement plans for employees of State and local governments and nonprofit organizations.

Provisions are added to codify the existing community development authority of national banks and to broaden the bill's language permitting safe-and-sound community development investments by State banks.

The amendments provide an exception to equity-investment restrictions for bankers' banks.

A provision is added to preserve the Federal Reserve's existing authority to permit investment in high-quality debt securities by U.S. depository institutions operating abroad.

The amendments require that executive officers and directors of depository institutions report annually to the board of directors on extensions of credit to officers and directors secured by the institution's shares.

In determining how to satisfy the FDIC's obligation to depositors at the least cost to the insurance funds, the FDIC is required to consider lost Federal tax revenues.

To prevent regulators from being bogged down in litigation over the FDIC's determination under the least-cost resolution requirement, these determinations will not be subject to stays or injunctions.

The amendments provide a presumptive safe harbor from cross-guarantee liability for a subsidiary of an insured depository institution in which the institution and its affiliates do not, in the aggregate, possess a plurality of the ownership interest or voting shares.

Section 224 on granting FDIC insurance to banks is rewritten for clarity.

Provisions requiring disclosure by institutions lacking Federal deposit insurance are revised to phase in more gradually, and responsibily for enforcement of the disclosure requirement is shifted from the FDIC to the Federal Trade Commission. Private deposit insurers are required to submit an annual independent audit beginning 120 days after enactment of the act and to submit business plans detailing their viability within 240 days after enactment.

Interstate branching solely to engage in deposit production is prohibited.

The Justice Department is required to report on bank holding company applications for interstate branching that raise significant competitive issues.

The Savings and Loan Holding Company Act is amended to incorporate BCCI-related changes parallel to those in the Bank Holding Company Act.

The amendment requires that a thrift institution be adequately capitalized in order to use the bills' streamlined thrift-to-bank conversion procedures. Those procedures may be used to convert to a savings bank charter under certain circumstances.

State officials are allowed to serve on the proposed Presidential Insurance Commission.

The provisions of the bill requiring disclosure of coverage by the Securities Investor Protection Act have been modified slightly.

The amendment adds protections for whistleblowers who expose wrong-doing by depository institutions.

Changes are made to ensure that the bill will not affect the application of the Internal Revenue Code to bank holding companies.

The Federal Reserve Board is given authority to grant immunity from prosecution, with approval of the relevant U.S. attorney.

Regulators are required to develop regulations regarding excess compensation of bank and thrift officials.

Federal agencies are required to report information they develop that would significantly affect the safety and soundness of an insured depository institution.

The amendment also revises the provision extending the securities-fraud statute of limitations. Under the amendment, the statute of limitations that existed before the Supreme Court's Lampf decision will continue to apply in cases that were pending at that time. Cases that have been dismissed as a result of Lampf but were timely filed prior to the Courts' decision may be refiled. Cases that have not yet been dismissed may be retained.

There is a sense-of-the-Senate resolution expressing concern about the availability of credit.

Technical corrections are made to the Federal Deposit Insurance Act.

Finally, various minor drafting changes are made to delete redundant language and promote clarity and consistency.

The amendment lengthens the phase in period for certain appraisal requirements enacted in 1989, broadens regulators' authority to make exceptions to those appraisal requirements, and establishes de minimis levels for those requirements.

Amendments were also made to title X, lender liability.

The manager's amendment also contains three coin provisions that have the required number of cosponsors.

Let me yield to the ranking minority member.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, the vast majority of this particular amendment is technical and a measure that we have been trying to work out over several days and hours. I would want people to be aware of that.

However, the amendment as to underwriters liability is involved in this. The current occupant of the chair and I spent several months coming to agreement. I think it is a good compromise.

I thank the occupant of the chair, the Senator from New Jersey, in that particular matter.

STOP EXCESSIVE COMPENSATION AT FEDERALLY-INSURED BANKS AND S&L'S

Mr. Levin. Mr. President, I would like to thank the managers, Senator RIEGLE and Senator GARN, for including in their package my amendment to require Federal regulators to stamp out compensation abuses by bank and S&L insiders.

My amendment is the result of a year-long investigation by the Subcommittee on Oversight of Government Management, which I chair. This investigation found host of compensation abuses in which federally insured bank and S&L funds were used for sailboats, vacation homes, butlers, multimillion-dollar golden parachutes, and other types of excessive compensation, which drained healthy institutions of needed assets and helped drive ailing institutions into Federal takeovers. The worst cases by far occurred at S&L's in the 1980's—I will describe some examples in a minute—but the investigation also uncovered evidence that banks are not immune to this practice and that it has not disappeared in the financial institutions of the 1990's.

My amendment, which is not part of the managers' package, would create the first Federal statute that specifically require Federal bank and S&L regulators to address the problem of compensation abuse by insiders. In essence, it would require them to prohibit as an unsafe and unsound practice any compensatory arrangement which is excessive or could lead to material financial loss to a federally insured bank or S&L. Regulators who battle inappropriate compensation at federally insured institutions now must do so on the basis of inconsistent regulations and without the benefit of an explicit Federal statute.

That ought to change. Here is what the Office of Thrift Supervision says about my amendment:

The experience of the Federal banking agencies is that [compensation] abuses of

this nature exist and, in many instances, such agencies have not always had the proper tools in which to address these abuses—this provisions would provide specific statutory authority to address such abuses. The proposed language sets forth clear and concise guidelines for the Federal banking agencies to follow, but does not handcuff the agencies with respect to the manner in which the statutory requirements may be implemented * * *.

My amendment would strengthen the regulations in this area and give regulators the tools they need to enforce them. As one regulator told my staff, a statute on insider abuse would raise this oversight issue to a whole different plane in his agency and, by providing clear statutory support, would strengthen the hand of regulators confronting these abuses. It would also send an unequivocal message to the financial community that inappropriate compensation threatening the safety and soundness of federally insured institutions must stop.

Finally, my amendment would also complement S. 543's provisions on insider loans by addressing this second type of insider abuse which can present equally significant threats to the safety and soundness of federally insured financial institutions.

To demonstrate the need for my amendment, we can look at the lessens of the recent past. Since there has already been extensive coverage of the S&L scandal, I will describe just two examples of compensation abuse by S&L insiders.

The first involves Centrust Bank, a federally insured S&L in Florida. In 1988, the chief executive officer received $550,000 in salary, a bonus of $300,000, and $2.76 million in Centrust stock dividends, despite the fact that the S&L was losing money. In 1989, he received $700,000 in salary and a $445,000 bonus, despite continuing losses. In 1990, he received $950,000 in salary and a $310,000 bonus despite another year of losses. That is a total of $6 million in 3 years in which the S&L never showed a profit. Just the opposite. Centrust lost money so fact that, in 1990, the Federal Government had to seize it and assume its debts.

After the takeover, Federal regulators found not only the exhorbitant cash compensation I have described, but a host of other insider abuses. They include a $6 million term life insurance policy payable to the CEO's spouse, for which the S&L paid a $258,000 annual premium; $400,000 spent by the S&L on a security system and guards for the CEO's home; a monthly allowance of $550 for the CEO's car; $75,000 spent on personal items in the CEO's home such as a refrigerator and 6 video cameras; $45,000 spent on hotel bills for the CEO during a trip to New York City; $233,000 to purchase a sailboat; and $1 million to maintain a jet and hangar. The list goes on, and it is incredible.

The second example involves Columbia Savings and Loan in Beverly Hills, CA. That S&L was primarily owned by the members of one family. In 1989, a year in which Columbia lost money, it paid its CEO, a family member, a bonus of $3 million. A few years earlier, in 1985, it had paid the same CEO $9 million, including a lump-sum retirement benefit of $5 million. Also in 1985, it paid the chairman of the board, the CEO's father, $560,000. Back then, director fees averaged in the mid-$20,000's.

Columbia also provided its CEO with a wild array of lavish perks, including use of condominiums in popular resorts, yachts and corporate jets. It employed an English butler and martial arts instructor. It provided the CEO with $463,000 in personal expenses, including a $2,000 wine-tasting course, $7,000 in Michael Jackson concert tickets, and the purchase of 55 guns including Uzi submachine guns. All at a federally insured financial institution which, by the way, collapsed this year and may cost Federal taxpayers as much as $1 billion.

Compensation abuses at other S&L's are also well known, detailed in indictments and civil suits involving such well known institutions as the Lincoln, Lamar, Vernon and Sunbelt S&Ls. In each of these cases, Federal regulators have sued for the return of excess compensation or assisted in criminal prosecutions of the individuals who ran these S&L's into the ground and looted the assets. Unfortunately, these actions are taking place after the S&L insiders enriched themselves and left the American taxpayer holding the bag.

One might suppose, after the widespread media coverage of the S&L scandal, the multibillion-dollar bailout, and taxpayer outcry, that compensation abuses by insiders would have ended. Unfortunately, you would be wrong. For example, in 1990, the press reported that the president of an S&L in Virginia received $825,000 after resigning, despite the fact that the S&L was losing money. In 1991, the Federal Government took control of this S&L.

While bank regulators have not uncovered problems of the same magnitude as in the S&L industry, the signs are there too. Here are a few recent examples.

According to press reports, in February 1990, the chairman of Washington Bancorporation resigned from that bank and received nearly $2 million in pay for 1990, though he worked less than 2 months in that year. Six months later, the bank collapsed.

Also in 1990, Riggs National Bank paid its CEO $1.4 million in salary, despite the fact that, in 1990, the bank lost $56 million, twice reduced its stockholder dividends and experienced a 59-percent drop in its stock price. Due to his poor performance, this CEO was rated by Barron's as the most overpaid bank CEO last year.

Just a few weeks ago, the press reported that the chairman of C&S-Sovran Corp. will get up to $6 million in severance pay if his job is terminated in the next 2 years. That arrangement is part of an executive pay package for eight individuals at the bank, who have been promised severance pay totalling $24 million. Press reports also indicate that the bank may have reached this agreement knowing that it would soon be taken over by another bank, NCNB, which is planning to eliminate 9,000 of the 60,000 jobs between them. That means that this multimillion-dollar payoff is highly likely.

That is not all. Each year, financial publications publish a list of the most highly paid bank executives in the United States, keeping statistics on what they call the millionaires club—those bank executives earning $1 million or more in a single year. In the last decade, the growth in this club's membership has been huge. From 1981, where there were 0 members, to 1982, with just 1 member; to 31 members in 1990.

It is striking to me that large numbers of bank millionaires are occurring in years with record numbers of bank failures. It is also worth noting that the first $2 million-dollar salary was recorded in 1989. In 1990, the highest paid bank executive obtained $2.5 million. And these figures do not include stock options, which can add millions more.

Despite this record, there is currently no Federal statute which directs Federal regulators to stop compensation abuse by insiders at banks and S&Ls. Existing regulations and examination requirements in this area are incomplete and inconsistent. Actions by regulators are often after-the-fact and ineffectual. That is why this legislation is needed.

My amendment would require each appropriate Federal banking agency to prescribe standards prohibiting as an unsafe and unsound practice compensatory arrangements which are excessive or could lead to a material financial loss to a federally insured institution. By using the phrase, "unsafe or unsound practice," section (c)(1) of the amendment would provide Federal regulators with clear authority to use all existing enforcement tools to stop compensation abuse. If, for example, regulators determined that a bank is providing executives with excessive pay, they would be able to use all regulatory means, including cease and desist orders, to require the bank to recover the excess pay, nullify unreasonable employment agreements, or take other appropriate action to end the abuse.

Section (c)(1) would apply to all types of compensation, including any employment contract, compensation or benefit agreement, fee arrangement, prerequisite, stock option plan,

postemployment benefit, or other compensatory arrangement. This language would cover, for example, all types of cash payments, including executive pay and bonuses, director fees, consulting fees, automobile allowances, reimbursement of travel expenses, membership dues, severance payments and retirement pay. It would also cover all types of noncash compensation, including arrangements which provide an individual with, for example, stock options, stock, property, artwork, security services, use of automobiles, use of real estate, use of aircraft, life insurance, medical insurance, health care, financial counseling or other perks. In short, the amendment is intended to apply broadly to all types of compensatory schemes.

The amendment would also apply to any executive officer, employee, director, or principal shareholder of a federally insured institution. This broad language is necessitated by the history of compensation abuse in the 1980's. There have been situations, for example, in which an S&L placed a key stockholder on its board and paid him huge director fees, and others in which a bank paid a principal stockholder enormous fees as a consultant. In another case, an S&L CEO put relatives and friends on the S&L payroll as employees, paying them huge salaries for little work.

The amendment would require Federal regulators to prohibit compensation which is excessive or could lead to material financial loss to a federally insured institution. This language is drawn in part from existing regulations and examination manuals, including 12 C.F.R. 563.39, 47 and 161(b), and the 1978 Office of Comptroller of the Currency Banking Circular No. 115. It provides two different tests for regulators evaluating compensation schemes. The first focuses on the nature of the compensation being provided, while the second focuses on the potential cost to the institution.

Section (c)(2) of the amendment addresses the issue of "when compensation, fees or benefits are excessive." Regulators currently use various regulations and examination requirements to make that determination. This section of the amendment requires them to issue standards to guide their efforts. It is my hope, by the way, that in issuing these standards, all of the agencies would work together to produce a single set of rules that all of their examiners, supervisors and regulators could follow.

Section (c)(2) is intended, not only to encourage consistency among Federal regulators, but also to require a tougher test which includes consideration of a range of factors. This expanded test is needed because, currently, some examination manuals indicate that regulators evaluating compensation should concentrate on comparing compensation at similar institutions. This comparison can be misleading, however, since comparable institutions may also be paying excessive compensation, and a rachet effect could be used to justify increases in everyone's salary. That is partly what happened in the S&L scandal.

Section (c)(2) requires regulators to determine whether the compensation being provided is unreasonable or disproportionate to the services actually performed by the individual. This language tells the regulators that they should put the focus first on what the individual is doing for the institution, rather than on what compensation levels his or her peers may be receiving. The provision also requires the regulators to consider a range of factors in evaluating whether the individual's compensation, fees and benefits are excessive.

For example, section (c)(2)(A) requires consideration of the total cash and noncash benefits being provided to the individual, so that regulators will consider the total situation, including the value of noncash benefits such as arrangements providing stock options, use of a residence or plane, personal property or other perks.

Section (c)(2)(B) requires regulators to consider the compensation history of the individual and other, similarly situated individuals at the institution. In one S&L, for example, the CEO doubled his pay each year for 5 years, a rate of increase which is clearly excessive. Another example would be a CEO who received a salary significantly greater than his or her predecessor, with no apparent reason for the pay discrepancy.

Section (c)(2)(C) requires consideration of the institution's financial condition. Salaries which might be reasonable at a profitable bank may be excessive at a bank losing money. Huge salary increases or severance payments at unprofitable institutions also raise red flags. On the other hand, the mere fact that an institution is profitable is not in and of itself justification for any compensation level, no matter how high. The S&L scandal is replete with cases where insiders wasted or looted a profitable S&L's assets and, in so doing, undermined its safety and soundness.

Section (c)(2)(D) requires regulators to consider comparable practices at comparable institutions, since peer institutions can provide a useful benchmark. At the same time, the point of section (c)(2) is to emphasize that this is only one element of many to consider.

Section (c)(2)(E) requires regulators to consider, for postemployment benefits, their total cost and benefit to the institution. Postemployment benefits include both cash and noncash benefits available upon termination of employment. They include severance pay, retirement income, medical and life insurance, and unusual arrangements such as charitable contributions and use of residences, aircraft and office space. Some of these benefits are provided as an inducement to employment, others are unexpected windfalls with no apparent benefit to the institution. For example, an unexpected million-dollar payment to a departing CEO would impose a significant cost with no apparent benefit to an institution, since the CEO is leaving and never expected that payment. If you think this example is far-fetched, the $24 million severance package for 8 C&S-Sovran executives and the $27 million payoff to Fannie Mae's departing CEO ought to demonstrate that it is all too possible. Even benefits offered to attract or retain a valuable employee may have to be curbed if they entail huge costs.

Section (c)(2)(F) requires regulators to consider any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with which the individual receiving the compensation may be involved. This language, drawn from golden parachute provisions in 12 U.S.C. 1828(k), requires regulators to consider whether the individual in question was involved in any wrongdoing affecting the institution, including any insider abuse.

Section (c)(2)(G) enables regulators to consider any other relevant factor as well. One example that comes to mind is whether the individual was involved in wrongdoing elsewhere. Because compensation and circumstances can vary significantly from institution to institution, regulators must be free to consider a wide range of factors. The point of section (c)(2)'s expanded test is to enable regulators to determine that compensation is excessive, even when peers are paying similar amounts, if such factors as disproportionate increases, unprofitability, wrongdoing, or other relevant factors are present.

In addition to prohibiting excessive compensation, section (c)(1) would prohibit compensation which could lead to material financial loss to a federally insured institution. The point here is to stop compensatory arrangements with the potential for requiring a bank or S&L to make substantial payouts or to dissipate its profits or capital. The word, "material," is used, not to require a showing of significant injury to the institution, but to exclude consideration of arrangements with a trivial impact. Examples of compensatory arrangements which could meet this test include agreements to provide unlimited lifetime medical care of executive officers and their families; multimillion-dollar golden parachutes; and unlimited indemnification agreements.

Finally, section (c)(3) of the amendment would authorize Federal regulators to address any other aspect of compensation abuse at federally-insured institutions.

Congress needs to send a strong, clear message to its regulators that the American people are fed up with insider abuse at federally insured banks and S&L's. While S. 543's provisions on insider loans address one aspect of this problem, they do not go far enough. Compensation abuses are part and parcel of the S&L scandal, and are beginning to show up in banks as well. Congress ought to act now to direct Federal regulators to redouble their efforts to stop this unsafe and unsound practice. My amendment does just that. Again, I thank my colleagues, Senator RIEGLE and Senator GARN, for supporting it.

BCCI-RELATED AMENDMENTS TO S. 543

Mr. BROWN. Mr. President, I rise today to bring to your attention three important amendments to S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, which will assist the proper Federal Government agencies to conduct more comprehensive and timely investigations into questionable banking activities. I am proud to have as a cosponsor Senator JOHN KERRY of Massachusetts, whose hard work during our investigation of the Bank of Credit and Commerce International, or BCCI, helped bring the deficiencies in current banking law these amendments correct to light.

These three amendments are the first changes in Federal law resulting from the BCCI investigation. They will strengthen the ability of Federal regulatory agencies to enforce our Nation's banking laws, bolstering existing law to prevent loopholes exploited by BCCI.

I am pleased to note both sides have cleared the three amendments and they are included in the managers' amendment.

The first amendment will help prevent sweetheart deals and the secret takeover of banks by undisclosed third parties. It requires that directors and officers of federally insured institutions, bank holding companies, and savings and loan holding companies annually report to their board of directors the outstanding amount of any loan made to them which is secured by their stock in the institution or holding company. It is important to note that this amendment applies only to institutions and holding companies whose stock is not publicly traded. It does not apply to companies whose stock is publicly traded.

The purpose of this amendment is to ensure that boards of directors are aware that directors or officers have pledged shares of that institution or holding company to secure credit. The amendment does not prohibit any director or officer from pledging shares that the director or officer may own; rather, it simply ensures such an action is reported.

The information provided formally to the board of directors must then be maintained in the bank or holding company's official records. The Federal Reserve and other bank regulators would then have access to the information during annual audits, and, thus, be better able to track who actually controls U.S. banking institutions. We have attempted here to increase the accountability of our banking system without requiring a significant new load of paperwork on bank officers, directors or regulatory agencies. This amendment does just that.

During hearings concerning BCCI's illegal ownership of First American National Bank, BCCI achieved effective ownership of First American National Bank by financing front men. Mr. Clifford and Mr. Altman received 100-percent offshore, nonrecourse loans from BCCI. The stock was pledged as collateral and helped ensure BCCI de facto control of the parent holding company. Adequate disclosure of this transparent financial arrangement would have alerted the Federal Reserve to BCCI's control of First American.

This amendment helps ensure the loophole exploited by Clifford and Altman is closed.

The second amendment would require U.S. agencies to promptly pass any information affecting the safety and soundness of the U.S. banking system to the proper Federal banking agencies. During the investigation of BCCI, critical information held by the CIA was not passed on to the Federal Reserve, which was the agency with regulatory authority over the banks involved. This delayed the Federal Reserve's in-depth investigation of BCCI's hidden ownership of U.S. banks by as much as 5 years.

The amendment will ensure that information concerning the safety and soundness of the U.S. banking system is not caught within a Balkanized bureaucracy, where important information is not shared properly. At the same time, the amendment has been drafted to address specific concerns of the Department of Justice that the disclosure of information not jeopardize criminal prosecutions or the safety of investigators, or create problems with respect to grand jury investigations. We also have ensured that sensitive intelligence information is handled in a fashion that ensures its protection.

The third amendment provides the Federal Reserve the authority to grant the power of immunity to witnesses who assist in developing information critical to its investigations. In providing the Federal Reserve the power to grant immunity to witnesses we are simply granting the Federal Reserve the same power that the Securities and Exchange Commission [SEC], the Federal Deposit Insurance Corporation [FDIC] and other agencies currently exercise. This power gives the Federal Reserve an increased ability to conduct investigations of greater magnitude and scope.

If the Federal Reserve had had the power to grant immunity during the 1980's, many experts believe its investigation of BCCI might have uncovered evidence of the bank's illegal ownership of First American when allegations first began to surface in the early eighties. Instead, the Federal Reserve was forced to wait for years—into the late eighties—until other Federal agencies were able to collect the necessary information and then decide to share it with the Fed's investigators.

These three amendments provide the Federal Government the ability to access information necessary to uncover questionable banking activities that might affect the safety and soundness of U.S. financial institutions earlier—long before depositors become victims or taxpayers must bail out the institution.

Mr. President, I thank the Chair and ask unanimous consent that the amendments be printed in full in the RECORD following my statement.

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

On page 272, between lines 5 and 6, insert the following:

"(11) REPORTING OF CREDIT BY EXECUTIVE OFFICERS AND DIRECTORS.—An executive officer or director of an insured depository institution, a bank holding company, or a savings and loan holding company, the shares of which are not publicly traded, shall report annually to the board of directors of the institution or holding company the outstanding amount of any credit that was extended to such executive officer or director and that is secured by shares of the institution or holding company.".

At the appropriate place in title XI, insert the following:

SEC. 11 . REPORTS OF INFORMATION REGARDING SAFETY AND SOUNDNESS OF DEPOSITORY INSTITUTIONS.

(a) REPORTS TO APPROPRIATE FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall report to the appropriate Federal banking agency any information regarding any matter that could have a significant effect on the safety or soundness of any depository institution doing business in the United States.

(2) EXCEPTIONS.—

(A) INTELLIGENCE INFORMATION.—

(i) IN GENERAL.—The Director of Central Intelligence shall report to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consulting with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury shall report the intelligence information to the appropriate Federal banking agency.

(ii) PROCEDURES FOR RECEIPT OF INTELLIGENCE INFORMATION.—Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for the receipt of intelligence information that are adequate to protect the intelligence information.

(B) CRIMINAL INVESTIGATIONS; SAFETY OF GOVERNMENT INVESTIGATORS.—If the Attor-

ney General or his designee determines that the reporting of a particular item of information pursuant to paragraph (1) might jeopardize a pending criminal investigation or the safety of Government investigators, the Attorney General shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation or the safety of the investigators; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) GRAND JURY INVESTIGATIONS; CRIMINAL PROCEDURE.—Paragraph (1) shall not—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) PROCEDURES FOR RECEIPT OF REPORTS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, each appropriate Federal banking agency shall establish procedures for receipt of a report by an agency or instrumentality made in accordance with subsection (a)(1). The procedures established in accordance with this subsection shall ensure adequate protection of information contained in a report, including access control and information accountability.

(2) PROCEDURES RELATED TO EACH REPORT.—Upon receipt of a report in accordance with subsection (a)(1), the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that furnished the report regarding the adequacy of the procedures established pursuant to paragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information contained in the report.

(c) DEFINITION.—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—As used in this section, the term "appropriate Federal banking agency" has the meaning given to the term in section 3 of the Federal Deposit Insurance Act.

(2) DEPOSITORY INSTITUTION.—As used in this section, the term "depository institution" has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.

At the appropriate place in title XI, insert the following:

SEC. 11 . POWERS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

Section 6001 of title 18, United States Code, is amended in paragraph (1) by inserting "the Board of Governors of the Federal Reserve System," after "the Atomic Energy Commission,".

REAL ESTATE APPRAISAL REFORM

Mr. DOMENICI. Mr. President, I am offering an amendment here today to change the real estate appraisal process to help reduce regulator burdens on real estate lending and stimulate real estate markets.

I am proud to announce that this amendment has bipartisan support and cosponsors by Senators BINGAMAN, BOREN, MURKOWSKI, MCCAIN, SEYMOUR, and CHAFEE.

This amendment also has the support of the Bankers Association, the National Association of Realtors, the Homebuilders, the U.S. Savings League, the National Association of Community Bankers.

This amendment is also supported by the Treasury, Federal Reserve, and other Federal agencies such as the Bureau of Land Management.

RELIEF TO THE CREDIT CRUNCH

During the last year there has been considerable discussion about the credit crunch and its impact on the economy. By credit crunch, I mean loans that could be reasonably and responsibly made, are not available.

The credit crunch is not simply a matter of weak demand for loans; but has a supply side component being driven by banks not making loans they could safely make. While the cause of the credit crunch cannot be pinpointed to one problem, part of the problem is a new phenomena created in FIRREA called the appraiser crunch.

While no one questions the need to have qualified and well-trained real estate appraisers, the requirements in FIRREA have resulted in an appraiser shortage that distorts real estate markets, prevents bank lending, delays the completion of real estate transactions, slows economic recovery, and accelerates the credit crunch.

While components of this amendment can be changed by bank regulators, the need for this amendment today is evident. This amendment will provide immediate economic relief to help stimulate the economy and real estate markets. While no one wants to return to the dangerous regulatory laxity that marked the savings and loan crisis, the economy cannot wait.

APPRAISER SHORTAGE: WAIVER PROCEDURE

In many States the new licensing and certifying requirements have caused a shortage in appraisers. This has resulted in higher fees to borrowers and created delays in completing transactions.

This amendment will require that the Real Estate Appraisal Subcommittee create an operational waiver system. A waiver will give an entity an option to use an appraiser that is not licensed or certified by the State.

I do not question the need to have well-trained and qualified appraisers and eventually we will have qualified appraisers nationwide. However, these requirements are not ready to be implemented nationwide and they need to be relaxed to relieve the real estate credit crisis.

I want to emphasize that I do not want to permanently weaken these standards, because I think they are addressing an important concern. However, a realistic transition period needs to be phased-in more slowly than anticipated in FIRREA.

The immediate shortage of appraisers is having two devastating effects on the real estate industry.

First, it has already resulted in an appraiser crunch, which in turn, has escalated appraisal fees between 50 and 300 percent, which will obviously increase closing costs and could prevent or delay many home buyers—in particular, first-time home buyers—from purchasing a home.

Second, delays in obtaining an appraisal could stall the recovery of real estate values across the country.

The appraiser shortage is adding unnecessary delays in completing real estate transactions. At the beginning of 1991, turnaround times for obtaining appraisals was in the range of 3 to 6 months. Today turnaround times are in the range of 6 to 9 months.

The shortage results in higher borrowing costs to consumers from higher appraiser fees. In New Mexico, appraisal fees can add up to $400 for home mortgages and $10,000 for commercial real estate transactions. In New Mexico, the shortage has resulted in appraisal fees increasing by about 25 percent.

TWO-TIER THRESHOLD: $100,000 RESIDENTIAL/ $200,000 COMMERCIAL

Currently the Real Estate Appraisal Subcommittee and the banking regulatory agencies establish a de minimis level of loan amounts that would need to be appraised. These regulations make no distinction between residential and commercial real estate, and require all real estate loans made by federally insured banks above $50,000 be evaluated by a State licensed or certified appraiser.

This amendment increases the $50,000 de minimis floor to $100,000 for residential and $250,000 for commercial real estate.

The present $50,000 level has created an administrative and costly burden disproportionate to the problem it was intended to address. Small loans were not part of the problem FIRREA was trying to capture in these appraisal requirements.

There are few commercial real estate loans made below $200,000. It has been demonstrated by the OCC and other regulators that establishing these higher thresholds would in no way jeopardize the safety and soundness of financial institutions. The two-tier approach allows scarce appraisal resources to be used more efficiently, while maintaining high appraiser standards.

Difficult appraisals are on large complicated real estate transactions, not small residential and commercial loans. Changing the de minimis standard will not effect the intent of FIRREA; however, it will help move real estate and ease the credit crunch.

The need to have well-qualified and well-trained appraisers is sound; however, substantial dollars and manpower resources are now being channeled unnecessarily into a category of loans where the fewest losses in the past have occurred.

EXTENDING THE EFFECTIVE DATE

FIRREA requires all States to establish real estate appraiser licensing and certification systems as of January 1, 1992, for all federally related transactions.

Many States need some breathing room in order to license and certify adequate numbers of appraisers. This amendment extends the effective date for 1 year, until January 1, 1993, when States must comply with the real estate appraisal standards.

While many States technically have a program in place, only a small percentage of appraisers are considered qualified to examine loans at federally insured institutions. According to November data of the Appraisal Institute, 17 States have not issued final rules and regulations, and 23 States have not even begun issuing licenses.

Even with extending the date to give States a chance to comply, banks still need to get appraisals, it just won't be required that the appraiser be State licensed.

In general, a person is considered a State licensed or certified appraiser if they have taken at least 75 hours of educational appraisal classes and obtained at least 2,000 hours of experience. In some States the classes and licensing procedures can cost up to $1,000.

While I do not question the need to have well-trained appraisers, it seems unrealistic to think that all appraisers would have paid the cost and taken the tests. No wonder there is a shortage.

Before FIRREA, New Mexico had about 500 people doing appraisals, now there are only 275 State licensed and certified appraisers.

HOME EQUITY LOAN EXEMPTION

This amendment requires the regulators to implement a de minimis level for home equity loans.

Currently borrowers have to pay and wait for another appraisal to get some home equity loans. If a borrower wants a home equity loan on a house that is worth $300,000 and the outstanding mortgage is more than $100,000, the borrower will have to pay and wait for another appraisal before a $20,000 home equity loan is approved.

A banker in New Mexico responded to the OCC comment period in which he states that:

> Loans to individuals for the purpose of purchasing a home, remodeling expenses, or other personal reason have not resulted in losses to our bank, of any size. These loans require less analysis and documentation. Lending officers are aware of market conditions in their lending area. They know the market value of residential real estate. Loans below $100,000 should not require the depth of documentation of loans above $100,000.

This is absurd. This keeps valuable resources out of the economy and slows economic recovery.

CONCLUSION

In conclusion, changes in the real estate appraisal requirements are essential because strong banks and financial services are a key to the economic health of our country. Strong banks will keep credit availability in good times and bad, fueling economic growth and new jobs.

Competitive, well capitalized banks are a sure way to avoid future credit crunches. If you want stronger banks, banks that will return to the business of lending money to sound customers for sound projects, I am pleased with the passage of this amendment.

THE APPRAISAL AMENDMENT TO S. 543

Mr. MURKOWSKI. Mr. President, I rise in support of the amendment from my friend from New Mexico providing some much needed relief to the stringent appraisal standards enacted into law in 1989. I am pleased to join my friend as an original cosponsor of this amendment.

Mr. President, I supported efforts in 1989 to adopt tougher appraisal standards as part of FIRREA. Appraisal requirements are an important component of safety and soundness regulation. Unfortunately, however, the 1989 requirements need fine tuning and that is what we are attempting to do today. Our objective in offering this amendment is to make the existing regulations workable without limiting available credit.

WHAT AMENDMENT DOES

Mr. President, the amendment before us contains three needed reforms. First, it would extend for one year the implementation date of the 1989 requirements. Many States, like my State of Alaska, have yet to establish adequate State certification and licensing programs necessary to allow appraisers to qualify to review loans under the new standards. This delay will allow States to meet this requirement in a responsible manner.

Second, the amendment would codify the $100,000 de minimis level for residential real estate loans and establish a $250,000 de minimis level for commercial real estate loans. Codification of these levels will provide guidance to Federal banking regulators and stability to the marketplace with regard to enforcement of the statutory de minimis levels.

Finally, the amendment would provide for a rural exemption from appraisal requirements in certain circumstances. This rural exemption is particularly important in my State of Alaska where vast distances and infrequent transportation can contribute to appraisal costs that far outweigh any potential benefit.

WHY AMENDMENT NECESSARY

Mr. President, the primary objective of the sponsors of this amendment is to remove a layer of regulation that contributes little or nothing to safety and soundness and places needless costs on our economy. The present shortage of qualified appraisers and high costs associated with the appraisal requirement are choking-off economic growth. Our amendment is designed to stimulate the economy and facilitate prudent real estate transactions.

IMPACT IN ALASKA

Mr. President, no State suffers more from high transaction costs than Alaska—great distances and sparse population make inflexible apparaisal requirements simply unrealistic. I have heard from many in Alaska on this subject. There is almost uniform agreement that inflexible appraisal requirements are preventing prudent lending. I ask unanimous consent to insert several of the letters and articles I have received from Arkansas on this subject into the RECORD.

Alaska is currently suffering the ill-effects of a credit crunch. Banks don't want to lend in Alaska because of the high costs involved. This amendment will help to remove some of the unnecessary obstacles to lending and economic growth that presently exist.

I ask my colleagues to support this amendment.

FIRST NATIONAL BANK
OF ANCHORAGE,
November 7, 1991.

FRANK: I am reminded of my annual $60,000 loan to Mike Hiemburch in * * *. Mike borrows secured by his $250,000 home. The new appraisal requirement adds $500 for an appraisal to the cost of borrowing money. America is no longer competitive with this excessive overhead. Our bank with 18% net worth to assets is unlikely to go broke just because it wants to spare the consumer and the businessman the additional cost and delay of unneeded, unwanted appraisals. This is a consumer issue. Lets help the consumer by allowing solid, stable banks to continue to provide free appraisal to their customers.

David Cuddy.

FIRST NATIONAL BANK
OF ANCHORAGE,
November 7, 1991.

Hon. FRANK MURKOWSKI,
U.S. Senate,
Washington, DC.

SENATOR MURKOWSKI: I am the Branch Manager of the Valdez Branch of First National Bank of Anchorage, I am writing you to express my concern regarding current legislation requiring banks to have an independent fee appraisal completed for any loan over $50,000.00 that is secured by real estate. The effect of this legislation is to raise the cost of credit to the borrower. In Valdez the cost of a loan in excess of $50,000.00 secured by residential real estate has been increased by $750.00 as a result of this legislation ($500.00 for appraisal and $250.00 for travel expenses.) A loan over $50,000.00 secured by commercial property has been increased from a low of $2,000.00 to $5,000.00 or more. As you can see these are significant increases to the cost of credit. The result of the increases has been a reduction in the extension of credit and therefore a decline in economic activity.

Valdez borrowers, when faced with the increased cost resulting from an appraisal, have on several occassions elected to reduce their request to avoid the requirement. On one occassion a commercial borrower seeking funds to expand his retail space postponed the project rather than pay $3,000.00

for a commercial appraisal. From a lenders perspective this is very frustrating. I know the value of real estate in Valdez. I am just as able to review comparable sales and analyse cashflow to arrive at value as an out of town fee appraiser. This, when combined with First National's conservative credit culture and strong capital position makes appraisal requirement a limiting and unnecessary expense to prospective borrowers. I urge you as a former banker to re-examine the existing legislation and support the elimination of the appraisal requirements.

Sincerely,

M.J. SHIRRELL,
Branch Manager, Valdez Branch.

FIRST NATIONAL BANK
OF ANCHORAGE,
November 7, 1991.

Re Fee appraisals.

DOUG LONGACRE,
Vice President, Branch Loan Administrator, Branch Lending Department.

DEAR DOUG: At this time we are required to have an appraisal done by a certified appraiser if the loan exceeds $50,000. Since this change came about we have been unable to service our customers in an expeditious manner. We have to contact an appraiser either the only one here in Bethel if he is in town or call Anchorage to find out when the appraiser is coming out.

It wouldn't be so bad if there were an abundance of appraisers that are available when you needed them. Even when they are available it takes a week or so to get the final appraisal. It happens with all applications that are over $50,000, there is no exception.

If there is anything that you can do to bring the process back to where it used to be I know that our customers will be much happier.

Sincerely,

ARVIN D. DULL,
Vice President.

FIRST NATIONAL BANK
OF ANCHORAGE,
November 6, 1991.

To: Doug Longacre, Vice-President, Branch Lending Administrator.

From: David Smith, Manager, Elmendorf Branch.

Re: Mandatory fee appraisals over $50,000.

DEAR DOUG: Although the Elmendorf Branch has not required a fee appraisal from loan customers, it is apparent through candid conversation and customer opinion that this would directly effect the applicants desire to finance property over $50,000 because of the additional appraisal charge. During a time of economic uncertainty, most potential customers I speak with do not feel comfortable spending any additional money on charges or fees that are not necessary.

I have several customers that inquired about large loans with substantial collateral, and could not understand why an appraisal was necessary. For example, ——— owns a home which assesses for $198,000 on the lower hillside. He currently has a 1st deed of trust on the property of $40,000. He was inquiring about a $60,000 second deed of trust loan for home improvements and some debt consolidation. Our position would conservatively be at a 50% LTV and yet he was still required to have a fee appraisal. He could not understand why this was the bank's policy. I informed him that the guidelines were set by the Federal Government. He voiced his concern on Government intervention and the long-term negative effects this will bring.

I concur with ———. I feel that the collateral position for the bank would have been very strong, yet I was still required to ask for the appraisal. I am afraid that now our Government has become deeply embedded in the banking industry and it will take many years to remove them.

If you wish to dicuss this or other concerns about fee appraisals please call me at #2112.

Sincerely,

DAVID SMITH,
Branch Manager.

FIRST NATIONAL BANK
OF ANCHORAGE,
November 7, 1991.

To: Doug Longacre, Vice President, Branch Lending.

From: Clyde Johnson, Manager, Seward Branch.

Doug: Here are three situations whereby our customers loan requests and/or plans were modified due to the requirement of a fee appraisal on real estate loans of $50,000 or more.

1. ——— requested a loan of $110,000 to payoff existing 1st deed of trust and conduct improvements to his fishing vessel. Due to an appraisal being required he was forced to hold up on his improvements during this wait. Previous business with this customer had established a value of $150,000 on the house.

2. ——— requested a loan of $63,000 to pay existing 1st deed of trust, suppliers, and a tax liability. Property had an assessed value of $129,900 at the time. Advised customer of required commercial fee appraisal would cost between $3,000–$5,000. Customer withdrew request and a subsequent loan of $27,000 was booked unsecured.

3. ——— Customers requested a loan of $55,000 to pay existing 1st deed of trust, repay his father and purchase a new vehicle. Advised customer that a fee appraisal would be required for loan of $50,000 or more. Customers reduced request and settled for less expensive vehicle for their family.

FIRST NATIONAL BANK
OF ANCHORAGE.
November 8, 1991.

To: Doug Longacre, Branch Lending.

From: Fred Braun, Juneau Branch.

Date: November 7, 1991.

Over the past year, the following loan applications were withdrawn by the applicants due to appraisal requirements:

1. ——— Request to borrow $100,000, first deed of trust on a 19-unit apartment building valued at $750,000.00.

2. ——— Request for $55,000 on a first deed of trust on a home valued at $110,000.00.

3. ——— $128,000 request on a first deed of trust on a commercial building valued at $450,000.00.

4. ——— $100,000 loan to be secured by a first deed of trust on a $400,000 building.

There are several other instances in loan requests received from towns outside of Juneau where no appraiser resides, which then became cost prohibitive when an appraiser charged not only for his appraisal but also for airfare and expenses. The loan requests did not exceed 65% of estimated valued.

NOVEMBER 7, 1991.

Hon. FRANK MURKOWSKI,
U.S. Senator for Alaska.

DEAR SENATOR MURKOWSKI. This letter is pursuant the current banking bill requiring banks to obtain a fee appraisal on all real estate transactions $50,000 and above. Two points come to mind when arguing against this. One, First National Bank has always been able to prepare in-house appraisals that routinely show more conservative values than does a fee appraisal. Was it not these fee appraisers who were successful in inflating real estate prices in Alaska during the early and mid 80's? I realize that the Savings and Loan debacle produced officers that also inflated real estate prices for personal gain, and I can understand Congress's concern over this issue. I do not, however, understand why banks with a lengthy history of conservatism and profitability should share this burden. The second point is that the costs for both residential and commercial appraisals are often prohibitive to the borrower. In some remote areas of the state appraisers need to be flown in, thus incurring more expenses to an already pricey appraisal. Telling a customer that a $3,000–$5,000 commercial appraisal will be needed on his $50,000 loan more often than not kills the application.

Some examples of disgruntled customers are as follows:

——— owners of ——— complained about this regulation, and held the cost of the fee appraisal is unnecessary and she didn't want to pay it.

——— wanted to purchase some land in Homer and found the cost of the appraisal was the difference between buying the property and not buying it.

——— complained about the high cost of a commercial appraisal when financing their mini-storage complex. They felt badly because the bank ends up using their own value instead of the appraised value, that is unless the appraisal comes in lower than the banks, in which case the bank will, of course, use the lower amount.

——— owner of ——— scratched her new building plans once she found out that the bank would require an appraisal that would cost her $?,000–$5,000.

In summation I would like to stress the points that I have made, and to let you know that this regulation is causing friction between this bank and its customers. A few bad examples should not debilitate the entire industry.

It is apparent that since the government is trying to stimulate the economy through interest rate reduction it should also make sure that regulations like this do not constrict this growth.

Thank you for your consideration,

Sincerely,

TODD K. GREIMANN,
Branch Manager,
First National Bank, Homer.

FIRST NATIONAL BANK OF ANCHORAGE,
November 7, 1991.

To: Doug Longacre, Vice President, Branch Administration, First National Bank of Anchorage.

Re: Required Fee Appraisal.

DEAR DOUG: I am writing to you in regards to the required fee appraisal on all loans over $50,000.00, listed below please find a few examples of cases where customerss changed their loan requests due to the extra money, time and aggravation of obtaining a fee appraisal as required by federal legislation.

1. ——— owns a commercial warehouse in the Peters Creek area. He recently requested funds from First National Bank of Anchorage for additional working capital in his business. Due to the expense and time involved in obtaining an appraisal he lowered his loan request to under the $50,000.

2. ——— requested $100,000 to complete tenant improvements to their $1,000,000. ** building. Even though this is a 10% loan to value we would be required to order an ap-

praisal at an approximate cost of $5–8,000. To avoid this ridiculous requirement and costs we booked this loan unsecured. If this legislation was designed to protect banks this is a perfect example of how this legislation will have an opposite effect.

3. —— lowered their loan request due to the time and aggravation involved in the appraisal process. They were completing their home and opted to settle for an unfinished down stairs to save the expense of the appraisal.

4. —— also lowered their request due to the expense of an appraisal. They have a home that would be conservatively valued at $130,000, and felt that paying for an appraisal to borrow 45% loan to value was insane.

Loan Amount $80,000.00.

We granted —— a $80,000 loan to construct and term finance a duplex located in King Cove, Alaska.

We made the construction loan prior to the appraisal requirement. Since we had made him a committment to provide him term financing we closed the loan without an outside independent appraisal. The estimated cost of getting an appraisal would be approximately $2,500 to $3,000. The appraiser would have had to be flown to King Cove from Anchorage because they have no resident appraiser.

Loan Amount $60,000.00.

$60,000 loan made in February, 1990 to construct a warehouse in King Salmon, Alaska.

We made —— the loan by using his equipment as the primary collateral rather then using his real estate which would have been the norm. We did so because the cost and time of having an appraisal completed in King Salmon was cost preventive. Our customer had to accept a shorter term loan using the equipment as collateral then we would of allowed on a loan secured by real estate.

David in the next few years I can see where we might have a problem dealing with real estate loans to fishermen in the smaller communities where the cost of acquiring the appraisal will be cost preventive.

FIRST NATIONAL BANK OF ANCHORAGE,
November 7, 1991.

Hon. FRANK MURKOWSKI,
U.S. Senate,
Washington, DC.

DEAR SIR: I am writing to express my displeasure with the current legislation requiring bank fee appraisals on real estate loans above $50,000.00.

I have recently been promoted to the Branch Manager of one of our Anchorage based lending branches. On two occasions I have had to inform my customers that even though their property had sufficient coverage, beyond any reasonable doubt, I would have to require a bank fee appraisal on their property in order to adhere to federal regulations. One specific client obtained a mortgage at one of the local credit unions and recently has asked us to re-write at a lower interest rate. His balance is approximately $56,000.00. His tax assessment on the property is $162,000.00. I informed him that we would require a bank fee appraisal. He stated that he would not pay the $500.00 to $600.00 because he felt the costs were so unjustified. The law in this case was detrimental to both the bank and the customer. He could not get his loan rate lowered from approximately 15% and we could not pick-up another good client. Because this particular customer is also a business owner of a printing shop, he wants to talk to us once again about the refinance and expansion plans, using his personal residence as collateral and once again I informed him of the appraisal requirements, and once again he has declined to make application with our institution. Because he feels the fee appraisal is unjustified he does not plan to expand his business and thus there goes three jobs that would help make our economy recover.

I realize that this may seem trivial to some, however it is very important to our business. We are not able to help some that will be able to generate tax dollars which will help not only our state, but also our nation. I feel the best answer is to raise the appraisal requirement to $100,000.00, especially in our compensating housing market.

We are very proud of the stability of our bank and what that stability means to our community. If we do not see some relief in this particular legislation, it could harm our ability to make some loans, which in turn will not allow us to reinvest adequately back into our local economy, thus harming the stability of our community.

I wish to thank you for allowing me to express my thoughts.

Sincerely,

DUANE S. KLEIN,
Branch Manager.

FIRST NATIONAL BANK OF ANCHORAGE,
November 7, 1991.

MEMORANDUM

To: Doug Longacre, Vice President, Branch Lending.

From: Jeff R. Belluomini, Vice President, Kenai Branch.

Re: Fee Appraisals.

Since the rules with regard to requiring fee appraisals when making advances in excess of 50,000.00 against real property have not changed, I thought I'd take a minute to provide you with some feedback as to how customers in general feel about this requirement. In addition, I'll cite a few specific instances in which low LTV loans were granted which really proved to be burdensome to the customer.

Generally speaking, in light of what has transpired in the banking industry nation wide the last few years, customers can appreciate the rationale for requiring a fee appraisal when there is some question as to whether there is sufficient value for the bank to maintain a 75 percent LTV ratio. However, when it is painfully obvious to the banker, as well as the customer, that the LTV ratio is lower than 75 percent, defending the fee appraisal requirement becomes difficult to do. What follows are five instances in which this proved to be the case.

1. Name: ——
Loan Amount: 61,000.00.
Value of Prop: 130,000.00.
LTV: 47 percent.

2. Name: ——
Loan Amount: 66,500.00.
Value of Prop: 104,000.00.
LTV: 64 percent.

3. Name: ——
Loan Amount: 154,000.00.
Value of Prop: 275,000.00.
LTV: 56 percent.

4. Name: ——
Loan Amount: 60,000.00.
Value of Prop: 90,000.00.
LTV: 67 percent.

5. Name: ——
Loan Amount: 107,200.00.
Value of Prop: 245,000.00.
LTV: 44 percent.

The foregoing examples represent instances in which the customer wanted the loan badly enough to pay for the appraisal; however, the bank, on occasion, looses business because a customer considers the requirement to be unreasonable.

I thought you should be aware of how the regulation is ultimately affecting the bank and our customers. I would welcome a modification to the existing legislation which would relax this requirement.

FIRST NATIONAL BANK OF ANCHORAGE,
November 7, 1991.

Hon. FRANK MURKOWSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR MURKOWSKI: I understand that you may soon be voting on important legislation governing the procedures banks must follow when lending on real estate. Apparently, consideration is being given to relaxing the requirement that banks obtain a fee appraisal on real estate for loans in excess of $50,000.00

I hope that you will be able to support an increase in this limitation from $50,000.00 to $100,000.00.

The current limitation that we are forced to honor causes our bank to have to pass on unfair and expensive appraisal costs to our borrowers. The typical fee appraisal in Anchorage cost between $450.00 to $550.00 per unit. Appraisals used to be priced much more reasonable but the appraisal community raised prices in response to the additional work they must perform to comply with appraisal guidelines established in Firrera.

In the last eight months there have been many occasions when I have been prohibited from lending on real estate without a fee appraisal because my loan has been slightly over $50,000.00. In these cases I have had a difficult time explaining to my customers why they have to pay for an appraisal on their homes even though they have twice the loan amount in equity. The most difficult part of this situation is the fact that in most cases I as the lending officer or loan committee will be more conservative than any appraiser that might complete a report.

To illustrate my point; is a loan for $100,000.00 on a $300,000.00 property appraised by a bank officer less of an investment than a $70,000.00 loan on a property appraised by a fee appraiser, for $100,000.00.

I believe there must be a more equitable method of protecting the banks interest and still minimizing the cost to the consumer. If the limit was raised to $100,000.00 for those financial institutions that maintained adequate reserves or capital I am confident the regulators concerns would be met. The other solution is to make the $100,000.00 limit be subject to a adequate loan to value ratio acceptable to everyone.

Either of these two solutions makes much better sense than to pass the responsibility to a third party who is not necessarily any better at identifying the value of real property. In the past this has lead to many institutions relying on the appraiser instead of their own intimate knowledge of the market.

Thank you for giving me the opportunity to provide another perspective on the issue at hand.

Sincerely,

RICHARD BRITTAIN,
Assistant Vice President.

FIRST NATIONAL BANK OF ANCHORAGE,
November 7, 1991.

To: Doug Longacre, Vice President, Branch Lending Department.

From: Charles I. Weimer, Vice President, Soldotna Branch.

Re: Fee Appraisals.

Has your office received any follow up information on the recent passage of the rules requiring that we as banks continue to require fee appraisals on all loans in excess of $50,000.00 that are secured by real estate? I continue to find this requirement a source of frustration and in some cases a hardship for a fairly significant number of our customers.

I would like to site a few examples of this frustration that has taken place in our Soldotna Service Area within the last 60 days.

No. 1 Loan /August 30, 1991.

Loan Amount: $250,000.00.

Collateral and Value: (1) 1st D.O.T. Lot 9, Block 3, Chinulna Point Subdivision valued at $260,000. (2) 1st D.O.T. Tract A-1 Tower Hill Subdivision valued at $131,000. (3) 1st D.O.T. Lot 7, Block 8, Alyeska Subdivision valued at $121,000.00.

The —— Family is a long time customer of ours. At one point in time, our bank has had an interest in each and every one of the properties that we currently hold as collateral on this current note. I am familiar with each of the properties we hold as collateral, and personally did an inspection of each prior to approving this recent loan request. As mentioned, the new loan amount is $250,000.00. The value of the one piece of collateral alone (Lot 9, Block 3, Chinulna Point Subdivision) is $260,000.00 which is in excess of our gross loan amount. We have two other improved parcels as additional collateral, the combined total of which equals $252,000.00, making our collateral value $512,000.00 giving us an original loan to value ratio of 49%.

We are well collateralized on this note, we made personal inspections of each piece of our collateral, we made the loan to a customer that has borrowed from our bank on numerous occasions over the years, but we still needed fee appraisals on *each* piece of collateral. That is my estimation was a disservice and a great expense to our customer. The cost for the three fee appraisals to my customer totaled $1,675.00.

No. 2. Loan —— / September 23, 1991.

——.

Loan Amount: $50,000.00.

Collateral and Value: 2nd D.O.T. (behind our own Soldotna Branch 1st D.O.T.) on NW¼ of NE¼ Section 32. Balance of 1st D.O.T. totals $74,000.00. Collateral value of this commercial real estate and improvements par Kenai Peninsula Borough assessed value totals $512,600.00 giving us a combined loan to value ratio of 244 on this property.

—— borrowed these funds to help him take care of some expanses associated with his small business as well as to pay some expenses relating to his family. —— requested $60,000.00 to help him meet his obligations but when I informed him that we would need to have a fee appraisal completed on his property (at a cost to him of $3,525.000) he decided to only borrow $50,000.00.

What this ultimately did was make —— take the additional $10,000.00 he needed out of his working capital to meet his obligations. Hopefully this decrease in his working capital will not present a hardship for him this winter.

No. 3. Loan —— / September 23, 1991.

Loan Amount: $80,000.00.

Collateral and Value: 1st D.O.T. Lots 3A, 4 & 5, Thompson Park Subdivision valued by the Kenai Peninsula Borough at $194,600.00 giving us a loan to value ratio on this advance of 25% per that assessment.

The —— approached our bank to help it refinance the indebtedness the —— owed to the F.D.I.C. A balloon payment on the note to the F.D.I.C. had come due. Outstanding payoff balance totaled $57,000.00. I was happy to be able to help the —— and informed the Trustees of the Club that a fee appraisal would be required. This particular fee appraisal was going to cost the Club $2,750.00—$3,500.00 plus tax. If the —— had to buy an appraisal it would have had to use monies it had set aside for its scholarship program. Having to provide an appraisal was unacceptable to the Club and it made different arrangements to pay the balance of the payoff to F.D.I.C.

As mentioned our loan of $50,000.00 gave us a loan to value of 25%. If we had made the loan of $57,000.00 our LTV would not have been significantly changed at 29%.

No. 4. I would like to also make reference to a transaction that I expect to be completing within the next 10-14 days —— own a beautiful home on the Kenai River here in Soldotna. The —— are retired and operate the home as a Bed & Breakfast during the summer months of each year.

Currently —— owe $84,000.00 on this property (which is the remaining balance of an investor $110,000 1st D.O.T.) which they built in 1984 at a cost of $185,000.00. The current year Kenai Peninsula Borough assessed value of the property totals $183,400.00. Both Cheryle James and myself had toured the entire property.

The —— wish to re-finance this property to enable them to take advantage of current lower interest rates, but also wanted to take $20,000.00 out of their pocket to pay the balance down from $84,000.00 to $64,000.00. I told —— and —— that the bank would be happy to help them in this request and since our new loan amount would be $64,000 that I would need to require a fee appraisal of the property.

The —— did not wish to spend the $700.00 for the fee appraisal and where in a quandary as to what to do. They could not understand why the bank would require an appraisal on a property that had as much equity as theirs. The —— wanted to discuss things and agreed to get back with me.

As it turned out —— decided to take additional money from their retirement savings to pay the $84,000.00 note down to $50,000.00 instead of paying it down to $64,000.00 thus eliminating the need for the fee appraisal.

In this instance I was frustrated that I needed to require a fee appraisal.

Doug, as a matter of course, the Soldotna Branch orders fee appraisals on those properties that we may be unfamiliar with or that we have any doubts about. We also order a fee appraisal of we feel our in-house bank appraisal and/or assessed value comparisons are insufficient. I have however been frustrated recently with regard to the $50,000.00 requirement.

Please let me know if and when you find out any additional or updated information regarding this matter.

[From the American Banker, Sept. 25, 1990]

THE TOUGH FRONTIER: APPRAISAL LAW TERRORIZES ALASKA'S WILDERNESS

(By Stuart Sperry)

NOME, AK.—Trip itinerary of Alaska-certified real-estate appraiser Grizzly Iceberger:

4 a.m.—Load sled.

4:30 a.m.—Hitch dogs to sled.

4:45 a.m.—Depart from Fairbanks.

12:30 p.m.—Bore hole in ice, hook fish, cook and eat.

1 p.m.—Resume travel after dogs eat.

8 p.m.—Stop for night; bore hole in ice, hook fish, cook and eat; dig shelter in snow; crawl in, sleep.

Repeat for next few months, appraising every transaction required between the two cities.

Unlikely scenario—perhaps. But, the extent of this exaggeration is surpassed by the amount of concern Alaska bankers have shown about new appraisal standards in their state.

As the 1989 Financial Institutions Reform, Recovery and Enforcement Act swings into motion, Title XI, with its more rigid appraisal standards, may hit the nation's largest and most sparsely populated state the hardest.

By dogsled, Yukon Quest, host of the Ididarod dogsled race, said a 1,000-mile journey could cost as little as $3,000—and that is the deluxe package (complete with markers, food and air support). The imaginary appraiser, Grizzly Iceberger, could do it much cheaper on his own.

The state's rugged tundra menacingly awaits the certified appraiser—eager to gobble banks' dollars.

Alaska bankers are concerned that cost and appraiser availability will present tremendous problems.

State lawmakers, in an attempt to ease these concerns, have adopted legislation that would lessen the financial burden that banks would incur because of certified-appraiser shortages and astronomical time and travel expense. Thus, such cost-cutting extremes as dogsleds and igloo hotels may be avoided.

Because many Alaska cities are only accessible by air, "certified appraisals would be extremely expensive and time-consuming," said James C. Lund, senior vice president, National Bank of Alaska, Fairbanks.

Alaska appraisal legislation contains this subsection:

"The [appraisal] board may provide for the limited certification of persons not meeting the qualifications prescribed in this section and may prescribe qualifications for limited certification. Persons receiving limited certification under this subsection may perform an appraisal that would otherwise require an appraiser meeting [standard certification requirements] only if:

(1) "The property being appraised is located in a sparsely settled area of the state.

(2) "The cost of an appraisal by an appraiser certified under [the standard certification requirements] would be unreasonably high with regard to the value of the property being appraised.

(3) "The appraisal by the person is consistent with federal law."

Lund said the bill "gives the licensing and certification committee the ability to make exceptions to the hard rules."

However, such clauses may not be in accordance with federal guidelines as established by the Appraisal Subcommittee.

The subcommittee has designated two types of appraisers—state certified and state licensed. Subcommittee Chairman Kevin Blakely told ABA Bankers Weekly that the subcommittee will have to "look very carefully at" state legislation that designates appraiser types other than those stated—such as the "limited certification" in Alaska.

Blakely, who represents the Office of the Comptroller of the Currency on the interagency subcommittee, also explained the subcommittee's staunch position on the requirements for the certification and licensing of appraisers.

The Appraisal Subcommittee "has tried to alleviate the concerns of scar-city of appraisers and cost [of appraisals] by adopting regulations with a broad enough scope," he said.

Blakely said the de minimis cut-off level and additional powers granted to licensed appraisers were adopted to address the concerns of states such as Alaska.

The chairman said the subcommittee has no problem with states that adopt appraisal standards that call for specified types of appraisers so long as the certified and licensed appraiser regulations are in place and comply with federal guidelines.

Many states are using a three-tiered system of classification. Legislation designates licensed, certified general and certified residential in this system.

[From the Anchorage Daily News, Sept. 29, 1991]

FEW WILL TOUCH ALASKA LOANS

(By Bruce Melzer)

Jan Sieberts of National Bank of Alaska can't get anyone to return his calls, Vic Mollozzi at Northrim Bank said he's gotten nothing but "No."

Savings and loan associations, pension funds and insurance companies outside Alaska that once loaned mortgage money for commercial real estate purchasers or developments are handing up on Alaska's bankers. Some are even demanding early repayment of the loans they've already made.

"We're right back to where we were 15 or 20 years ago. Nobody wants to put money here," said Randy Boyd, the vice president who handles real estate lending at Key Bank of Alaska.

Alaska's credit crunch lingers today, five years after Anchorage's real estate market started collapsing in the late 1980s recession. For years it hardly mattered. Most of the commercial real estate sales were repossessed properties, often bought by investors with lots of cash and financed by the institutions that held the property.

But as Anchorage shakes off the dark days of the late 1980s, businesses and commercial real estate investors are scrambling to find loans to buy buildings, build new ones or expand existing ones. Some bankers fear Alaska's economy could be dragged down if business can't find the money to grow.

Alaska banks, stung by millions of dollars in soured loans during the 1980s, are picky about who gets their money today: only those who plunk down a lot of their own cash and don't want to borrow the banks' funds for very long.

Already bankers are putting pressure on the state to fill the void left by Outside lenders.

Blame it on the national recession, poor investments by the insurance companies and the collapse of many real estate based savings and loans around the country, said Boyd and Sieberts. Add to that the pressure by bank regulators to reduce real estate ending up in the nation's banks, the bankers said.

Aggressive real estate lending pulled down most of the nine banks that failed in the recession and that helped taint lenders' view of Alaska, said Glenn Olds, state commissioner of commerce.

"The Outside banks and pension funds had so much fun in Alaska, they don't want to come back," said Wayne Williams, deputy director at the Alaska Industrial Development and Export Authority.

NO TAKERS

Bob Hickel puts out 140 calls in his efforts to refinance the loan on his company's University Center shopping mall. Equitable Life Assurance Society held an 11-year loan on the mall. But, this year, the giant insurance company was in the middle of a well-publicized cash squeeze, he said.

When Equitable asked to be paid off early, which it had to right to do under the loan arrangement, Hickel spent nearly four frustrating months trying to find another lender.

Potential financiers didn't have problem with the real estate itself. "There was simply no interest in Alaska," said the president of Hickel Investment Co.

The mall owner is renegotiating the loan with Equitable. The insurer's willingness to keep the mall loan was due in part to its improved financial shape after cash infusion by a French insurance firm, Hickel said.

Banks typically loaned money for construction of projects like Hickel's mall, but often didn't carry the mortgage. Instead the banks sell the loan to companies that make their money with long-term investments; savings and loans, insurance companies and pension funds, said NBA's Sieberts.

Commercial real estate sales work the same way. Local banks often make the loan, then sell it.

This year, Sieberts tried to spur interest in some Alaska real estate deals to the few Outside investors still buying commercial mortgages.

"They will go through 49 states before they come here. They won't return my calls anymore," he said.

Alaska's banks will lend for real estate, but only for buildings that are sure-fire moneymakers over relative short periods. All of the major banks usually require buyers to put up at least 25 percent of the building price, sometimes more.

NBA will make real estate loans to investors for a maximum of 10 years, Sieberts said. Those loans stay in the bank's own portfolio. Interest rates adjust every three years for typical NBA real estate loans.

First National Bank of Anchorage, the state's second largest bank, gives 15-year loans with a minimum 25 percent down payment, typically with variable interest rates, said Richard Enberg, head of the corporate lending division.

Key Bank has the longest terms available. It offers loans between 15 and 20 years. But those loans often include an option to "call" the loan—a demand for full repayment after five to seven years. Boyd said.

Security Pacific Bank, Alaska's fourth largest, gives commercial real estate loans mainly for businesses occupying the building they are buying, said Ralph Holliday, president.

No borrower is immune from the credit crunch. Northrim Bank, Alaska's newest bank, is looking to buy the building it leases on C Street, said Marc Langland, bank president. Even though the sale is still being worked out, Seattle's Seafirst Corp. has already turned down Northrim, said Williams with AIDEA.

Northrim has taken the first steps to get a loan from AIDEA, Williams said.

NATIONAL CRISIS

The credit crunch extends beyond Alaska. "Over the past 18 months a credit crisis of national proportions has developed and grown increasingly severe, particularly for real estate market," wrote the National Reality Committee, an industry lobbying group.

"Today's credit crisis is marked by unchecked declines in real estate values, illiquid real estate markets, mounting stress on the banking system, increasing unemployment and an eroding state and local property tax base," the committee wrote.

That real estate group says the banks are being squeezed out of commercial real estate lending by a slumping market throughout the nation, and regulators fearful of excessive real estate lending. As part of a national trend, Alaska's bankers are being pressured by bank regulators to reduce real estate lending, said Sieberts of NBA.

The United States' banking system isn't set up to allow banks to loan long term, bankers said.

Banks rely on depositors for their funds, depositors that can demand their money at any time, said Northrim's Langland. This need for liquidity—the ability to get cash on hand in a hurry—makes it difficult for banks to tie up their money for the 20 or 25 years often needed for real estate deals, he said.

The credit crunch may be real, but bankers and commercial real estate brokers had a hard time pointing to a good, solid deal that died for lack of a loan.

Jeff Thon, broker at Pacific Tower Properties, said the problem may be that buyers are unsatisfied with the loan terms because they have to make too large a down payment or pay off the loan too quickly.

Alaska banks can handle the community's needs, said D.H. Cuddy, president of First National. Despite his confidence in the local banks, Cuddy said he is concerned by the pullout of the life insurance companies.

"With the chaos in the real estate market, Outside banks have taken losses in this market, and it will take time to woo them back," he said.

But some bankers worry that if the credit crunch continues, Alaska business will be badly hurt. If the lending system can't allow business to grow, "the economy can slide pretty fast. Coming out of the recession, we need all the tools we can get," Langland said.

TURNING TO THE STATE

Alaska's bankers are looking to the state-owned Alaska Industrial Development and Export Authority to plug the gap left by the exodus of Outside lenders.

"We can't rely on the rest of the United States to take care of us," said Sieberts.

So far the agency's new board has been reluctant to jump headlong into major real estate lending, but that policy is likely to change according to Olds, commerce commissioner and AIDEA board member. The agency's board is in the middle of examining its mandate, he said.

Last month AIDEA's board turned down a real estate loan for Aleut Corp. to buy a $2 million strip mall on Tudor Road. The board said the project wasn't worthy of funding because it didn't create jobs, said William Scott, agency executive director.

The decision shocked the bankers, who have been selling just such loans to AIDEA for 11 years. Under the program, the bank holds about 20 percent of a loan and AIDEA holds the rest, Williams said.

"We kind of thought with the new administration, they would open up (to commercial lending). That hasn't been the case," said Sieberts, whose bank brought the Aleut loan to AIDEA.

The deal didn't die, though, NBA financed the loan after Aleut agreed to a down payment of nearly 50 percent, said Alice Petrivelli, the Native corporation's president.

Bankers have been leaning on AIDEA to fund real estate, regardless of whether the deal creates jobs.

"My personal feeling is that AIDEA should be making good, solid, well-evaluated loans. I'm not that uptight that only procuring new jobs or products demonstrates, economic development," Scott said.

Edgar Blatchford, a board member and the state's commissioner of community and regional affairs, said he supports some real estate investment, but, "I would like to see the generation of local jobs for local people" as the priority for AIDEA funding.

Despite the cries of "credit crunch," AIDEA hasn't seen much demand for loans, Scott said.

Last year only one bank approached AIDEA with a loan, agency records show. This year banks have proposed eight deals, according to the records.

All the tools are in place to make it even easier for AIDEA to get into long-term real estate loans. A new program encourages banks to sell participation in long-term loans to AIDEA, by enabling the banks to get repaid twice as fast as the agency does. That technique already has been used to fund development of the new Carrs Quality Center in Kenai.

But AIDEA's funds are limited. Only about 15 percent of the agency's $900 million assets could be available for lending, Scott said. Real estate loans also would have to compete with other development projects, large and small, funded by the authority, he said.

So far the credit crunch appears to be manageable. Real estate buyers aren't breaking down the doors to get loans, bankers said. But Hickel, the mall owner, wonders what will happen if the insurance companies and other Outside lenders want their money sooner, rather than later, or refuse to refinance the loans they already have. "If everyone is going to call their loans, who is going to come up with the money."

Mr. DOMENICI. Mr. President, America will spend $300 billion directly and indirectly on litigation this year. If this money were dedicated to the deficit we would have no deficit this year. This would be great for the economy! It would reduce the cost of capital. It would free business managers from worrying about lawsuits and give them time to think about creating and marketing new products in new markets. It would create jobs. It sounds too good to be true.

I realize that litigation, like deficits are going to be around for years to come, but I think we should be careful not to encourage more litigation. We should focus carefully on one provision of the banking bill because it will have that effect.

The provision would overrule the Supreme Court in Lampf, Pleva, Lipkind, Prupis & Petigrow versus Gilbertson. This case established, for the first time, a uniform statute of limitations for 10(b)(5) securities private rights of actions.

Statutes of limitation are deadlines that people have for filing lawsuits. Changing a deadline does not sound like a very important issue for the Congress, but unless we act carefully we could be skewing our legal system too far in the wrong direction by inviting more meritless lawsuits. It could hurt us from a competitiveness standpoint and put us in the situation where the best thing the U.S. manufacturers in law suits.

For legal scholars, for securities lawyers and judges, 10(5) is a fascinating area of the law. Congress did not create a private right of action under section 10b. The Court did. They developed the elements of the action and the defenses and burdens of proof. When the Federal Rules of Civil Procedure were updated in 1966 the class action of rule 23 was married up with rule 10(b)(5) to become corporate America's Eleventh Commandment, that is, "Thou shalt not commit 10(b)(5)."

Rule 10b makes it illegal for an issuer of securities to employ any device, scheme, or artifice to defraud * * * and to make any untrue statement of a material fact or to omit to state a material fact. These words have been interpreted to allow private plaintiffs to sue for any fraud that touches upon the purchase or sale of securities. They can sue practically anyone, no matter how peripherally involved.

The Congress has taken a hands off approach to 10(b) and has allowed the courts to run the show. The Lampf case held that the appropriate statute of limitations for implied causes of action should be 1 year from the discovery of the fraud or 3 years from the date the fraud was committed. The Court provided this outside limit, and rejected the doctrine of tolling the statute (holding it in abeyance) when people don't have any way of knowing they have been defrauded.

The Court also made its "1 and 3" rule retroactive. Cases that were filed on time under the old rules must be dismissed if they were not filed on time according to the new rules of Lampf.

Allowing cases to be dismissed unless they met the new rule has caused a lot of trouble. FDIC is concerned that some of its S&L cases might be dismissed. Cases against Michael Milken, Charles Keating, and other famous rogues have been, or might be dismissed unless Congress acts.

In my own State, I know of a woman, Thomasita Garcia, who filed a 10(b)(5) case that was dismissed because it did not meet the Lampf timetable. She is hoping Congress will eliminate the retroactive impact of the Supreme Court's decision so that her case can be refiled.

Congress has to reverse the retroactivity. Perhaps the Congress should provide a longer statute of limitations.

The Chairman of the SEC, Richard Breeden believes that the 1- and 3-year limitation is too short and that the uniform rule should be 2 and 5, that is, 2 years from when the fraud was discovered or 5 years from the time the fraud was committed.

If Congress is going to overrule the Supreme Court and examine 10(b)(5), I think it has to also address the growing number of meritless 10(5) cases that are making it harder and harder for U.S. companies to focus on developing better products and competing internationally.

Lawsuits are a distraction. Frivolous lawsuits are not only, as one CEO has put it, counterproductive but nonproductive.

If the Congress is going to overrule the Supreme Court and lengthen the statute of limitations it must also enact some reforms to curb the abuse of the 10(b)(5) lawsuit and our courts.

The number of securities fraud lawsuits has tripled since 1988.

At least 1 out of every 14 companies on the New York Stock Exchange has been confronted by a securities fraud suit.

The Chairman of the SEC has publicly stated three times in as many weeks that "frivolous securities claims should * * * warrant our attention and our efforts to control."

He recognizes that litigation in all too many cases may be seen as the route for trying to recover what may have been market losses. In effect, some investors may seek a system of heads I win, tails I sue. * * *

Chairman Breeden agrees with an academic study of securities class actions that concluded, "because of the risks and costs of litigation, companies settle weak or even meritless claims on essentially the same terms as they settle meritorious claims."

He stated that:

> [a] litigation system that fails to separate strong claims from meritless claims serves no one. It does not serve investors who have clear, solid claims and yet receive only a modest settlement, even more modest after payment of substantial attorneys' fees. It does not serve companies who have valid, strong defenses, and yet pay millions to settle claims to avoid the costs and risks of litigation.

The Supreme Court recognized the problem as long ago as 1975, stating that securities claims "which by objective standards may have very little chance of success at trial [have] a settlement value to the plaintiff out of any proportion to its prospect of success at trial so long as he may prevent the suit from being resolved against him by dismissal or summary judgment. The very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit."

Also, "[t]he prospect of extensive deposition of the defendant's officers and associates and the concomitant opportunity for extensive discovery of business documents is a common occurrence in this and similar types of litigation."

> [T]o the extent that [this process] permits a plaintiff with a largely groundless claim to simply take up the time of a number of other people, with the right to do so representing an in terrorem increment of settlement value, rather than a reasonably founded hope that the process will reveal relevant evidence, it is a social cost rather than a benefit.

Vincent O'Brien, a principal of the Law and Economics Consulting Group in Berkeley, CA, examined 330 securities fraud cases.

In the 330 suits brought since 1988, 96 percent settled out of court. The norm for most other civil litigation is 60 to 70 percent.

The average attorney's award in the 330 cases was $1 million in legal fees and $250,000 in costs. This amounted to 21 percent of the average settlement award.

The percentage of settlement amounts that compensated stockholders' actual losses were very low. Cash settlements averaged 6 percent of the total trading loses suffered by purchasers of common stock.

The 83 settlements in 1990 earned lawyers more than $100 million in expenses and fees.

I ask unanimous consent that a September 10, 1991, Wall Street Journal article entitled "The Class-Action Shakedown Racket" be printed in the RECORD.

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

[From the Wall Street Journal, Sept. 10, 1991]

THE CLASS-ACTION SHAKEDOWN RACKET

(By Vincent E. O'Brien)

The class-action securities-fraud suit has become a feature of doing business for just about every size and type of company in the U.S. Since 1968, the number of these suits filed in federal courts has almost tripled. In the past three years, at least one out of 14 companies on the Big Board has experienced a securities-fraud suit, most of them alleging concealment of failure to disclose information, and claiming significant monetary damages.

Proponents of securities class actions say that the suits prevent fraud and help maintain the integrity of financial markets. The large number of cases and the settlements are, to them, evidence of the need for securities class actions.

Are the proponents right? To shed some light on the issue, I collected data on more than 330 federal class-action securities-fraud cases involving common stock, all of them within the past three years. In every case, the plaintiffs alleged material misrepresentations and omissions by management regarding the true health and potential of the defendant company.

I found, as have most of other studies of the subject, that virtually all securities-fraud class-action cases are resolved through settlement. In my 330-case sample, only three cases were decided by a jury; an additional five were dismissed or withdrawn. All in all, 96 percent of securities class-action cases in my sample were settled out of court. The norm for most other civil cases is 60 to 70 percent.

It is not the small investor who benefits from this litigation. Individual stock buyers get little direct benefit from the class-action suits brought on their behalf. Most of the shareholder losses are suffered by large institutional investors, and it is they who receive the bulk of the settlements. In the most extreme case, five claimants out of 302—the T. Rowe Price Horizons Fund, the Fidelity Magellan Fund, the IDS Managed Retirement Fund, the Kemper Total Return Fund and Chase Manhattan Bank—received 36 percent of the settlements. In another case, with 4,952 approved claimants, 52 percent of the settlement went to 1 percent of the claimants; not one of that 1 percent was an individual. In a third, just one out of 1,531 claimants got more than 10 percent of the claim.

After, of course, deducting for attorneys' fees: the average attorney's award in the 330 cases was about $1 million in fees and $250,000 in expenses, or a little more than 21 percent of the average settlement amount. In 1990, settlements were announced for 83 cases, earning the plaintiffs' attorneys more than $100 million in fees and expenses. A big part of these fees goes to a small handful of plaintiffs' firms: While more than 120 firms were identified as plaintiffs' counsel, one or more of just seven of these firms were involved in 40 percent of the cases.

None of these facts would be especially objectionable if the lawsuits were in fact punishing and deterring wrongdoers. But despite the high settlement rate, the data don't support such a sunny conclusion. Instead, regardless of size, profitability, industry type or location, any company whose stock price declines is open to a class-action suit.

Conventional wisdom says companies likely to be the target of shareholders' wrath are small, new and probably high-tech. But in fact, securities-fraud class-action suits are not confined to say one type of company. While one-quarter of the defendants in the sample of 330 cases were banking and investment companies and one-fifth were computer or software companies, more than half of the cases represented a wide range of industries: heavy equipment, entertainment, retail, pharmaceuticals and health care.

Nor did size make any difference. Companies with less than $10 million in revenues were sued as frequently as their $30 billion brethren. While more than half of the companies sued had less than $500 million in sales, fully 13% had annual revenues exceeding $2.5 billion.

Being long established did not protect a company from litigation either. Nine percent of the companies sued had been incorporated for five years or less, but 75% had existed as corporations for more than 10 years. Fewer than a quarter of the suits related to new securities offerings, and fewer yet involved initial public offerings of stock.

One thing that virtually all the defendants did have in common was a steep drop in the price of their common stock—49%, on average. In a handful of cases, the defendant company was sued because the stock price went up. In these cases the plaintiff class consisted of investors who sold stock before disclosures, typically of mergers or takeovers, boosted the share price.

Curiously, there is little variation in settlement amounts, both in real terms and as a percentage of investor losses. This suggests that settlement payments are not determined on the merits of the cases but by other factors, perhaps insurance coverage. While the types of companies sued and the circumstances vary widely, settlement outcomes do not. One hundred and seventy-nine cases have reportedly settled since April 1988. Two-thirds of the cases studied settled for less than $5 million; almost 85% for less than $10 million.

The settlement amount as a percentage of stockholder losses was consistently low. In a random sample of 20 cases, I estimated actual trading patterns and calculated the total trading losses to stock buyers in the alleged damage period. I found that cash settlement amounts averaged about 6% of total trading losses for purchasers of common stock during the relevant period. Once again, the outcomes were highly concentrated in the lower end of the range; 12 of the 20 cases settled for less than 5% of the trading losses.

Cash settlements in our sample provided less than a nickel in actual compensation for every dollar lost by investors, since attorneys' fees and administrative fees consumed, on average, 21% or more of the settlement fund.

In sum, virtually every company in every industry faces a significant probability of being sued, most likely by one of seven law firms. If past experience holds true, the litigation will undoubtedly be settled and the amount of the settlement will probably be less than $5 million. Investors will receive only a tiny fraction of their losses, with most of this being paid to sophisticated, professional investors. Plaintiffs' attorneys will divvy up more than $1 million in fees. It is not likely that undergoing such a suit will improve a company's way of doing business, nor is it likely to deter fraud. Most important, the securities class-action suit will seldom offer any benefit to the party it is supposed to champion; the stockholder.

Mr. DOMENICI. Another study by Dr. Alexander came to similar conclusions: Settlement amounts do not vary on the basis of the strength of the plaintiff's claim. They depend entirely on the amount of damages claimed or the amount of the defendants' insurance coverage. Third, the settlements provide very little for the plaintiffs—between 5 and 15 cents for each $1 sought in the complaint, but the lawyers average $1 million in fees for each case, typically 30 percent of the entire settlement. Interestingly enough, the study found that lawsuits are much less frequently filed or not filed at all, where the amount of damages that could be claimed is less than $20 million.

The system isn't really working. Innocent defendants are settling meritless cases rather than fighting them. One CEO has called it extortion.

Victims of serious fraud are getting no more than those asserting meritless claims.

I would like to see a system where real victims recover 70 percent or more of their losses, where the attorneys get less and where speculators filing frivolous lawsuits get nothing. If amendments that Senator MCCONNELL, Senator GRAMM and others offer later today are enacted we will have vastly improved the system. Speculators and their lawyers who file meritless suits would have to pay the prevailing party's attorneys' fees and costs.

LAMPF DECISIONS AND THE BANKING BILL

Mr. MCCONNELL. Mr. President, the banking bill which had been before us this past week contained a provision in the miscellaneous section that was far from miscellaneous to emerging innovative businesses in our Nation. It was far from miscellaneous for trial lawyers who specialize in securities cases.

The provision I speak of was the so-called Bryan amendment that reversed a recent Supreme Court decision, Lampf versus Gilbertson. In Lampf, the Court interpreted securities laws to re-

quire a uniform statute of limitations for cases brought under section 10(b) of the Securities Exchange Act of the 1934 and Securities and Exchange Commission Rule 10b-5 alleging securities fraud brought by disgruntled shareholders against management

Determining that Congress had carefully balanced the relevant considerations in selecting statutes of limitations for the express causes of action contained in the 1934 act, the Court held that these same periods should apply to implied causes of action under section 10(b). It held that 10(b) claims must be brought within 1 year of the time the plaintiff knew or should have known of the facts constituting the alleged fraud, but in any event no later than 3 years from the time of those events.

The Bryan amendment changed the law set in Lampf in several aspects: First, it extended the 3-year absolute limit to 5 years; second, it doubled the time that plaintiffs have to file suit from the time they are on notice of the alleged fraud from 1 to 2 years; and third, it eliminated the requirement that plaintiffs exercise reasonable diligence in discovering the alleged fraud. Under the Bryan amendment, plaintiffs could have brought suit 2 years from the time they actually discovered the alleged fraud, whether or not they could have discovered it earlier through the exercise of reasonable diligence.

To fully appreciate the ramifications these changes portend for emerging, innovative businesses in this country, one needs to know the nature of securities litigation.

Mr. President, any company whose stock price is volatile is a sitting duck for these 10(b) lawsuits regardless of whether there is any fraud involved.

Companies, their outside directors, and accountants, are sued for allegedly overstating prospects, understating, and even saying nothing at all. Law firms who specialize in these cases use professional plaintiffs and other stock speculators to file a class action suit. Then, they use the discovery process to pressure companies, as well as peripheral deep-pocket defendants into settling the cases even when they have done nothing wrong.

Mr. President, such tactics have been termed "layermail." One favored target, who has been sued by 13 different plaintiffs, calls it "legalized extortion." He states, "They know how expensive it is for us to take our case to court. We're supposed to give them a few million dollars so they'll go away."

More than 98 percent of these suits are settled without trial. Lawyers typically get 30 percent of the settlements, plaintiffs about 10 percent of their trading losses. The big winners are plaintiff lawyers.

The big losers are targeted companies and the American people. Consumers pick up the tab for these suits and settlements that as Forbes magazine noted on August 19 are "a kind of tax on American businesses trying to survive in a tough industry and a tough world."

Mr. President, this is another example of the lawyer's tax that is dealing serious blows to our already feeble economy. To cut the tax for all Americans, last week I introduced S. 1979, the Lawsuit Reform Act.

It is no wonder that America has 70 percent of the world's lawyers. Congress is adept at keeping them busy. We have passed a litany of lawyer-relief bills and many more wait in the wings. This particular provision, the Bryan amendment, would have benefited a select group of plaintiff lawyers who prey on companies experiencing stock volatility—regardless of the presence of fraud.

Mr. President, we should be creating jobs for America's unemployed—not overpaid lawyers.

To that end, 2 years ago I introduced the Lawsuit Reform Act, comprehensive tort reform legislation that was supported by an extraordinary coalition of diverse organizations. The coalition consisted of volunteer organizations, health care providers, education associations, local governments, law enforcement organizations, professional groups, and small businesses. These groups share a common affliction—a civil justice system run amok. They supported my comprehensive bill because it addressed the concerns of all Americans, not just those of a narrow interest group.

Mr. President, comprehensive tort reform such as I introduced 2 years ago, and again last week, protects both the victims of wrongful injuries—who have a right to fair compesnation—and the victims of wrongful lawsuits. My bill, the Lawsuit Reform Act, does the following:

First, abolishes the doctrine of joint and several liability, so that a defendant's share of the damages is proportional with his share of responsibility for causing the harm;

Second, requires the loser of any civil action covered by the bill to pay the legal costs of the winner, up to a reasonable limit, unless the loser is legally indigent;

Third, prohibits a person from suing others if the person was under the influence of illegal drugs or alcohol and this condition was over 50 percent responsible for their injury;

Fourth, provides that awards for damages in product liability suits will be offset by payments from workers' compensation programs, and allows for a right of subrogation; and

Fifth, limits the statutory liability of local governments under 42 U.S.C. 1983 except in bona fide constitutional rights cases; and

Sixth, promotes alternative means of dispute resolution.

Mr. President, these six provisions would go a long way toward restoring balance and reason to our Nation's civil justice system. A civil justice system that currently is crushing America's volunteer spirit, driving up health care costs, reducing educational opportunities, cutting essential services of local governments, and making America less competitive in the world marketplace.

There has been a lot of talk around here lately on the terrible injustice of unemployment. We are awash in bills to stimulate the economy. One of the areas we should be looking at is tort reform to alleviate this terrible drag on the economy—the litigation crisis.

The civil justice system—the lawyer's tax—is costing America jobs. It is costing consumers billions of dollars. And it is robbing consumers of products that, although better than existing products, do not have an established legal history and therefore are too risky to put on the marketplace.

The lawyer's tax accounts for 95 percent of the cost of child vaccines; a third of the cost of a stepladder; and it adds a surcharge of $300 onto the bill that parents pay to have their baby delivered—if they can find a doctor willing to take the liability risk.

There is no sense in maintaining the status quo, or rejecting tort reform, unless one is more concerned with the economic well-being of trial lawyers than of the American people.

Mr. President, while I believe our Nation needs comprehensive tort reform, for the sake of the debate at hand over the banking bill, the amendment I was prepared to offer is very modest in scope. Further, my amendment is focused on consumer protection. It makes sure that plaintiffs get their money's worth and their fair share when they seek legal counsel. This amendment applies to implied actions brought under the Securities Exchange Act of 1934, and would do the following:

First, limit attorney fees to 20 percent of the total award, tracking the Federal Tort Claims Act.

Second, require an up-front estimate of how much the lawyer is going to charge the plaintiff to bring the suit, including any amounts that will be charged even if the plaintiff loses the case;

Third require up-front disclosure of the lawyer's hourly rates—and gives plaintiffs the right to choose an hourly rate over a contingency fee arrangement; and

Fourth, provide plaintiffs a private right of action against their lawyers if they do not comply with these provisions.

Mr. President, these are not draconian measures. They are modest provisions to ensure that the Bryan provision primarily benefits citizens who have been the victims of fraud—rather than lawyers looking to cash in. This is a consumer protection amendment.

There is a case to be made for abolishing contingency fees, period. As Walter Olson, a senior fellow at the Manhattan Institute has written:

The case against the contingency fee has always rested on the danger it poses not to the one who pays it, but to the opponents and more widely to justice itself. As other nations recognize, it can yoke lawyer and client in a perfectly harmonious and efficient assault on the general public. The designated opponents are far from the only ones victimized by wrongful or overzealous litigation. Every lawsuit sweeps in third parties who are forced to expand time, energy, and money without compensation, and surrender their privacy by answering under oath the probing questions of a hostile lawyer. The cost to taxpayers of running the system are far from trivial; more broadly, lawsuits tend to paralyze productive initiative by keeping rights in a state of suspense. We all pay for needless litigation.

The Bryan amendment and the Supreme Court's Lampf decision notwithstanding, there is a liability crisis afflicting the securities industry and, in turn, thousands of American businesses.

Mr. President, this is the time, and the place, for tort reform. But in the interest of getting an agreement on the banking bill, I along with Senator DOMENICI, Senator GARN, Senator GRAMM, Senator RIEGLE, and Senator BRYAN, have agreed to postpone this debate until after the Senate reconvenes in January.

We have agreed that the Bryan amendment to overturn the Supreme Court's Lampf decision will be removed from the banking bill, and that it will not be added in conference with the House. Further, we have agreed that the Banking Committee will hold hearings on the Bryan amendment as well as litigation problems in the securities industry.

Mr. President, the Bryan amendment and the tort reform amendments that I and Senator DOMENICI have proposed complement one another. It is not a question of one or the other. These matters must go hand-in-hand if we are to protect the victims of fraud and other wrongful actions as well as the victims of wrongful lawsuits.

Proportional liability, the English Rule, a 20-percent fee cap, and other reforms that have been put forth by this Senator and the Senator from New Mexico embody simple fairness and are long overdue. I am pleased that we will have the opportunity to examine these issues further before the Banking Committee and the full Senate.

[From the Investors Business Daily, Nov. 1, 1991]

BEING A PLAINTIFF SOMETIMES AMOUNTS TO A PROFESSION

(By Andrew Leigh)

When an attorney's computer alerts him to a company whose stock price is falling sharply because of an earnings surprise, he needs to quickly find a shareholder who can serve as a plaintiff in a lawsuit.

Only then can he file a class action complaint on behalf of all shareholders.

The lawyer, however, can't dally. Chances are, dozens of other attorneys are also aware of the stock-price change and are racing their complaints to the courthouse.

The incentive to the lawyers for being first is simple: Usually the judge who ultimately presides over the case will name the lawyers who got their cases filed first to be lead counsel. That means they control the case and get a larger cut of the fees.

To gain an edge, firms that specialize in such lawsuits maintain lists of "professional plaintiffs." Their portfolios are structured to be as diverse as possible. After all, you never know who you're going to have to sue.

Now, however, a growing number of judges are holding out another carrot for people who file such suits. They're awarding lead plaintiffs extra cash for sticking their necks out. Defense lawyers worry that these added incentives will encourage more professional plaintiffs and more litigation.

Some repeal plaintiffs are legendary. Harry Lewis, a retired attorney, has been the lead plaintiff in hundreds of lawsuits, mostly in Delaware and New York. Estimates run from 300 to 400. Lewis couldn't be reached for comment. Many repeal plaintiffs are corporate activists—people who consider themselves watchdogs over the American corporate world.

CYNICISM CHARGED

But defense lawyers grouse that the use of repeat plaintiffs reveals a cynicism underlying these cases.

"It's hard for them (repeat plaintiffs) to say that they've been 'had' 300 times," said Evan Tager, a Washington-based defense attorney.

Defense lawyers sometimes try to make an issue of a plaintiff's professional status. While the answers sometimes can be embarrassing to the plaintiff, the tactic rarely succeeds in altering the outcome of a suit.

Plaintiffs' attorneys in class action suits are sometimes referred to by judges as "private attorneys general." Their supporters view them as filling gaps in federal enforcement of securities laws. The victims aren't as important as they are in other civil cases.

"The plaintiff is a pretty nominal figure" in this type of suit, said Professor John Coffee of Columbia University Law School.

"The real driving force, the engine behind these cases, is the lawyers," said Jerold Solovy, a Chicago-based defense attorney.

Richard Greenfield, a prominent plaintiff's attorney based in Haverford, Pa., says that the "unseemly race to the courthouse" has been misinterpreted.

Greenfield blames the courts for giving deference to the first counsel in the door, and says that his main objective is to ensure that the lead counsel is the most experienced and competent lawyer, one who won't "sell out" the others or fumble the case.

"There's a lot of marginal lawyers out there," Greenfield said.

Greenfield is considered one of the best in the business. His firm has about 200 clients on file and a computer database loaded with financial reports.

"I can take apart a major transaction or prospectus and analyze it and find out what's wrong in an hour," Greenfield boasted.

PRO RATA SHARE

No one suggests plaintiffs' attorneys pay their clients. That is clearly illegal. But plaintiffs do get a pro rata share of whatever money is ultimately recovered in the lawsuit.

"As a practical matter, the lawyer has hired the client rather than the client hiring the lawyer, "said Coffee.

A growing number of judges are awarding extra cash payments of $10,000, $15,000 even $100,000, to lead plaintiffs for stepping forward. These payments come on top of the plaintiffs' regular share of the settlement pie.

The awards are sometimes described as compensation to the plaintiff for extra time and trouble. Sometimes the named plaintiff would have to serve as a witness or sit through lengthy pretrial questioning.

But those payments are often referred to as incentive awards, and judges say they hand them out in order to induce more injured parties to step forward.

In 1979, the Justice Department under former President Carter proposed a federal policy that would mandate incentive payments of $10,000, according to Greenfield, but the proposal was tabled.

Sometimes, in addition to being asked whether they approve of the final settlement, members of the class have been asked to vote on whether to grant the incentive award. Lead plaintiffs have won some and lost some of those votes.

Judges are granting incentive awards to name plaintiffs in other types of class actions as well. So far, these include lawsuits in cases of employment discrimination and antitrust violations.

Coffee warns that the incentive system could be subject to abuse. He described "conducive recoveries" where the plaintiffs' attorneys and the corporate defendant "quietly agree to pay a smaller settlement" in exchange for a higher attorneys' fee.

But the members of the plaintiff class must sign off on the deal. A bonus payment to the lead plaintiffs could smooth the way to a less-than-satisfactory settlement for the rest of the class, Coffee fears.

"These incentive fees, if they get too high, have a potential to become a bribe," said Coffee.

A more common practice than using outside professional plaintiffs, says Coffee, is for law firms to set up pension or profit-sharing plans with highly diversified portfolios.

CONFLICT OF INTEREST

In the past, Coffee says, law firms would use these portfolios to bring suits on their own behalf in shareholder suits. But the courts have ruled that this is a conflict of interest.

Since the ruling, law firms have simply agreed with one another to use one another's portfolios—Law Firm A represents Law Firm B's pension plan in one lawsuit, and vice versa.

The law firms also often keep track of the investments of employees and employees relatives.

"It's really very little different from ambulance-chasing—only in this case they're creating the accident," said Tager.

ELIMINATING SAVINGS PROVISION

Mr. GARN. Mr. President, the Federal Reserve bill that has been incorporated into the committee bill as title 6A has, as one of its purposes, to increase our bank regulators' ability to gather information from foreign supervisors regarding the activities of international banks. The goal is to prevent another BCCI situation, in which the bank's full activities were known to no one, from arising again.

This is important because, as my colleagues know, the only reason that enforcement actions against BCCI were finally successful was because many

nations cooperated and shared information regarding the far-flung dealings of BCCI's financial empire.

In furtherance of expanded cooperation, section 606 of the bill provides U.S. regulators with authority to provide and to receive information, subject to the requirement that sensitive information must be kept confidential in order to avoid jeopardizing ongoing investigations. Thus, the committee bill would exempt sensitive information obtained from foreign supervisors from disclosure under the Freedom of Information Act.

The committee bill also includes language in section 606(d) requiring Federal regulators to comply with disclosure requests from the U.S. Congress or the U.S. courts. Some foreign governments have indicated that this language would discourage them from providing confidential information for fear that it would become public, defeating the purpose of the underlying provision.

This language was not part of the original Fed bill and the Federal Reserve staff agrees that it undermines the purpose of the legislation. Therefore, I have requested deletion of that subsection because I want to encourage the kind of cooperation with other governments that has successfully brought BCCI and a number of drug money launderers to justice.

Even as amended, the bill's language would keep sensitive information from parties outside the law enforcement process but it would not limit access to information in furtherance of enforcement or congresssional oversight of our banking laws. It also has to be recognized that regardless of what the bill says the Congress and the courts have broad subpoena powers with which the agencies must comply.

FOREIGN BANKS

Mr. GRAHAM. Mr. President, there are several provisions relating to foreign banks in title VI that I would like to comment on. I am pleased that the amendments adopted in the Banking Committee's markup and offered in the manager's amendment by the committee here today address these concerns. I appreciate the help and support of Senators RIEGLE, GARN, and SARBANES and their staffs on these efforts. Title VI of the bill goes a long way toward increasing the Federal Reserve's ability to supervise foreign banks doing business in the United States.

In my home State, there are approximately 45 State-chartered foreign bank agencies. The primary business of many of these agencies is to use dollar deposits from their own citizens to finance the trade of their countries. A great deal of this trade is with the United States. This is particularly true of banks from Latin American and Caribbean Basin Initiative [CBI] countries which provide a high percentage of the trade financing of these countries. For example, the Banco International de Costa Rica provides approximately 70 percent of the trade finance available to Costa Rica. Moreover, almost two-thirds of Florida's $14.7 billion in exports went to Latin America and the Caribbean region in 1990. During that year, Latin American and Caribbean banks provided over $2.4 billion in trade financing through their Florida agencies. This accounted for over one-fourth of Florida's total exports of goods to the region. This trade has a direct impact on the economic development in Latin America and the Caribbean Basin region as well as on Florida's economy.

Florida's international future lies with the countries within the developing Latin American and Caribbean Basin region. Most of the banks from this region of the world are relatively small by United States, European, and Japanese standards. The Senate Banking Committee bill included language which expressly prohibits the Federal Reserve from making the size of the foreign bank the determinative factor in the Board's decisions to allow a foreign bank to establish or continue operations of a branch, agency, or representative office in the United States. These foreign bank agencies from smaller countries provide financing for trade with U.S. firms that might not be available from other sources. These agencies directly promote trade and commerce between the United States and their home countries.

Further, this amendment language included the following relevant standards for approval: the needs of the U.S. community to be served; the length of operation of the foreign bank in its home country; and the relative size of the foreign bank in its home country. The same restrictions and standards apply with respect to the Federal Reserve Board's decision to terminate the activities of a foreign bank branch, agency, or representative office in the United States.

The committee included these provisions because it is concerned that foreign banks from smaller countries and developing regions of the world might be at a disadvantage in the Board's application approval process, particularly if financial resources were a controlling factor. For example, banks in Latin America and the CBI region may be relatively small in terms of capital assets by world standards, but may have operated for a number of years and are among the largest banks in their home countries. They provide critical trade financing which may not be available from other sources. Trade is essential to these countries' economic and political stability. Small institutions can operate in a safe and sound manner and can possess the necessary managerial resources, experience, and capacity to engage in international banking.

Also an amendment offered today by Senator MACK and myself included in the manager's amendment addresses another important aspect of the bill regarding foreign banks from countries currently which do not regulate banks on a consolidated supervisory basis. While this may be an important consideration in the approval and termination decisions, we must provide a reasonable process for imposing this new requirement. Also, these foreign banks should have a general understanding of the parameters the Board will be using when reviewing them. Again, my concerns are primarily with foreign banks or agencies from Latin America and the CBI region. Today, few of these developing countries have a bank regulatory scheme that would comply with this standard. It is important to give these countries notice and an opportunity to reform their regulations. It is expected that the Fed will work with those countries that want to reform their regulatory scheme and provide these countries with guidance on what is meant by "comprehensive supervision or regulation on a consolidated basis."

Principally, this amendment requires the Fed, in consultation with the Treasury Department, to establish reasonable criteria for evaluating bank agencies from countries without a consolidated regulatory scheme to allow them to continue their U.S. operations. These criteria will allow the Fed to examine specific features of the bank's performance as an alternative to reliance on a foreign regulator.

The Treasury Department role is significant, particularly with respect to the Caribbean and Latin American region. It is important to ensure that the CBI and Enterprise for the Americas policies concerning trade and development and our banking policies are consistent.

It is also essential that the Fed promulgate criteria prior to taking any action based on the home country's regulatory scheme. This amendment requires the Fed to promulgate criteria within 1 year of enactment. During the time, the Fed will not take any action against foreign banks operating in this country solely because they are not subject to comprehensive supervision and regulation by their home country as long as they do not violate any U.S. laws and are operated safely and soundly, such foreign banks will be permitted to continue operating. Again, the Fed is expected to provide guidance to foreign countries on what is meant by "comprehensive supervision of regulation on a consolidated basis."

EXCESSIVE COMPENSATION

Mr. RIEGLE. Mr. President, the managers' amendment includes an amendment authored by Senator Levin to stamp out compensation abuses by bank and S&L insiders. These abuses have included using federally insured

bank and S&L funds for sailboats, vacation homes, butlers, multmillion-dollar golden parachutes, and other types of excessive compensation. In some cases, these abuses have drained healthy institutions of needed assets, in others they help drive ailing institutions into Federal takeovers.

In essence, the Levin amendment requires bank and S&L regulators to prohibit as an unsafe and unsound practice any compensatory arrangement which is excessive or could lead to material financial loss to a federally insured bank or S&L. Federal regulators opposing excessive compensation must now act on the basis of incomplete and inconsistent regulations and without an explicit Federal statute on this subject.

S. 543 already contains provisions to stop improper insider loans; the Levin amendment addresses this second source of insider abuse which has caused so much damage. By providing the first Federal statutory language specifically requiring Federal regulators to stop insider compensation abuse, the amendment makes a strong addition to the bill.

DODD INSURANCE STUDY COMMISSION

Mr. METZENBAUM. Mr. President, I want to speak to an amendment Senator DODD and I have worked on which will be part of the manager's amendment to the banking bill.

The banking bill came out of committee with a provision to create a Presidential Commission To Study the Insurance Industry. As originally proposed the mandate of the Commission was too narrow in my view. If we have such a commission, it is essential that it study the critical issues facing the insurance industry and the existing regulatory framework under which the insurance industry does business today in this country.

The Senate Judiciary Subcommittee on Antitrust, Monopolies and Business Rights, which I chair, has been studying the insurance industry for a long time now. We have held numerous hearings concerning the solvency of the industry and the quality of State regulation.

The House Energy and Commerce Committee chaired by Congressman DINGELL has been conducting oversight of the insurance industry for over 3 years.

Both my subcommittee and the House committee have concluded that there are serious problems with the way insurance is regulated today and as a result the ability of the insurance industry to keep its promises to its policyholders is in jeopardy.

As a result of these hearings, I recently introduced legislation, "The Insurance Protection Act of 1991"—S. 1644—which I believe provides the basis for dealing with the real problems we face today. I ask that a summary of the bill and my introductory statement be reprinted at the end of these remarks.

In evaluating the Study Commission proposed by Senator DODD, my first reaction is the Congress has a pretty good idea that there are serious problems and that we can no longer sit by and trust that the States will be able to take care of these problems.

My second reaction is that if a Study Commission is necessary, the one originally proposed was not going to study many problems that require immediate attention. I have worked hard with Senator DODD to see that the Commission evaluates the problems that my committee and others have found in the insurance industry.

Let me explain what has been added to the charter of this Presidential Commission and what I believe the Commission must study if it is to provide any insight into what needs to be done.

Given the rash of huge insolvencies in the last couple of years, it is critical that the Commission also study whether the system by which we regulate insurance in this country is working. Today, one of the largest industries in this country—to the tune of $3 trillion—is regulated by 50 different State authorities. The quality of that regulation varies widely, the resources brought to bear are almost uniformly insufficient, and the laws being enforced by the States are frequently inadequate and weak.

For these reasons, the Commission will look at how the health of the insurance industry affects the rest of the national economy. Much of life insurance today is really a financial business and the health of that business is subject to the same forces that have shaped the S&L debacle and are now facing a weakening banking industry. As these three sectors are buffeted, so may the entire health and well-being of the country's economy.

In that regard, the Commission will look at the impact of the decline in real estate values and the effect of huge noninvestment grade bond portfolios on the health of the industry. Although these two aspects of the asset side of the balance sheet are the subject of much focus today, the Commission will also be looking at other factors that can impact the strength of a company's assets, such as its investment practices and the effect of guaranty fund assessments—both actual and projected under a variety of industry insolvency scenarios. The Commission also will learn, as part of this analysis, something about the general adequacy of the industry's capitalization, which has weakened in recent years.

Additionally, the provision calls for the Commission to look back and analyze the causes of insolvencies over the last 5 years. Whether the causes are fraud, mismanagement or a changing economic environment, the conclusions of this analysis will say much about the ability of the States to oversee this industry and anticipate problems before they result in disaster.

The Commission should also look into the effect fraud and criminal behavior can and do have on the solvency of companies as these are also factors which can be influenced by appropriate Government action. In that regard, the Commission should also look at the broadest influences on a company's balance sheet, namely the effect of company management practices and State regulatory oversight.

The Commission is specifically tasked to look at the overall effect of State regulation of insurance companies in a wide variety of areas. I have already mentioned some of the ways State regulation is critical to the solvency of the industry, but the Commission is also specifically required to look at this issue from the standpoint of whether high quality and consistent regulation is being met by the current system of regulation.

Given that the industry is by and large a national and even an international business today—and that the biggest most influential companies do business in virtually every State—the Commission should evaluate whether it still makes sense for the industry to be regulated by 50 different and varied State regulatory regimes. The Commission should determine whether the benefits of uniform regulatory requirements outweigh whatever benefits continue to accrue from the current system which is almost 200 hundred years old. As part of this analysis, the Commission should make some assessment of whether the current system in fact provides consistent and high-quality regulation in every State.

The Commission is also required to evaluate the adequacy of resources at the State level. This evaluation should include a review of the number of examiners and the number of qualified actuaries necessary to adequately regulate, the adequacy of funding in each State in relation to the number of insurers domiciled in that State and the annual premiums collected by that State.

The Commission should also look at critical issues relating to State solvency regulation, including the ability of each State authority to determine whether a company is financially troubled and to act quickly enough in taking the company over, whether each State adequately regulates the use of certain financial practices, such as surplus relief reinsurance and surplus notes, whether each State requires adequate capital and surplus for companies domiciled in such State, and the adequacy of each State's regulation of a company's investment practices.

The Commission is also required under this amendment to study the ef-

fect of State regulation on consumer issues including consumer protection and competition. The Commission as part of this review should look at pricing, product development, advertising, marketing, and the general adequacy of information provided to consumers. Consumers too often have far too little information to make informed decisions about whether they are buying the best policy for the money, with the best company available. The Commission should review whether consumers are given adequate information relating to the financial health of the companies, the relationship of premiums to the accumulation of interest, the claims paying experience of insurers, and whether the insurer or seller of the policy has been subject to any regulatory action.

Even when the consumer does everything possible to choose the best deal and the best company, that policy can be sold to another company, perhaps a weaker company, without the knowledge or consent of the insured. The Commission should review whether State regulation provides enough information to consumers and adequately protects their investments from involuntary transfer. Additionally, the Commission should analyze whether the current system whereby the States approve rates encourages efficiency of operation among insurers. If the rates are approved with little incentive for insurers to contain costs, then the system is not working well.

The Commission is further required to analyze the effectiveness of State regulation of reinsurance. With a very large percent of all reinsurance business in the United States being conducted by companies outside of the country, can States adequately regulate this business when they are unable to know anything about these companies? Even for those reinsurers that are U.S. based, the Commission must ask whether State laws are strong enough and whether regulators are adequately reviewing reinsurance agreements and reinsurers.

In sum, the Commission must determine the appropriateness of the present allocation of Federal and State responsibilities in regulating insurance. Particularly in light of the national nature of the companies in the market and the importance of this industry to the well-being of the national economy and all Americans who hold insurance policies, the Commission must determine whether the Federal Government should continue to have no role in the regulation of insurance. As part of this review the Commission should look also to the views and practices of other nations and foreign insurers. This review would be a useful comparative analysis. The Commission should also take into account the views of other nations with respect to the fairness of the present system to international trade in services.

The amendment also requires the Commission to look at the efficiency of the present system for liquidation of insolvent insurance companies. In this regard, the Commission should evaluate the desirability of having a single authority to marshall assets of failed companies operating in multiple States in order to ameliorate internecine battles between competing State authorities.

The Commission is also required to review the adequacy of State and Federal civil and criminal enforcement authority and activity. The insurance industry is a prime target for insurance fraud and other misbehavior by individuals and by the companies. The Commission should determine whether State laws are adequate to deal with these problems and whether a greater Federal role is warranted. The Commission should also review whether State antigroup laws and antirebate laws inhibit competition or efficiency in the market for insurance. Additionally, the Commission should review the adequacy of State conflicts of interest laws as they apply to regulators and their relations with the insurance industry.

The amendment also provides that the Commission should undertake a broad review of the condition of the current guaranty fund system. The amendment lists a variety of considerations that the Commission must take into account, including the effect of State tax offsets for guaranty fund assessments on taxpayers under a variety of industry insolvency scenarios.

The Commission has a very large mission. The industry it will examine is one of the most important to the country's economic health and to the well-being of its citizens. For hundreds of years the regulation of this critical industry has been left to the 50 States. Based on years of work by the Congress, I believe that we can no longer be satisfied with the status quo. Recent events and common sense dictate that the Federal Government be involved in assessing and regulating the health of the insurance industry. I don't think we need a Commission to tell us this. I believe the amendment agreed to by this body will result in a confirmation of what we already know to be the case.

The Commission will obviously take time to reach its conclusions. I only hope we have the luxury of waiting for those conclusions. If big insurers continue to experience problems and the pace of major insolvencies does not abate, I believe this Congress may have to act quickly to restore consumer confidence. In such circumstances no one should be under the mistaken impression that we should or could wait for the results of a Study Commission. We will have to act. Let's hope that is not the case, but let's not ignore reality either.

DISCLOSURE AMENDMENT

Mr. WIRTH. Mr. President, I rise to discuss a provision in the manager's amendment that would require increased public disclosure of information related to failed financial institutions if tax dollars are used to resolve the institution's failure.

Taxpayers are being forced to provide billions of dollars to resolve problems in the savings and loan industry. The estimated cost of the S&L crisis has increased steadily in recent years, from $19 billion in August 1988, to $216 billion today. We may see it increase further before we are through. Even if the current estimates hold, we'll still have to pay hundreds of billions of dollars more to pay the interest on the funds borrowed to resolve the problem.

Fundamentally, I believe taxpayers are entitled to know why an expenditure of this scale became necessary. But today, when taxpayer money is spent on a failed thrift or bank, the taxpayers often have no idea why the institution failed, and have no means to obtain that information.

Settlements of lawsuits filed by the Government against individuals and businesses involved in an institution's failure and the examination reports of banks and thrifts can provide valuable insight into why an institution failed and why tax dollars were needed to cover the institution's losses.

Unfortunately, under current law, this important information is not available to the public. The provisions included in the manager's amendment would correct that and shed some light on how the S&L crisis developed. The public should have access to that kind of information.

Senator GARN and I have debated this issue on the floor twice this year. We have also discussed it in the Banking Committee and in several private meetings. We both wanted to make more information about financial institution failures available to taxpayers. We both wanted to protect the privacy of individuals who did not contribute to a failure. We disagreed on the best way to balance those concerns.

Senator GARN and I have now succeeded in reaching an agreement on the public disclosure issue. Neither of us think it is perfect. But it is a compromise and I think it does advance the goals we both have sought.

The amendment would require disclosure of examination reports and settlements of Government lawsuits related to financial institution failures. It is similar to an amendment that drew the support of a majority of the Senate on a cloture vote during consideration of the HUD, VA, and Independent Agencies appropriations bill.

Information about individual customers such as their account balances, deposits, home loan, et cetera, is not routinely included in examination reports. The reports that I have seen do

not include this kind of material. Reports are far more likely to discuss overall problems in an institutions lending practices and controls than they are to single out individual loans.

The General Accounting Office currently has access to examination reports. I have a letter from the GAO that outlines the contents of examination reports. I would be happy to provide any Senator interested in an overview of what is included in a report with a copy of that letter and I ask unanimous consent that it be printed in the RECORD.

Nevertheless, I think it is important that we go the extra mile and would like to go over the privacy and other safeguards that we have included in the amendment.

First, the amendment directs regulators to remove the names and other identifying information from the report for any customers who are not affiliated with the bank.

So if you are a noninsider, in the unlikely event you happen to be named in an examination report, you are assured that your name will be deleted.

Second, any information about insiders that is included in an examination report will be removed from the report before it is made public if that information is not relevant to the relationship between the institution and the insider.

The amendment also includes provisions to prevent release of information that could affect open insured depository institutions.

I have also extended the period for which regulators can delay release of a portion of an examination report to avoid hindering an ongoing criminal investigation. Regulators will now be able to delay release for up to 5 years.

In addition, I have also opted to allow regulators to delay release of portions of examination reports for up to 2 years to avoid interference with a civil or administrative action.

I believe these safeguards improve the amendment and address the privacy concerns that Senator GARN has raised.

Settlements of lawsuits filed by the Government against individuals and businesses involved in an institution's failure and a financial institution's examination reports can provide valuable insight into why an institution failed and why tax dollars were needed to cover the institution's losses.

Unfortunately, under current law, this important information is not available to the public. My amendment would correct that and shed some light on how the S&L crisis developed. The public should have access to that kind of information.

Under the agreement Senator GARN and I have reached, the public will be able to learn more about the S&L crisis and other financial institution failures that taxpayers are forced to resolve.

I think this kind of disclosure requirement is important and am pleased that we have been able to resolve the matter.

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

GENERAL ACCOUNTING OFFICE,
Washington, DC, October 18, 1991.

Hon. TIMOTHY WIRTH,
U.S. Senate.

DEAR SENATOR WIRTH: Since my testimony during the September 19, 1991, banking committee hearing on the Bank of New England, our staffs have been working together to better understand the implications of your proposal to publicly disclosed examination reports on banks that have failed. We appreciate your objectives to apprise the public of (1) the regulator's assessment of the safety and soundness of a bank's operations prior to its failure; and (2) the names of those borrowers—particularly insiders—whose loans have caused losses to the bank, Bank Insurance Fund, and ultimately the taxpaying public.

We believe your first objective would be served through disclosure of the examination reports on failed banks. However, we do not believe publicly releasing examination reports would serve your second objective because they are exception reports—not a complete accounting of bad loans or bank losses.

Examination reports differ slightly among federal bank regulators, but basically reflect concerns regulators have identified during an examination about the safety and soundness of a bank's operations. The regulators' concerns may be based, for example, on their review of a sample of loans out of a bank's portfolio. The examination report would then include a narrative discussion of the deficient bank practices or conditions found from reviewing the sampled loans. The only loan information that would be included in the report would relate to those sampled loans with the deficient condition to illustrate the adverse effects of the deficiency on bank operations.

Federal bank regulators' examination reports typically contain the following:

(1) Letter to the Board of Directors: This two to three page letter briefly summarizes the examination results. The summary generally describes the examiners' overall conclusions relative to the safety and soundness of the bank's operations. The letter also usually includes the composite CAMEL rating assigned to the bank as a result of the examination.

(2) Summary of Findings: This detailed summary generally describes the extent of examination coverage and the examiners' conclusions related to each of the CAMEL components. The conclusions may include both positive and negative comments about the safety and soundness of bank operations. They may also include a discussion of improvements needed in bank operations. Narrative comments for each CAMEL component are usually complemented with various ratios relative to bank operations and the examiners' numerical rating.

(3) Appendixes: The appendixes generally include listings and descriptions of specific deficiencies found in bank operations. For example, the appendix relative to asset quality typically includes a description of sampled loans reviewed and found to be improperly valued or classified by the bank. The appendixes also include specific violations of law or regulation found by examiners including violations of Regulation O relating to insider activities.

As you can tell from what we described as typically being in an examination report, it includes specific concerns examiners have about the safety and soundness of bank operations, but does not provide a complete accounting of all bank problems. Further, the specific loans listed in the appendixes do not account for all problem loans and those listed may not necessarily result in losses to the bank. Likewise, law or regulation violations, like preferential loan terms to bank insiders, cited in the appendixes involve only those loans with violations that were identified by the examiners.

In view of the shortcomings of examination reports in identifying insiders whose loans have caused losses to failed banks, you might wish to consider requiring the FDIC to disclose the names of all directors, executive officers, major stockholders and their related interests, including family members and controlled organizations whose loans are 30 days or more past due. The FDIC strikes us as the most appropriate agency for this type of disclosure, since as part of its efforts to liquidate or sell failed institutions it identifies loans in non-performing status.

We hope this information about federal bank regulators' examination reports and the additional disclosure we suggest will be helpful to you in deciding how best to satisfy your objectives. If we can be of any further assistance, please call me.

Sincerely yours,

RICHARD L. FOGEL,
Assistant Comptroller General.

HAIRCUT STUDY

Mr. WIRTH. Mr. President, the bank reform legislation includes a number of provisions to address the too-big-to-fail problem. I support these measures and was considering offering an amendment that would complement these provisions.

My proposal would have required uninsured depositors and creditors to take a haircut from their funds when an institution fails. Under this proposal, the FDIC could not make uninsured whole if a determination is made to protect uninsured deposits. The depositor would lose a portion of the uninsured funds.

S. 543's provisions to address the too-big-to-fail problem are important steps. We will see less coverage of uninsured funds and depositors will no longer be confident that their uninsured funds will be protected in the event of a failure.

These changes will introduce greater market discipline into the system by providing large depositors with an incentive to look at a bank's financial condition, not just its interest rate.

However, as depositors become familiar with the new system, we may see an increasing concentration of large deposits in a few big banks that the market believes regulators are certain to consider too-big-to-fail.

BENEFITS OF A HAIRCUT

A haircut would provide a stronger incentive and do a better job of bringing market forces into play, particularly for the very largest institutions.

For this reason, I think a haircut that takes effect a few years down the line is a strong complement to the pro-

visions already included in the legislation.

Right now, investors can make deposits of well over $100,000 in our largest banks and be reasonably confident, based on past history, that the FDIC will protect them in the event of a failure.

However, if these depositors know that, no matter what, they would not be able to recover all their funds after a failure, they will be inclined to look at a bank's health, not just its interest rate. Banks themselves will have an incentive to better monitor their condition or risk being unable to attract deposits.

A haircut provides certainty that an uninsured depositor will lose money if an institution fails. I think that's a pretty strong incentive for a depositor to take a look at the financial condition of an institution before making a large deposit.

Some depositors, no doubt, will decide the risk is worth taking—that's the way markets work. But that's a big improvement over the current system where there is relatively little market discipline. It's also an improvement over the reforms currently included in S. 543.

There is some concern that a haircut will lead depositors to pull their funds from troubled banks because they are concerned about losing some of their uninsured funds when too-big-to-fail is invoked. That is the point of a haircut. It would bring more market discipline to the operations of large banks and the decisions of uninsured depositors.

Investors with large uninsured deposits are relatively sophisticated. In addition, industry analysts, newsletters, and other press will keep uninsured depositors informed in response to demand for information about large banks' financial condition. Depositors will learn about, and react to, relatively early signals about bank problems.

Any outflow of funds will happen early enough that an institution will be able to move to correct its problems. There may be a short-term outflow of funds but in the long term a haircut will contribute to more stable institutions and a more stable banking system.

If a haircut took effect immediately, I might agree there was reason to be concerned about an immediate large outflow of uninsured funds from large troubled banks. But my haircut proposal included a transition period to allow banks and depositors to examine risks and work to correct problems in order to protect their uninsured deposits.

During the Banking Committee markup Senator DOMENICI and I worked on a haircut proposal. The amendment that was ultimately adopted would require that the FDIC not provide uninsured depositors with early access to more than 90 percent of the value of their claims that could be supported by the institution's assets. This language is relatively modest and can be improved.

There is some resistance to a haircut proposal and I will not offer my amendment to establish a haircut in 1995. Instead, the managers' amendment includes provisions directing the the Congressional Budget Office to study the effect of a haircut and report back to the House and Senate Banking Committees within 18 months.

CBO will examine the possible savings a haircut requirement could yield for the insurance funds, as well as the benefits that increased market discipline will bring financial institutions and the insurance funds.

The amendment I had planned to offer would not have required a haircut until 1995. The additional information from CBO and the opportunity to examine the effectiveness of S. 543's provisions to address too-big-to-fail will help the Senate determine if a haircut is desirable and, if we do decide that a haircut is appropriate, we will still be able to put one in place for 1995.

Mr. SEYMOUR. Mr. President. I rise today to speak on a matter of utmost importance to California—the credit crunch. Everytime I return to California, my constituents cry out for help. The credit crunch is preventing the upturn in our economy, and they're right. While we are in a recession, present regulatory practices are causing the chilling of capital and ensuring a slower recovery. The credit crunch is not caused by a lack of qualified borrowers, many of my constituents have solid credit ratings, never missed a loan payment, and can't get a new loan, or for that matter a recommit of an existing loan, for a home or small business.

Since I took office last January, I have made the issue of the credit crunch one of my top priorities. At every turn, I have reminded the administration that the credit crunch is stifling the American economy, and in particular, the California economy. An economy that for decades has been the economic engine of the Nation. Over the last 2 months, President Bush has required his economic advisers to give a new look to the credit crunch problem. Finally, spurred by the reality of a sluggish national economy, the administration has begun to understand what we in California have been experiencing for months—banks unwilling to lend because of tightened regulatory practices and a devaluation of real estate prices.

The amendments that I am introducing will further send the message that: First, the Senate recognizes the need to find measures to end the credit crunch; and second, not all real estate loans, particularly performing loans, should automatically be considered a bad loan just because they are in real estate.

The first amendment is a sense of the Senate that the credit crisis must be resolved in order to provide a healthy and efficient marketplace that works for owners, lenders, and investors. This measure stresses efforts that should be undertaken, such as modernizing and simplifying the rules that apply to pension investment in real estate to remove unnecessary barriers to pension funds seeking to invest in real estate. In addition, restoring balance to the regulatory environment by considering the impact of risk-based capital standards on commercial, multifamily, and single-family real estate; ending market-to-market, liquidation-based appraisals; encouraging loan renewals; and, fully communicating the supervisory policy to bank examiners in the field. And last, encouraging a positive tax system for real estate owners and operators.

The second amendment requires Federal regulators not to adversely evaluate an investment or a loan made by a federally insured depository institution or consider the loan to be nonperforming solely because the loan is made to or the investment is in commercial, residential, or industrial property. The message here is that not all real estate loans, particularly performing loans, should automatically be considered a bad loan just because they are in real estate. This amendment does not inhibit Federal regulatory agencies if the loans or investments may affect the safety and soundness of the institution.

I urge my colleagues to support these amendments.

Mr. RIEGLE. Mr. President, a number of my colleagues have inquired about the insurance provisions of S. 543. I have prepared a summary and analysis of those provisions. I ask unanimous consent to have that document reprinted in the RECORD following this statement.

I should note that the summary and analysis does not reflect a minor amendment to these provisions adopted during today's consideration of S. 543. This amendment expanded the grandfathering in the small towns provision. Pursuant to the amendment, national banks that have been selling insurance under the small towns authority will be allowed to continue to seek insurance to existing customers, regardless of where the customer resides.

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

SECTION 771. INSURANCE ACTIVITIES OF NATIONAL BANKS

Section 771 settles the debate over the insurance activities authorized for national banks by adding a new section to the National Bank Act, Section 5136B.

The general rule, set forth in subsection 5136B(a), states that national banks will not be permitted to provide insurance as a prin-

cipal, agent or broker. That general rule is subject to four exceptions. Both the prohibition and the exceptions are equally applicable to national banks and to their subsidiaries.

Parity. Subsection 5136B(b) permits national banks to engage in insurance activities to the same extent as similarly-situated state-chartered banks. A national bank or its branch is permitted to provide insurance as a principal, agent or broker in the same manner and to the same extent that a bank chartered in the state in which the national bank or branch is located is permitted to provide insurance as a principal, agent or broker. Where a state allows state-chartered banks to sell insurance, national banks or branches located in that state would have the same power, to the same extent. Where a state bars state-chartered banks from selling insurance (or limits such activity), this subsection does not give any additional authority to national banks. This subsection does not permit a national bank to use its insurance powers in a "parity" state to market insurance in a "non-parity" state except to the extent that a state bank is permitted to do so under the new interstate insurance provision added by Section 772 of this Act.

Section 5136B also applies the same parity principles to the subsidiaries of national banks, thus creating an exception to the rule that a subsidiary of a national bank can only engage in activities permitted for the parent national bank. Under this provision, a subsidiary of a national bank is permitted to provide insurance as a principal, agent or broker in the same manner and to the same extent that a subsidiary of a bank chartered in the state in which the national bank is located is permitted to provide insurance as a principal, agent or broker.

The definition of "bank chartered in the state" is intended to make clear that the parity provision only grants national banks the insurance authority granted to similarly-situated state-chartered commercial banks, but does not "borrow" any authority that may be granted by a state to savings banks, thrift institutions or other institutions excluded from the definition of "bank" in the Bank Holding Company Act.

Some states have laws that grant state-chartered banks the same power to sell insurance as that granted under federal law to national banks. A national bank located in a state with such a "wildcard" statute will not obtain any insurance powers by virtue of such a provision, nor will this subsection grant any insurance authority to banks chartered by such a state.

Insurance Activities in Small Towns. Subsection 5136B(c) establishes geographic boundaries for the sale of insurance by national banks in small towns. Subsection (c) thus replaces the former 12 U.S.C. 92, which is repealed by subsection (a), and would limit the effect of recent administrative and judicial interpretations of the "small town" authority of national banks. Nothing in this recodification, or in any other part of this subtitle, would have any effect on existing insurance policies.

Subsection (c) reenacts and amends the grant of authority in Section 92. A national bank may sell insurance in any small town in which the bank or any of its branches is located.

The term "small town" is specifically defined. A small town includes any "place" with a population not exceeding 5,000 (as shown by the preceding decennial census). The word "place" is taken from the small-town provision of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8)(C)(i). Construing that term, the Federal Reserve Board has explained that a "place" "must be a cognizable political subdivision such as a village, town, municipality, or township for which population figures are available." *United Community Financial Corporation*, 73 Fed. Res. Bull. 508 (1987). That same interpretation is applicable here.

In addition to such a place, the definition of a "small town" also includes any contiguous rural area, including rural communities, within 7.5 miles of the borders of the place, except to the extent that such a contiguous rural area includes any city or town that has a population exceeding 12,500 (as shown by the preceding decennial census).

Within a small town, a national bank or branch may sell only to certain customers, who are specified in subsection 5136B(c)(2). Subsection (c)(2)(A) permits the sale of insurance to an individual who is a resident of or employed in the small town. As used in this subsection, the term "individual" is intended to include individuals who purchase insurance on behalf of family members. For example, a parent who otherwise qualifies under subsection (c)(2) would be permitted to purchase an automobile policy that covers a son or daughter who takes an automobile to college beyond the borders of the small town. Subsection (c)(2)(B) permits the continued sale of insurance to an individual who has ceased to satisfy the conditions of subsection (c)(2)(A), so long as the national bank or branch has provided insurance to that individual since he or she changed residence and/or place of employment.

The term "person" as used in subsection (c)(2) includes a corporation or other business entity. Subsection (c)(2)(C) is intended to permit truly local businesses to purchase a full range of insurance products and services for their small town operations. Thus, for example, a business that manufactures a product in the small town would be able to buy product liability insurance to cover those products. But a business that has an office in the small town would not be permitted to purchase product liability insurance to cover products manufactured in a plant located beyond the borders of the small town. In addition, a subcontractor of a business would not be a permissible customer unless it independently satisfied the requirements of subsection (c)(2).

Subsection (c)(4) provides that national banks and their branches that provide insurance are subject to state laws governing the provision of insurance unless the state law is preempted by federal law. There is currently pending litigation in which national banks assert that federal law preempts the ability of certain states to enforce against them provisions of state law restricting the sale of insurance by banks. The reenactment of Section 92 in subsection (c) is not intended to reflect any view whatever on the merits of such litigation. The same language is employed in subsection (d)(4) and in Section 771(c) to indicate that, in those sections as well, this legislation takes no view on the ability of states to apply state laws to national banks.

"Grandfathered" Insurance Activities From Small Towns. In 1986, the OCC ruled that Section 92 of the National Bank Act permits a national bank with a branch in a place of less than 5,000 inhabitants to sell insurance nationwide through that branch. OCC Interpretative Letter No. 366 (August 18, 1986). This interpretation has been upheld by a decision that is now on appeal. *National Association of Life Underwriters v. Clarke*, 736 F. Supp. 1162 (D.C.D.C. 1990). As noted above, the reenactment of Section 92 would limit the effect of these interpretations.

Subsection (d) addresses those national banks that may have begun to engage in geographically-expanded insurance activities as a result of those prior interpretations. Subsection (d) applies only to national banks or branches that were actually providing insurance from a place of under 5,000 as of May 1, 1991 and permits only the sale of insurance that insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the national bank or branch was actually providing as of May 1, 1991.

The limitation to insurance "of the same type" as that being provided on the grandfather date should be construed narrowly. For example, the provision should not be construed to permit the provision of ordinary life insurance by an institution that, on the grandfather date, was providing only credit-related life insurance. Similarly, a bank whose insurance agency activities on the grandfather date extended only to ordinary life insurance would not be within the scope of the grandfather if it later wished to sell property/casualty insurance.

National banks or branches that meet these qualifications are permitted only to provide insurance in the "contiguous region" to the place in which the national bank or branch is located, except that insurance may not be provided in any county in which the national bank or branch was not actually providing insurance as of May 1, 1991. This last exception is not intended to include a county in which only a de minimis number of insurance policies were sold as of May 1, 1991. The term "contiguous region" is defined specifically in subsection (d)(4).

Incidental Insurance Powers of National Banks. Section 771(c) amends Section 24 (Seventh) of the National Bank Act, which permits banks to exercise "all such incidental powers as shall be necessary to carry on the business of banking." At least one Court has held that this language does not authorize national banks to engage in general insurance agency activities, see, e.g., *Saxon v. Georgia Association of Independent Insurance Agents*, 399 F.2d 1010 (5th Cir. 1968). The OCC and the courts have, however, construed the incidental powers clause to permit banks to conduct limited insurance agency activities, including the sale of credit-related life, health, and accident insurance, *Independent Bankers Association v. Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980), title insurance, municipal bond insurance, and annuity contractors. Litigation challenging the OCC's rulings as to title insurance and annuities are now pending.

Section 771(c) permits a national bank to engage in activities pursuant to Section 24 (Seventh) that constitute providing insurance as principal, agent or broker, but only if such activities were lawfully engaged in any one or more national banks before May 1, 1991. Otherwise, national banks may not provide insurance as a principal, agent or broker pursuant to Section 24 (Seventh).

The requirement that an insurance activity have been "lawfully engaged" in by one or more national banks before May 1, 1991 is intended to preserve federal-court litigation challenging the OCC's ruling concerning title insurance and annuities, although this provision does not indicate any view whatever on the merits of such litigation. Thus, activities were not lawfully engaged in before May 1, 1991 to the extent that they are finally adjudged by a federal court as unlawful under laws in effect on May 1, 1991.

Section 771(c) does not contain a definition of the term "insurance." It is intended that, in construing the meaning of this term, an administrative agency or court look to the manner in which a product is commonly regulated by state insurance departments. Although no single decision by a state insurance commissioner can control the meaning, for purposes of federal law, of the term "insurance," common state regulation of insurance products is, as a general matter, probative evidence that should be carefully considered by any decision-maker. On the other hand, decisions by a state insurance regulator finding that traditional bank products, such as letters of credit, are insurance, shall not in any way restrict the ability of national banks to offer such products. In addition, the fact that an insurance product may be characterized by another term for purposes of other laws does not detract from its status as "insurance" for purposes of this provision. Thus, for example a product that can be labeled as both "insurance" and a "security" can be "insurance" as that term is used herein.

SECTION 772. INTERSTATE INSURANCE AGENCY ACTIVITIES OF BANKING SUBSIDIARIES OF BANK HOLDING COMPANIES

Section 772 adds a new Section 13 to the Bank Holding Company Act that generally prohibits any bank holding company from allowing a subsidiary bank to provide insurance as an agent or broker beyond the borders of the state in which the subsidiary bank is principally located. For purposes of this section, the place in which insurance is "provided" includes the place in which an individual who purchases such insurance is domiciled. Thus, a bank may be providing insurance beyond the borders of the state in which it is principally located even if no insurance agent ever physically leaves that state and even if the contract of insurance is, for contractual purposes, made under the laws of the home state.

This provision does not apply to an insurance subsidiary of a state bank that markets insurance separately from its parent bank. Such a subsidiary remains subject to all state laws, including state laws that bar the affiliation of a licensed insurance entity with a banking institution, but the additional prohibition of this provision does not apply to the activities of such an insurance subsidiary. If, however, the insurance subsidiary markets its products in, through or from its parent bank, then the bank itself would be engaging in insurance activities subject to the prohibition and exceptions of this provision.

Section 13 contains six exceptions.

The first exception, Section 13(a)(1), provides that a bank principally located in one state may sell insurance in a host state if the statutes of the host state expressly authorize a bank principally located in another state to provide insurance in such host state, by language to that effect and to merely by implication.

The second exception, Section 13(a)(2), concerns interstate branches of banks. Where a bank is permitted to sell insurance in a host state by virtue of this exception, that insurance may be sold through the interstate branch by the out-of-state bank directly, or by a subsidiary of the out-of-state bank. Furthermore, this authority extends to interstate branches of national banks through the "parity" provision of subsection (b); where a state permits its state banks to sell insurance, a branch of an out-of-state national bank may also sell insurance.

The third exception, Section 13(a)(3), details the circumstances in which a national bank or branch selling insurance pursuant to the grandfather clause of Section 5136B(d), will be able to sell insurance across a state line. These limitations are in addition to the limitations of Section 5136B(d) itself. National banks selling insurance pursuant to the new small-town provision, Section 5136B(c), are not included in the exceptions to Section 13 and thus are not permitted to sell insurance across a state line.

The fourth exception is a grandfather provision. It extends only to the continuing interstate sale of insurance that insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the bank was actually providing beyond the borders of the state in which the subsidiary bank is principally located as of May 1, 1991. As in Section 771, the limitation to insurance "of the same type" as that being provided on the grandfather date should be construed narrowly and, to give but one example, the provision should not be construed to permit the provision of ordinary life insurance by an institution that, on the grandfather date, was providing only credit-related life insurance. In addition, the grandfather clause can only be used by a subsidiary bank that was providing insurance on May 1, 1991, so long as insurance is not provided pursuant to a statute enacted by a state after May 1, 1990. A statute that fails to meet this requirement was enacted by the state of Delaware on May 29, 1990. Accordingly, any bank holding company providing insurance pursuant to this Delaware legislation will not be able to satisfy this requirement of Section 13(a)(4).

The fifth and sixth exceptions permit the interstate sale of insurance by subsidiary banks of credit insurance and insurance placed on property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

Section 13(c) confirms that nothing in this section shall be deemed to affect the ability of a bank holding company to engage, directly or indirectly, in insurance activities that are permissible under Section 4(c)(8) of the Bank Holding Company Act.

SECTION 773. SAFEGUARDS FOR SALE OF INSURANCE

Section 773 contains four consumer safeguards applicable to the sale of insurance that are added to the Federal Deposit Insurance Act. These consumer safeguards are equally applicable to any insured depository institution and to any subsidiary of an insured depository institution.

Section 773(a) establishes disclosure provisions alerting customers of FDIC-insured banks that insurance products are not deposits and are not insured by the FDIC and, to the extent applicable, are neither guaranteed by nor otherwise an obligation of an insured depository institution.

Section 773(b) establishes three prohibitions on the manner in which FDIC-insured banks might otherwise favor their captive agents. No FDIC-insured institution may (i) require as a condition of providing any product or service to any customers, or any renewal, that the customer acquire, finance, or negotiate any insurance policy through a particular agent, or broker, (ii) in connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy solely because such policy has been issued or underwritten by any person who is not an affiliate of such institution, or (iii) impose any discriminatory requirement in any insurance agent that is not affiliated with the insured depository institution that is not imposed on any insurance agent that is affiliated with such intention.

Section 773(c) prohibits FDIC-insured institutions from soliciting the sale of insurance required under the terms of a proposed loan or extension of credit before the loan customer has received a written commitment with respect to the loan or extension of credit. This provision applies to renewals of loans and extensions of credit as well as originations.

Section 773(d) forbids FDIC-insured institutions from using nonpublic customer information for the purpose of providing insurance, except with the prior written consent of the customer. The term "insurance" does not include certain specified forms of credit-related insurance.

SECTION 774. INSURANCE UNDERWRITING IN BANK RESTRICTED

Section 774 would amend the Federal Deposit Insurance Act to establish a general rule restricting state banks to insurance underwriting activities permissible for national banks as of May 1, 1991. Section 774 also contains a grandfather clause setting forth a limiting exception to the general restriction. Specifically, a state bank, or subsidiary of such a bank, that was lawfully providing insurance as a principal in that state on November 21, 1991, may continue to provide insurance of the same type to residents of that state, individuals employed in the state, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such state. In this context, the phrase "lawfully providing insurance was principal" requires that the state bank have been actively engage in the business of underwriting new insurance coverage on the grandfather date. The mere fact that, on the grandfather date, insurance previously underwritten by the state bank remained in force would not be sufficient to bring a state bank within the scope of the exception to the general rule.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1377) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, I believe the Senator from North Carolina [Mr. HELMS] may be ready now to offer his amendment. I would certainly invite him to do so, if this is a convenient time for him.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 1378

(Purpose: To prohibit foreign banks which have financed trade in slave labor produced goods from conducting operations in the United States).

Mr. HELMS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1378.

At the end, add the following:

"SEC. . SANCTION FOR FINANCING CHINESE SLAVE LABOR.

(a) SANCTION.—A foreign person which is a bank, financial institution, or insurer, and any parent, subsidiary, affiliate and successor entity of that foreign person, shall be prohibited from conducting business in the United States if the President determines that on, or after the date of enactment, the foreign person has knowingly and materially contributed to the efforts of the People's Republic of China, to develop, produce, market, transport, or sell goods produced by forced or prison labor within the meaning of Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307).

(b) TERMINATION OF SANCTION.—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a) has ceased to aid or abet efforts by the People's Republic of China to develop, produce, market, transport, or sell goods produced by forced or prison labor.

(c) WAIVER.—

(1) The President may waive the application of a sanction imposed on any person pursuant to this section, after the end of the 12-months period beginning on the date on which the sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the natural security interests of the United States.

(2) If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(d) DEFINITION.—For purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.".

Mr. HELMS. Mr. President, I asked the clerk to read the amendment because it is self-explanatory, and I think that every Senator in this body will favor this amendment. I am not going to ask for a rollcall vote. I will simply say this:

Mr. President, with this amendment, Americans will see just how serious is the Senate about stopping the flow into the United States of Communist Chinese slave-labor produced goods.

Specifically, this amendment would prohibit from doing business in the United States, any foreign bank which knowingly and materially assists trade in Chinese slave-labor produced goods. The amendment is based on a provision just signed into law imposing sanctions on foreign companies which trade in chemical and biological weapons.

Mr. President, it is currently against the law to import or transport slave-labor produced goods to the United States. However, it is clear that this law is simply not working and that we need to do more.

How does this Senator know that current law is not working? Just 1 week ago, NBC TV visited a trade show in San Francisco. There they found representatives of Communist China distributing pamphlets hawking some machinery. Included in this pamphlet was a picture of the factory in which the machinery is produced. If one were to look closely—as did this Senator—he or she would see that surrounding this factory are guard towers and barbed wire.

That is correct, Mr. President. This factory is no factory at all—it is a slave-labor camp. And the Communist Chinese are openly selling its products here in the United States.

Mr. President, enough is enough. When it comes to Chinese slave-labor camps, America has played the patsy for too long. Last year, this Senator came to the floor with a bottle of Dynasty brand wine—wine which was produced in a Chinese slave-labor camp and sold here in the United States. That was over 1 year ago. Six months ago, Asia Watch reported that the New Life Cotton Cloth Mill—a slave-labor camp—has been exporting to the West since 1983.

But the State Department still claims they have no proof that Communist chinese slave labor goods are reaching our shores. The State Department is simply more interested in smoothing over relationships with the Chinese Communists that they are in protecting the rights of American workers who are forced to compete with—and are losing their jobs to—China's slave labor system.

The fact of the matter, Mr. President, is that these slave-labor produced goods—such as the ones being hawked in San Francisco—could never reach these shores if not for letters of credits issued by banks. In fact, according to Asia Watch, that slave labor New Life Cotton Cloth Mill has boasted of the low-interest loans it received fom a Japanese bank back in 1988.

As we speak, Mr. President, I have no doubt that there are foreign banks making profits off of sales of Chinese slave-labor produced goods here in the United States. If such banks are so greedy as to assist trade in slave labor—just to make profits, then they should not be permitted to do business here in the United States. It is as simple as that.

Mr. President, when goods produced by slave labor camps in China are sold in the United States, Americans lose jobs, and an insidious practice in China is being supported. We, as Senators, must do all we can to stop this trade. That is why I offer this amendment, and why I hope all Senators lend it their support.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan.

Mr. RIEGLE. Mr. President, I will indicate that on this side of the aisle, we are prepared to accept the Senator's amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, on behalf of the Republican side, I am willing to accept the amendment.

The PRESIDING OFFICER. Is there further debate? There is still time remaining.

Mr. RIEGLE. Will the Chair withhold for just a moment?

Let me say I am prepared to accept it. I am told we have to just check a jurisdictional question. We will take some time to do so.

If the Senator will forbear, I will ask we wait a moment on that. And could we perhaps lay that aside temporarily and move to the Senator's next amendment?

Mr. HELMS. We certainly can.

Mr. RIEGLE. I ask unanimous consent that we set aside temporarily the amendment offered by the Senator from North Carolina so he might now offer his next amendment.

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

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I do not lose the remainder of the time?

The PRESIDING OFFICER. The Senator is correct. There is 3 minutes under the Senator's control.

AMENDMENT NO. 1379

(Purpose: To impose sanctions on foreign banks or their affiliates that engage in financing the use or acquisition of chemical or biological weapons)

Mr. HELMS. Mr. President, I send a second amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1379.

At the end of title XI of the bill, insert the following:

SEC. 1138. SANCTION FOR FINANCING THE USE OR ACQUISITION OF CHEMICAL OR BIOLOGICAL WEAPONS.

Section 81 of the Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended by amending subsection (c)(1) to read as follows:

"(c) SANCTIONS.—

"(1) DESCRIPTION OF SANCTION.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, that—

"(A) the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services

from any person described in subsection (a)(3); and

"(B) the foreign person is prohibited from conducting business in the United States if the foreign person is a bank, financial institution, or insurer, or any subsidiary thereof, and if the President determines that the foreign person knowingly and materially contributed to the efforts of any foreign country, project, or entity described in subsection (a)(2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.".

Mr. HELMS. Mr. President, I thank the clerk for reading the entire amendment. Again, I think the amendment speaks for itself, because, with this amendment, the Senate can take a quantum leap toward slowing down the proliferation of chemical and biological weapons. Specifically, as the language of the amendment states, it would prohibit from doing business in the United States any foreign financial institution which finances or insures the trade in chemical or biological weapons.

It was just a couple of weeks ago that President Bush signed into law the State Department Authorization Act for fiscal years 1992 and 1993. Included in this bill is a provision—which passed the Senate 92 to 0—imposing sanctions on foreign companies which participate in the chemical and biological weapons trade.

The amendment I offer today simply closes the loop by amending this newly enacted provision to impose sanctions on those who would finance or insure this insidious trade.

For the past couple of years, I have tracked the numerous, mostly foreign, companies which have ruthlessly provided Iraq, Iran, Libya, and Syria with the wherewithal to develop and build chemical and biological weapons. Among my findings were that the Deutsche Bank helped finance Libya's chemical weapons complex at Rabta, and that BCCI affiliates helped finance Saddam Hussein's war machine.

Mr. President, the fact of the matter is that we must take action to put a halt to the action of these and other companies. Otherwise, we will have only ourselves to blame when some of the most brutal regimes in the Middle East—Iraq, Syria, Iran, and Libya—obtain the capability to independently produce chemical weapons, biological weapons, and nuclear weapons. That is what is at stake.

Beyond this imperative, it is simply unfair that while the American taxpayer had to spend literally millions of dollars to provide our troops with protections against Iraq chemical weapons, the foreign companies which helped Iraq build these weapons, and the banks which provided the financing, got away scot-free with their profits intact.

This amendment includes provisions which will hit the foreign banks which finance this trade where it hurts—in their pockets.

Like the legislation dealing with companies which the President just signed into law, sanctions would be imposed by the President once he makes a determination that a foreign financial institution has "knowingly and materially contributed" to efforts by a foreign country to "use, develop, produce, stockpile or otherwise acquire chemical or biological weapons."

The sanctions would be imposed on the offending financial institution for at least 1 year. After that time, the sanctions remain if the financial institution continues its involvement with the chemical or biological weapons programs of these countries. However, also after a year, the President is provided the authority to waive the sanctions.

The chief difference between this amendment, and the provision which is now law lies in the particular sanction. This amendment prohibits offending institutions from doing business in the United States. The law on companies prohibits sanctioned companies from selling their products to the U.S. Government.

Admittedly, the sanction on companies is somewhat less stringent. However, the Senate in its 92 to 0 vote on the chemical weapons bill, approved language prohibiting imports from offending companies—a sanction similar to what is now being proposed. In addition, the import sanctions are included in the unemployment compensation package just received from the House yesterday. I have been assured by the conferees on this bill that the import sanctions will be included, and enacted into law.

Mr. President, Congress—in its wisdom—has already passed legislation to impose sanctions on foreign companies which trade in chemical weapons. In fact, the Senate passed that legislation on a number of occasions. Now is the time to expand the scope of that legislation to close down the foreign banks, insurance companies, and other financial institutions which finance and insure the trade in chemical weapons. That is what this amendment will do, and I urge Senators to lend it their support.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Mr. President, I am prepared to accept this amendment. I yield to my colleague from Utah.

Mr. GARN. Mr. President, I am also prepared to accept the amendment.

Mr. RIEGLE. Mr. President, let us settle that amendment then. I yield back the remainder of our time.

The PRESIDING OFFICER. The Senator from North Carolina has 3 minutes and 45 seconds remaining.

Mr. HELMS. Mr. President, I ask unanimous consent that the distinguished Senator from New Hampshire [Mr. SMITH] be added as an original cosponsor of both this amendment and the previous one, which was laid aside.

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

Mr. HELMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment.

The amendment (No. 1379) was agreed.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1378

Mr. RIEGLE. Mr. President, I now move that the Senate return to the first Helms amendment, and I indicate that we have checked the jurisdictional issue on that matter, and we are prepared to accept that amendment.

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

Mr. HELMS. I yield back the remainder of my time.

Mr. RIEGLE. I yield back the reminder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment (No. 1378) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HELMS. I thank the chairman.

Mr. RIEGLE. Am I correct now that the Senator from North Carolina has offered the two amendments that he intended to offer?

Mr. HELMS. I am going to have mercy on the managers of the bill. I will not offer the third one.

Mr. RIEGLE. I thank the Senator from North Carolina.

MODIFICATIONS TO AMENDMENT NO. 1342

Mr. RIEGLE. I send to the desk two technical changes to the previously adopted amendment No. 1342 offered by Senator FORD. I ask unanimous consent that they be agreed to.

The PRESIDING OFFICER. Is there any objection? Without objection, the modifications are agreed to.

The modifications are as follows:

Page 4, line 17, 18 insert before the semicolon "*Provided*, That a law in existence on the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991 which prescribes a period of more than five years shall be deemed to provide a period of five years.".

Modify page 27 to read as follows:

2906(b)(1)) is amended by adding at the end the following sentence:

"A written evaluation shall contain the information required by subparagraphs (A) and

(B) presented separately for each metropolitan area in which an insured depository institution maintains one or more domestic branch offices.".

SEC. 306. STATE TAX COMPLIANCE.

Section 5240 of the Revised Statutes (12 U.S.C. 484) is amended by adding at the end the following:

"(C) Notwithstanding subparagraph (A), lawfully authorized auditors, examiners, and other representatives acting on behalf of the State agency or agencies charged with the administration and collection of taxes imposed by such State or political subdivision thereof, may, to the extent necessary, review the books, records, and accounts of a depository institution, chartered under Federal law which has its main office or any branch located in that State, to determine any State or local tax liability and to ensure compliance with the tax laws of the State or political subdivision thereof.".

SEC. 307. USE OF NAMES IN HOST STATE.

(a) BANK HOLDING COMPANY ACT OF 1956.—Section 3 of the Bank Holding Company Act of 1956 (12 fol.)

Mr. RIEGLE. Mr. President, I suggest the absence of a quorum and that the time not be charged to the managers of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1380

(Purpose: To require the Federal Deposit Insurance Corporation to treat certain deposits of the Freedom National Bank of New York as insured deposits)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. GARN], for Mr. D'AMATO, proposes an amendment numbered 1380.

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

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

The amendment is as follows:

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

SEC. . SPECIAL INSURED DEPOSITS.

For purposes of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the deposits of the Freedom National Bank of New York that—

(1) were deposited by a charitable organization, as such term is defined by New York State law; and

(2) were deposits of such bank on the date of its closure by the Office of the Comptroller of the Currency,

shall be considered to have been insured deposits, as such term is defined in section 3 of the Federal Deposit Insurance Act.

Mr. GARN. Mr. President, this is the amendment we discussed before, concerning Freedom National and charitable organizations. It has been cleared on both sides.

The PRESIDING OFFICER. There is 9 minutes and 30 seconds remaining.

Mr. GARN. I yield back Senator D'AMATO's time.

Mr. RIEGLE. I yield back the remainder of my time.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1380) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, I suggest the absence of a quorum without the time being taken from either side.

The PRESIDING OFFICER (Mr. ADAMS). Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1381

Mr. RIEGLE. Mr. President, I send an amendment to the desk, offered in behalf of Senators BRYAN and SMITH.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for Mr. BRYAN, for himself, and Mr. SMITH, proposes an amendment numbered 1381.

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

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

The amendment is as follows:

The Senate believes that the responsibility to establish national banking policy should rest with the Congress and not Federal financial regulatory agencies; and

The Senate believes that this responsibility is especially true with regard to whether insured depository institutions, in particular, bank holding companies, should be permitted to engage in real estate brokerage; and

The Federal Reserve Board may, pursuant to section 4(c)(8) of the Bank Holding Company of 1956 (12 U.S.C. 1843(c)(8)), permit bank holding companies to engage in those non-banking activities which are "reasonably related to the business of banking or are a proper incident thereto;" and

The Senate believes that real estate activities other than those expressly approved for national banks pursuant to the National Bank Act, may not be directly related to the business of banking or incidental to banking, for purposes of the Bank Holding Company Act; and

Congress believes that Congress, not the regulatory avenue should determine whether or not bank holding companies should be permitted to engage in real estate brokerage.

Now, therefore, it is the sense of the Senate that Congress, not the Federal Reserve Board should determine whether or not real estate brokerage is "closely related to banking" per section 4(c)(8) of the Bank Holding Company Act of 1956.

Mr. RIEGLE. Mr. President, this amendment has been cleared on both sides and I urge the adoption of the amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1381) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, we have now worked out the Conrad amendment. Let me suggest that the Senator from North Dakota be recognized now to send his modified amendment to the desk which is acceptable to both sides, and we are prepared to accept it.

AMENDMENT NO. 1375, AS MODIFIED

Mr. CONRAD. Mr. President, I ask that I be allowed to modify my amendment. I send the modification to the desk.

The PRESIDING OFFICER. The Senator is entitled to modify his amendment unless there has been a time agreement or the yeas and nays ordered. That has not been ordered.

Mr. CONRAD. I ask unanimous consent to be able to modify the amendment.

The PRESIDING OFFICER. The Senator does need consent. Without objection, it is so ordered. The amendment is modified accordingly.

The amendment (No. 1375), as modified, is as follows:

At the end of title II, add the following new section:

SEC. 232. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) The Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) should protect insured depositors of banks and savings and loans at the least possible cost to the American taxpayers;

(2) As the number of failed institutions and assets in liquidation managed by the FDIC and RTC has grown, the Legal Division's caseload of legal matters has expanded to about 100,000.

(3) The FDIC and RTC are the largest purchasers of legal services in the United States today.

(4) Two recent studies by Price Waterhouse and Altman & Weil on behalf of the FDIC have concluded that—

(i) the FDIC and RTC may spend more than $1 billion this year on legal fees and expenses yet there is ineffective oversight or management of these expenses;

(ii) outside counsel are generally not selected on a competitive basis;

(iii) the FDIC and RTC have not instituted policies to insure that tasks are assigned to

the firm best able to perform them in a cost-effective manner;

(iv) the FDIC generally pays hourly rates rather than arranging less costly fixed rate contracts;

(v) outside attorneys spend significant amounts of time performing tasks which do not require attorneys' skills; and

(vi) the FDIC and RTC have allowed persons and firms whose activities contributed to the decline of the banking and thrift industries to contract with and profit from the activities of the FDIC and RTC; and

(5) These practices undermine the faith of the American taxpayers in the use of taxpayer dollars to finance the cleanup of the banking and thrift industries.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the FDIC and RTC should take immediate steps to ensure that outside counsel are selected competitively on the basis of their ability to perform required tasks at the lowest possible cost to the taxpayer; and

(2) the FDIC and RTC should not contract with persons or firms whose activities contributed to the decline of the banking or thrift industries.

Mr. CONRAD. Mr. President, we have been able to work out this amendment in a way that I believe is effective for the American taxpayer. It will help us to start to move on this massive abuse of using the legal fees, law firms, in a way that is costing the taxpayers tens of millions, if not hundreds of millions, of dollars a year in additional costs that they should not be asked to bear. I want to thank the chairman and ranking member for working to achieve this result.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment, as modified.

The amendment (No. 1375) as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. I thank the Senator from North Dakota. Mr. President, in looking at my list, we are now down to a relatively few amendments. We have an amendment in order for Senator GORE. We have one in order for Senator BUMPERS. I am advised that Senator BUMPERS does not intend to offer his amendment. I want to confirm that but, in any event, the Bumpers amendment will not be offered.

I show remaining on the list a Gorton amendment, a possible Mack amendment, a possible D'Amato amendment, a possible Dole amendment, a possible Grassley amendment, and I think that is it.

So we are very near conclusion of this bill. I ask any of those Senators who intend to proceed to come to the floor as quickly as they can, because there is great pressure by the leaders on both sides to complete this bill and to move to other matters that have to be brought up tonight that are quite urgent. May I ask those Senators and alert their offices now that it is essential they come to the floor and be prepared to offer these amendments.

The PRESIDING OFFICER. The Chair repeats the amendments to be certain the Senators hear and know about it. You had a potential amendment by Senator GORE, by Senator BUMPERS, which you are not certain will be offered, by Senator GORTON, Senator MACK, Senator D'AMATO, Senator DOLE, and Senator GRASSLEY; is that correct?

Mr. RIEGLE. Yes, and I believe an amendment has been reserved for the majority leader as well. That should be listed.

Senator KERRY also has two on this list. They should be acknowledged, although I am hopeful it may not be necessary for him to come and offer those. In any event, they were on the earlier unanimous-consent list and should be noted.

The PRESIDING OFFICER. That is Senator JOHN KERRY. The amendments by Senator JOHN KERRY are potential ones.

Mr. RIEGLE. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the quorum not be counted against the time of the managers.

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

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.

Mr. DOMENICI. Mr. President, is the Senator from New Mexico correct in assuming that the banking bill is the pending matter and that an amendment would be appropriate?

The PRESIDING OFFICER. If the Senator is authorized to offer an amendment, that is correct. The banking bill is pending. We have a list of amendments. I do not see the managers here now, and, therefore, the Chair will have to check with the Parliamentarian.

Mr. DOMENICI. Mr. President, I do not need to offer an amendment. I am going to make a statement that has already been accepted because it was offered by the managers.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOMENICI. Mr. President, I have heretofore offered an amendment to change the real estate appraisal process to help reduce regulatory burdens on real estate lending and to stimulate real estate markets.

Almost all of us have been hearing from our constituents that somehow or another the banks seem to be clogged because of regulation, real or perceived, and that even when loans are going to be made, they take an inordinate amount of time from the time of application until conclusion.

None of us know the extent of that, and none of us know exactly how to fix that.

But we did come upon some situations that we think could be fixed and would not in any way jeopardize the health and the soundness of the institutions in the United States, banks and others making loans.

So I am very pleased that an amendment which I offered was cosponsored by my junior Senator, Senator BINGAMAN, by Senator BOREN, Senator MURKOWSKI, Senator MCCAIN, Senator SEYMOUR, and Senator CHAFEE. I thank them for helping with the amendment. It is now part of the bill as it works its way through the Senate because the managers have seen fit to accept it.

Essentially, what we are trying to do is to make the appraisal of homes and commercial property a little bit more expeditious, and to move the thresholds, the mandatory thresholds which require certified appraisers, up some. They were $50,000 both for commercial and residential. Almost everyone says that is far too low, and that we ought to move that up. Thus we have moved the residential up to $100,000, and commercial up to $200,000.

It means that they will be appraised even lower than that, but not necessarily by certified appraisers which we have found to be in short supply in almost every State, and extremely expensive as compared with appraisals of other types that were used before the certification process gained such a prominence.

So what we have done in this amendment is say that rural America, where it is very, very hard to get appraisers of a certified quality, is exempt from having to have certified appraisals. Thus you can have homes and commercial property in a very small community way far from the large cities, and you will not have to have a certified appraisal. You will have to have an appraisal.

A number of other exceptions have now been weaved into this amendment, and I have gone into them in some detail in this statement.

I thank the managers for accepting it. I believe it is the kind of amendment that should be accepted by the House because if we want to do some things to move money out of our banks into the hands of people, either for home improvements or for homes or commercial property, we ought to take away delays and costs wherever we can, especially if we have concluded that it is not necessary that they remain as they are today either for protection of the bank or for protection of those who are buying or mortgaging property.

I thank the Chair.

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. GARN. 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. GARN. Mr. President, I suggest the absence of a quorum and ask that the time not be charged against either side.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1382

Mr. RIEGLE. Mr. President, I send to the desk an amendment in behalf of Senator KERRY.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE] for Mr. KERRY, proposes an amendment numbered 1382.

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

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

The amendment is as follows:

On page 262, between lines 13 and 14, insert the following new subparagraph:

"(E) CORPORATE EQUITY SECURITIES.—Acquiring common and preferred shares listed on a national securities exchange and shares of an investment company registered under the Investment Company Act of 1940, in an aggregate amount not exceeding 50 percent of the bank's capital, if the bank was engaged in investing in such securities as of September 30, 1991. A bank shall not acquire common or preferred shares of any issuer (other than a registered investment company) if, after the acquisition, the bank's investment in shares of that issuer would exceed 10 percent of the bank's capital.

Mr. RIEGLE. Mr. President, the amendment has been cleared on both sides. I ask for its adoption.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So, the amendment (No. 1382) was agreed to.

Mr. RIEGLE. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid on the table.

The Senator from Iowa.

AMENDMENT NO. 1383

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

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 1383.

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

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

The amendment is as follows:

Section 11 of the Federal Deposit Insurance Act is amended by adding a new paragraph (14) to subsection (e) as follows:

(14) CREDIT CARD SALES.—

(A) NOTIFICATION.—Any insured depository institution shall notify the Corporation in writing prior to entering into any agreement relating to the sale of credit card receivables, if the institution is:

(i) not in compliance with the minimum applicable core capital requirements; or

(ii) not adequately capitalized as defined in section 205 of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

(B) WAIVER BY THE CORPORATION.—After receipt of the written notice required in subparagraph (A), the Corporation, in its sole discretion and upon such terms and conditions as it may prescribe, may waive its right to repudiate the agreement if the Corporation determines that such a waiver is in the best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the ability of the Corporation to otherwise waive its rights to repudiate any agreement or lease under this section.

(D) NO BREACH OF DUTY.—In granting any waiver of its right to repudiate a contract or lease, including any waiver granted under subparagraph (B), the Corporation, in any capacity, shall not be liable to any person for any damages as a result of such action nor shall any court have jurisdiction to enjoin, restrain or affect the exercise of such powers by the Corporation.

(E) EFFECT OF WAIVER ON SUCCESSORS.—Where the Corporation has waived its rights to repudiate pursuant to subparagraph (B), any restriction contained or incorporated by reference in a sales agreement on the manner in which any customer or any list of customers of the selling institution may be solicited or otherwise dealt with shall be binding upon a receiver or conservator of the institution and the Corporation shall require any entity which subsequently purchases or acquires such selling institution, or substantially all of the assets or liabilities of such institution, to assume, and agree to be bound by, such restrictions on the manner in which any such customer or lists of customers of the selling institution may be solicited or otherwise dealt with, as if the acquiring entity were the selling institution; provided however, that nothing herein shall be read to inhibit or restrict such subsequently acquiring entity's ability to offer any service or product to any group of prospective customers as identified without use of or reference to any such prior customer status or list, or to require such entity to discontinue or restrict any of its preexisting customer relationships. Nothing herein shall apply to a transaction in which the Corporation arranges for a depository institution to purchase only insured deposits.

(F) CREDIT CARD CUSTOMER LIST.—Notwithstanding any other provision of this paragraph (14), if any consummated agreement reached at arms length relating to the sale or transfer of credit card receivables by an insured depository institution provides for the sale of the exclusive use of any credit card customer list of the selling institution, the Corporation shall prohibit the use of such list by any person other than as provided by the terms of such previous agreement as part of any transaction undertaken pursuant to sections 11 or 13 of this Act.

(G) FRAUDULENT TRANSACTIONS EXCLUDED.—No provision of this paragraph shall be construed to interfere with the Corporation's rights to repudiate any contract undertaken with the intent to hinder, delay or defraud the institution, the creditors of such institution or the Corporation.

SUMMARY

This language amends subsection (e) of section 11 of the Federal Deposit Insurance Act to provide a mechanism for parties to credit card sale transactions to obtain a waiver of the ability of the FDIC to repudiate these transactions where the selling bank does not meet specified capital requirements. Subparagraph (C) clarifies that this amendment is not intended to prohibit the Corporation from granting waivers for other types of contracts.

Subparagraph (D) is intended to protect the Corporation from allegations that as conservator or receiver it has violated its fiduciary duty to all creditors by granting such a waiver prior to the failure of the insured depository institution. Without the protection afforded by subparagraph (D), the ability of the Corporation to grant such preclosing waivers would be unduly hampered by risk of potential litigation claims.

Subparagraph (E) provides certain protections to purchasers of credit card receivables when the FDIC waives its rights to repudiate such agreement by effectively passing through to the successor of any failed institution any previously agreed to restrictions on the seller relating to its customers.

Subparagraph (F) would require the FDIC to prohibit the use of any credit card customer list of a failed institution if that list had previously been sold or transferred in an arms length transaction to another entity.

Subparagrpah (G) protects the Corporation from any agreements that are designed to hinder, delay or defraud the depository institution, its creditors, or the Corporation.

Mr. RIEGLE. We are prepared to accept the amendment.

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

The amendment (No. 1383) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, we have one more amendment I am going to be sending to the desk that we are prepared to accept, and that is the sense-of-the-Senate resolution of Senator GORE.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. RIEGLE. It is not quite ready. We are going to suspend for a moment.

AMENDMENT NO. 1384

Mr. RIEGLE. Mr. President, let me send the Gore amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for Mr. GORE, proposes an amendment numbered 1384.

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

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

The amendment is as follows:

Expressing the sense of the Senate regarding United States policy toward Yugoslavia.

Since attacks against people and territory of the Republic of Croatia by armed forces responding to direction from the Republic of Serbia are continuing despite numerous cease-fire agreements negotiated under the auspices of the European Community;

Since losses of life, property, and displacement of persons have already reached grievous levels and are continuing to rise as the result of continued violation of cease-fires;

Since attacks against the Republic of Croatia represent an effort to change postwar borders by force; and

Since it is a fundamental principle essential for the future peace of Europe that borders not be changed by force: therefore, it is the sense of the Senate that, if the Croatian government adheres in good faith to the terms of cease-fires negotiated by the European Community, and if those parties now conducting military operations against the Republic of Croatia refuse to comply immediately with the terms of such cease-fires, the policy of the United States should be—

(1) to consult promptly with the EC, with other countries on a bilateral basis, and with the United Nations on the question of recognizing, upon request, those Republics such as Slovenia and Croatia that have declared their sovereignty and independence and have agreed to cooperate with EC efforts;

(2) to take whatever steps are needed under existing legal authorities to bring the United States into conformity with sanctions and other punitive measures agreed to by the EC for its own members and recommended by them for others, and to take action parallel to those proposed by the EC for applying "positive compensatory measures" to be applied to those parties that "cooperate in a peaceful way towards a comprehensive political solution on the basis of EC proposals;"

(3) to offer humanitarian assistance to those republics that require such assistance on an emergency basis in light of conflict taking place on their territories;

(4) to place the Republic of Serbia on notice that continued military action will cause the United States to support EC efforts to call for mandatory UN Security Council measures as a response to an act of aggression;

(5) to require of all authorities a clear and binding commitment to protect the rights of minorities living within the borders mutually recognized by the republics and provinces of Yugoslavia in 1974 and to seek formal commitment on their part to accept international inspection and, if necessary, arbitration, to protect those rights; and

(6) to lend strong support to all EC and other international activities aimed at bringing about a restoration of peace and respect for the principle that territorial disputes shall not be settled by the use of violence.

RECOGNITION OF THE YUGOSLAV REPUBLICS

Mr. DECONCINI. Mr. President, I rise to support the amendment offered by my distinguished colleague, Senator GORE. However, while I believe that it is important that we consult with the Europeans in the hope of having a common, multilateral approach to the issue, we must do more than consult. We should encourage recognition, and the United States should itself take a stand and recognize the Republics now. The United States stands in this world as a symbol of freedom and independence for all peoples, and it is critical that we do not abandon our principles in our response to the crisis in Yugoslavia.

The conflict in Yugoslavia has a complex network of intertwining historical roots, and the mutual accusations and one-sided reporting coming from the disputing parties makes it difficult for us to find easy answers. I would nevertheless like to make the following comments, which I believe justify recognition of the sovereignty and independence of the individual republics.

First, it is a simple fact that the Yugoslavia we once knew has now disintegrated. The blame for this rests not on the so-called "separatist" governments of Slovenia and Croatia, but on the Government of Serbia and its ally, the Yugoslav military, which claim to be preserving the Yugoslav State. In other words, the best arguments for recogition have come not from Ljubljana and Zagreb, but from Belgrade itself.

It is true that the people of Slovenia and Croatia elected governments which indeed have sought to break up the existing federation, an exercise of their right to self-determination. It is also true that this right is, for these two peoples and for all others, tempered by the principle of the equal rights of peoples. This means that, instead of taking unilateral actions, they must take into account the aspirations of others, in this case their countrymen in the other Yogoslav Republics and provinces. In fact, for the first 6 months of this year, Slovenian and Croatian officials engaged in negotiations that attempted to do just that. Even after the conflict started, the Croatian officials remained in the federal system in the hope of working things out.

During that same time, Serbian officials sought to undermine the Federal system they were claiming to defend. They stole Federal funds. They ensured that the representatives of Kosovo and Vojvodina were not the independent voices they constitutionally should be at the Federal level. They resigned from the Federal presidency, only to return and then block the normal rotation of the head of that body. Most recently, they claimed to take control of the presidency and assumed the powers of the Federal assembly. These arbitrary actions created the political chaos that denied Yugoslavia the legitimacy it otherwise had. With these acts, they have provided the other republics with the most genuine reason for wanting to leave the federation. And while they all nevertheless agreed to create a new Yugoslavia on the basis of a plan proposed by the European Community for an association of sovereign and independent states, Serbia turned the plan down. As a result, I believe that the future of those who have attempted to negotiate a mutually agreeable solution should not forever be determined by those who have not.

Second, the boundaries between the Yugoslav Republics were not internationally recognized frontiers, but that does not mean that changing these boundaries by the threat or use of force is in any way an acceptable practice. By seeking to change these boundaries by force, the efforts of the Yugoslav Army and the Serbian Government have made them the equivalent of international frontiers. Indeed, it is likely that we would not feel compelled here today to recognize the republics and their existing borders were it not for the Yugoslav Army attacks on them.

Finally, with all the violence that has occurred, whether we like it or not Yugoslavia has been shattered to the extent that it cannot be put back together except by the free will of its peoples. Given what has happened, reconciliation among the neighboring peoples of Yugoslavia is more likely to occur if they each first have their own sovereignty and independence.

I am under no illusion, however, about what recognition means. Like sanctions, it is unlikely to bring a sudden and complete halt to the fighting, since the fighting is really over territory and not maintenance of a federation. Recognition will not mean foreign intervention or military assistance to the independent republics, and it would be foolhardy, if not dangerous, to interpret it as such.

Recognition also does not mean approval of the policies of the republican governments, most of which have espoused nationalism, sometimes at the expense of democratic development, economic reform and respect for the rights of all peoples on their territories. None of the republics, including Croatia, can claim to be fully democratic. Of course, building democratic institutions might be difficult during the course of civil war, but such an effort cannot be abandoned. While independence may now be a precondition for further democratic development, I wish to make clear that, to the United States, democracy is far more important than either the unity of Yugoslavia or the independence of its republics, and opting to recognize the republics does not, in and of itself, mean full

acceptance in the community of democratic nations.

While it is no cureall, recognition does take a stand on what we and hopefully the rest of the world will now accept as the best response to the Yugoslav crisis. Until recently, the Europeans and the United States have kept the door open to both sides of the dispute; we could have, were asked to, but chose not to recognize the republics earlier in the crisis. That open door has now been slammed shut by the Serbian Government and the Yugoslav military, first and foremost by its wholly unwarranted assault on Dubrovnik.

Recognition will also provide needed symbolic support to those republics which have never been independent before and may have a difficult time achieving it now. As hard as it may be to realize, these republics may in fact be the scene of even more bloodshed that has been seen thus far in Croatia, and they desperately need our support.

In return for recognition, we should ask that those republics willing to develop relations on the basis of the EC plan should in fact do so. The plan is a good one, and the EC should proceed with it. It contains important elements on respecting human rights and fundamental freedoms for all people, without discrimination on the basis of their enthnicity or religious belief, that should not be quickly abandoned by governments genuinely committed to the development of democracy. And just as they were neighbors within the Yugoslavia of past, so too shall they be neighbors as separate, sovereign entities, making cooperation among them as envisaged in the EC plan inevitable.

If the Serbian Government continues to choose to reject the plan, so be it—they choose their own isolation from the remaining Yugoslav Republics and also from the rest of Europe. In the end, I hope the people of Serbia will decide to join the community of free European nations rather than accept the isolation their government has brought them. When that time comes, Serbia's neighbors must be prepared to extend their welcome.

Mr. REID. Mr. President, neither the Croatians nor the Serbs are without fault in the current Yugoslavian conflict. In fact, both sides have been brutal.

Just this morning in the Washington Post, on the front page, we read an article, dateline Vukovar, a city in Croatia, beginning with this sentence: "Lying in Liberation Square today were a puppy, an old woman under a plaid blanket and a chubby man staring wide-eyed at the sky. All were dead." The article goes on to describe a Serb guerrilla "wearing a newly liberated white hockey helmet and a crimson scarf and shouldering a machinegun" pedalling by a burning apartment building on a child's bicycle. "He smiled broadly, flashed a V-for-victory sign and steered carefully so as not to run over the corpses."

It is the kind of sensationalist writing that gives a skewed picture of the Serbo-Croatian conflict. If we read only the front page and do not turn to the rest of the article, we think "Oh, aren't the Serbs awful. See how brutal they are."

It is only on page 30 that the author admits that "ethnic hatred here is not one-sided." The author goes on to describe a Serbian woman living in Vukovar whose family has been threatened with death by Serbian militiamen. She states "Sometimes, when there was the most shooting, the militiamen made us leave the apartment building and stand outside in the street. They said that if we didn't leave the building, they would slaughter us."

Both Serbs and Croatians have beaten prisoners. Ante Gudelj, a 72-year-old Croatian man, was captured by Serbian rebels in Tenja on July 1. When interviewed, this elderly man still had many black and blue bruises covering large areas of his back, chest, and arms. "The worst are the bruises on my back and kidneys. I was hit with police batons. They also hit me in the groin with their legs." According to the doctor, the patient's left lung was punctured and filling with water.

On the other side, according to Helsinki Watch, a Serbian prisoner was beaten by Croatian National Guardsmen, near Djakovo, July 7, 1991, in a similar manner. These incidents abound on both sides.

There is no need to describe all of the atrocities that have occurred on both sides, but there have been many. The majority of abuses committed by the Croats, according to Helsinki Watch, involve discrimination against the Serbs: the Croats' beating of prisoners in police custody and their failure to rigorously prosecute a killing are also serious violations. The abuses committed by the Serbs involve physical maltreatment—including the beating and use of electric shocks against prisoners—and egregious abuses against civilians and medical personnel, including the use of human shields and the taking of hostages. The Yugoslav Army has also committed serious human rights violations by attacking civilian targets.

These two peoples bare scars that date back hundreds of years. Serbs make up 37 percent of Yugoslavia, Croats are 20 percent, and Slovenians are 8 percent. Even this century, during World War II, while Yugoslavia was occupied by the Nazis and Italian fascists, a bloody civil war was waged among Croats, Serbs, and communists. The Independent State of Croatia was a fascist state which massacred thousands of Serbs, Jews, Gypsies, and others. Similarly, Serbian Cetniks, a group loyal to the Serbian King in exile, massacred thousands of Croats, Muslims, and others.

Today that conflict continues. Not under the same political labels, but out of revenge and hatred on both sides. Fears on both sides appear justified. Croatia has seceded with 600,000 Serbs living within its border. These Serbs are fearful. On the other hand, the Serbian leader, Slobodan Milosevic, is a hard-line Marxist and a public relations disaster.

Serbs living in Croatia feel threatened by the resurrection of Croatian nationalism, according to Helsinki Watch. The Serbs claim that such fervent nationalism is a prelude to the resurrection of the World War II Nazi puppet state under which thousands of Serbs were killed. They believe that an independent Croatia would be a fascist state. The Serbs are 11.5 percent of Croatia's population, and they do not want to be labeled as an ethnic minority in Croatia. They fear being treated as second-class citizens, or worse.

The Croats believe that the current Serbian insurrection is the creation of the Federal Government in Belgrade, whose aim is to bring about the fall of the Croatian Government and to reinstate Serbian and Communist control over its territory. It is interesting to note, however, that the Yugoslav defense minister is a Croat, and the chiefs of the navy and air force are a Croat and a Slovenian.

Both sides should be sitting down at the bargaining table, not killing one another in yet another brutal Serbo-Croatian bloodbath.

I think the Senate needs to make it clear that we do not approve of the actions of either the Serbs or the Croatians.

Mr. RIEGLE. Mr. President, I urge adoption of the amendment of Senator GORE.

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

The amendment (No. 1384) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. BUMPERS. 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. RIEGLE. 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. RIEGLE. Mr. President, I ask unanimous consent that the D'Amato amendment be withdrawn because that has been settled in another manner.

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

Mr. BUMPERS. Mr. President, I ask unanimous consent that I be given 5 minutes to discuss my vote on this bill immediately after its passage.

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

CAPITAL MAINTENANCE AGREEMENTS

Mr. RIEGLE. Mr. President, I rise to engage in a colloquy with the distinguished Senator from Tennessee [Mr. SASSER] dealing with the capital maintenance agreements provision of the bill. This provision is in title II of the legislation.

It is my understanding that this provision is not meant to be applied retroactively. In other words, that we are not taking any position on current law as it relates to capital maintenance agreements.

Mr. SASSER. Mr. President, in response to the Senator from Michigan [Mr. RIEGLE] I would simply like to say that I am in agreement with the Senator's interpretation of the provision.

Mr. RIEGLE. I thank my colleague from Tennessee for his affirmation of the intent of the capital maintenance agreements provision.

STATUTORY LIMITATIONS ON CREDIT CARD INTEREST RATES

Mr. MOYNIHAN. Mr. President, last week the Senate adopted an amendment to the banking bill proposed by Senator D'AMATO that would establish by law a limit on the interest rate that may be charged on credit card balances.

I voted in support of the amendment. I believe the amendment raised some fair questions about why many credit card interest rates have remained static, at persistently high levels, when other interest rates have gone down. Fair questions about whether there is a genuine and vigorous competition in the market. Fair questions about whether credit cards are being issued indiscriminately, with the losses made up by those who use their cards judiciously and pay their debts.

A floor vote in the Senate is a time-honored way of raising concerns in a forceful way, and I believe that objective has been accomplished. We have opened a dialog and are now getting some answers. I would venture that the American consumer is better informed this week than last, as is the Congress.

I don't believe this ends the matter. I think we should take a careful look at whether there is genuine competition among credit card providers, particularly large ones, and whether some cardholders are unfairly subsidizing bad credit decisions. These are fair questions, and I do not prejudge the answers. I would support proposals to provide for a study by disinterested experts. I believe that is as far as we need go at this point. Our main concern in the banking bill should be to modernize the banking laws so that banks have a fair chance to prosper, and to put the bank insurance fund on a sound footing. We must also be cautious in the current recession not to do anything that would jeopardize consumer spending.

While fair questions have been raised, statutorily imposed limits on credit card interest rates are not appropriate at this time. For this reason, I will vote against any final version of the pending banking bill that contains such limits.

CREDIT CARD INTEREST RATE CAPS

Mrs. KASSEBAUM. Mr. President, much has been said about the credit card vote in the Senate last week. I have read several articles that state the vote occurred on Thursday night and caused the stock market to drop 120 points the next day. The only problem with these analyses is that the vote actually occurred on Wednesday night not Thursday. The market on Thursday, the day after the vote, was down less than two points.

I have also read that the vote was a complete surprise to the credit card industry which had no time to respond to congressional concerns regarding their rate structure. Some type of vote should not have been unexpected by the credit card industry. The issue has been festering for some time. In the days prior to the vote, several respected Senators went to the floor questioning why credit card rates were not responsive to the other interest rate cuts. The industry did not respond to these speeches or offer any justification for their rates.

It was only after the vote that any type of justification or explanation was offered. President Bush stated that he was simply jawboning the issue to bring rates down. In a sense, this is exactly what the Senate did as well. Where President Bush can jawbone an issue by giving a speech that will be widely reported in the media, sometimes the Senate must resort to jawboning an issue by a symbolic vote. It is unlikely that the credit card ceiling will be enacted into law, and on its merits, it shouldn't be. Nevertheless, the vote did serve as a shot over the bow of the industry. In fact, with almost every complex bill, particularly a bill perceived as benefiting a particular industry and involving the perception of taxpayer assistance, there is generally at least one populist-driven, lopsided vote designed to serve as a shot over the bow. The votes generally force the industry to respond to a criticism they are ignoring. For all its criticism, the vote has put the burden of proof on the credit card industry to justify the public why credit card rates have not reacted to the other reduced rates, and it has made consumers better informed. The credit card industry clearly needs to do a better job of justifying their rate structure.

To the extent the industry is now focusing on this issue, the vote has served its purpose. In this regard, the Washington Post carried an excellent article by Rudolph A. Pyatt, Jr., which I ask be included in the RECORD.

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

[From the Washington Post, Nov. 21, 1991]

CONGRESS CAN SHED LIGHT ON DARK CORNERS OF CREDIT CARD INDUSTRY

(By Rudolph A. Pyatt, Jr.)

When lawmakers in Maryland attempted to hold down bank card interest rates in the early 1980s, major banks in the state threatened to pick up their marbles and move the game elsewhere unless the rules were changed. And when the threat seemed to be having less than the desired effect, lobbyists for the state's banking industry raised the stakes by warning of possible jobs lost to neighboring Delaware.

Sure enough, when legislators refused to budge, Maryland's larger banks loaded up their credit card divisions and moved them, one by one up Interstate 95 to Delaware, which has no interest rate ceiling. Thus those Maryland banks. Operating from a safe haven, were free to charge 18 percent and 19 percent interest on their cards, just as many of their competitors were doing nationwide.

A much bigger dispute over credit card interest rates was flaring at the time, however, as national consumer groups and members of Congress joined the fray. As we have seen in recent days, it is a recurring argument in which issuers of credit cards nationwide find themselves increasingly on the defensive.

Congress was all set last week to pass legislation mandating a cap on interest rates, but apparently woke up with cold feet when it was widely suggested that congressional support for the measure caused a one-day plunge of 120 points in the Dow Jones industrial average.

Raising a wet finger to determine wind direction is probably a more accurate forecaster for the Dow's performance on most days than the reasons given. Congress nevertheless deferred action on an interest rate cap for the time being. The issue is bound to come up again.

In the meantime, it's unlikely that credit card issuers will relent and slash interest rates simply because the President says they should. In much the same way that Maryland banks responded several years ago, the nation's banks and other credit card issuers are warning that bad things will happen if you touch their cash cows.

A congressional cap on credit card interest rates "could deliver a knockout blow to America's economy," bankers, retailers and other industry groups warn in a high-pow-

ered campaign. "Potentially, up to half of those citizens currently holding credit cards would no longer qualify," if a national cap were imposed, the groups contend.

Scare tactics? Call it a massive exercise in hyperbole for the time being.

Other factors pose a much greater threat of a knockout blow to the economy than a cap on credit card rates: growing unemployment, the competitive mismatch between U.S. companies and formidable protected foreign cartels, and the continuing upheaval and uncertainty in banking, to name a few.

Meanwhile, it's somewhat ironic that the banking industry warns of dire consequences for the economy while keeping a tight lid on loans for housing construction and business expansion. Something the banks are or aren't doing is fueling complaints about a credit crunch.

Credit card issuers maintain that an interest rate cap would force them to limit cards to their most creditworthy customers. That's the way it should be. As it is, the purveyors of plastic appear to be issuing cards to almost anyone who has a Social Security number. Small wonder, then, that the industry says high rates are necessary to cover credit losses and fraud.

If credit losses and fraud are as serious as banks and others say they are, why not reduce risk by restricting the availability of cards to truly creditworthy customers in the first place? The average middle-income consumer can qualify for a $5,000 line of credit and a bank card quicker than you can say charge it. College students in many instances can obtain a credit card quicker than they can get a job.

Much of the growing credit card business has developed, not as a result of applications initiated by consumers, but through aggressive marketing initiatives by competing banks and other marketers of plastic.

Rep. Frank Annunzio (D–Ill.), who authored a short-lived proposal that would have capped credit card rates at 14 percent, was quoted recently by the Associated Press as saying that U.S. consumers pay 20 percent interest on credit cards because banks lost money to "fast-talking, quick-buck artists."

Consumers were, in fact, paying close to 20 percent interest on credit cards long before banks were taken in by fast-talking, quick-buck artists in the go-go 1980s. Ten years ago, card holders were paying 18 percent. The prime rate, however, was above 17 percent. Five years ago, when the prime was less than 10 percent and the economy was booming, some card holders were still paying more than 19 percent.

It's possible to find rates as low as 14 percent, but the average consumer probably would need a national shopping list to find rates that low. Although some regional institutions, such as Richmond-based Crestar Bank, charge less than 16 percent, most major card issuers seem to be stuck on 19.8 percent.

If that's really representative of the high cost of operating a credit card business, then something's terribly wrong with the system. Banks generally pay no more than 7 percent today on certificates of deposit. They pay less than 5 percent on overnight borrowings from other commercial banks. The discount rate, or the charge on loans to banks from the Federal Reserve banks, is now only 4.5 percent.

With banks enjoying such wide margins in the cost of borrowing and lending, loan sharks may be in the wrong business.

But if the costs of issuing cards and processing credit transactions are really as high as bankers and others say they are, it may be time for Congress to look into the matter—not necessarily to put a cap on rates, but to shed more light on a business that has created a love-hate relationship for consumers.

RISK POOLS WORK

Mr. HATCH. Mr. President, increasing access to health care for all Americans has been one of my primary concerns, especially in light of rising costs, escalating insurance premiums, and the budget strain on public programs. Many Americans are finding out that when disastrous medical emergencies occur, they are squeezed out of vital coverage. For this reason, I have been interested in the development of risk pools that can be used by Americans who suddenly find themselves designated as high risk and unable to get the insurance coverage they need.

Mr. President, I want to bring my colleagues' attention to what can happen when a medical emergency makes a family uninsurable and the need for medical attention remains. I also want to highlight a successful, innovative solution to one aspect of the access to care problem.

In Utah, the risk pool has been made a reality because of a family, the Becks, who desperately needed medical coverage due to the birth of a child with Down's syndrome. The State of Utah has funded a risk pool for the uninsurable which will make a very real difference in the lives of not only the Becks, but also others in the State who have been denied insurance simply because of a need to use it. I commend the Becks and others who brought this issue to the attention of the State as well as my colleagues in the Utah Legislature who voted to establish the new program.

Mr. President, I ask that the entire article from the Salt Lake Tribune, dated July 29, 1991, be included in the RECORD.

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

MOTHER, SON WIN BATTLE FOR MEDICAL INSURANCE

(By Dan Harrie)

Trisha Beck's introduction to the harsh policy of "risk avoidance" by health insurance companies came eight years ago when she gave birth to a son, Richard, with Down's syndrome and respiratory problems.

The medical bills for the first year were $100,000.

In the meantime, the Beck's insurance company raised their monthly premiums from $80 to $450 a month. Worse, the financially troubled firm took out bankruptcy and was forbidden from practicing in Utah.

Policyholders were told to find insurance elsewhere.

That was when Ms. Beck discovered an even more startling fact about the health insurance industry—the "blackballing" of people with major medical problems as uninsurable.

The Becks, who were self-employed, were turned away by company after company. Desperate, they finally turned to Medicaid, but were told their income was too high; they would have to divorce or abandon their child to the state to qualify.

"I remember slamming my hand down at the Medicaid office and saying this is not right. This is not fair. I said some day I'm gong to change this," Ms. Beck recalls.

She has.

Beginning Monday, a state-backed program to provide medical insurance to the "uninsurable" will begin taking applications. Ms. Beck, who lobbied the Legislature six years to create the Comprehensive Health Insurance Pool, will serve as vice chairwoman.

"It was a really tough sale," says the mother of five, who at times dogged unconvinced lawmakers to the door of the men's room with babe in arms.

The $2 million in state money will start a program officials say can be self-funding after it gets up and going.

It is not for poor people. Premiums are 50 percent higher than equivalent policies in the private sector.

Fred Havas knows the harsh, statistics-driven ways of the insurance industry inside and out.

An insurance agent, Mr. Havas discovered March 7 he had a disabling heart condition that required bypass surgery. The next day he was summarily fired from his job.

"I was shocked. That was probably the most absolutely filthiest thing that I'd ever had done to me."

Mr. Havas was saved by federal law requiring companies to continue existing coverage to employees, at their own expense, after they're terminated. But that safety net disappears after 18 months.

REPEAL OF GLASS-STEAGALL AND IMPOSITION OF FIREWALLS

Mr. GARN. Mr. President, I know that many of my colleagues shared my disappointment when we found it necessary to eliminate the Glass-Steagall provisions in title VII from S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, before consideration of that legislation by the Senate. Repeal of the Glass-Steagall Act is long overdue. I have every expectation that the Senate will revisit the Glass-Steagall issue at some time in the near future, however, so I am hopeful that the elimination of those provisions will not unduly delay the achievement of true financial services reform.

Recently I received a letter addressed to Senator RIEGLE and me that I believe indicates the direction that our future efforts should take with respect to Glass-Steagall. This letter is particularly noteworthy in that it comes not from a securities firm or commercial bank or other type of financial services firm, but from more than 70 companies and other entities that are users of financial services. It should not be surprising that they applauded the Banking Committee's repeal of Glass-Steagall, because they would directly benefit from enhanced competition in financial services. And it is important to note that they warned against our imposing excessive firewalls that could unnecessarily impair the competitive benefits of Glass-Steagall repeal.

I believe that this letter is an important message to the Congress from a group of interested parties we have not heard from before. I ask that it be included in the RECORD.

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

NOVEMBER 8, 1991.

Hon. DONALD W. RIEGLE, Jr.,
U.S. Senate,
Washington, DC
Hon. JAKE GARN,
U.S. Senate,
Washington, DC.

DEAR SIRS: Your Committee has taken the historic step of voting to bring to our country the full benefits of competition and innovation in financial services by repealing the Glass-Steagall Act, as part of S. 543 the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991. As entities that raise capital in the public and private markets in this country and abroad, we applaud this action.

Equally important, we urge you not to allow this critical reform to be sabotaged—under the distingenous guise of preventing abuses—by new anti-competitive restraints on financial firms' ability to provide users of financial services like us with the full range of financial products and services. Excessive "firewalls" hurt not only the firms they are directed against but also the consumers of their services.

Among the most anti-competitive proposed firewalls are those that would prohibit a bank from lending to an underwriting customer of the bank's securities affiliate for a period of time following the underwriting. Some allege that such a prohibition is necessary to prevent banks from coercing their customers to give securities business to the banks' affiliates in order to maintain access to bank-provided credit.

As clients of banks that have securities affiliates, we think those allegations are spurious. Even if they tried—and they have not—our banks could not force us to use their affiliates by threatening to withhold credit. Borrowers creditworthy enough to issue securities generally have a wide choice of potential lenders. It is absurd to contend that we would accept any but the best-performing underwriters merely because their affiliates also provided credit. Firewalls designed to prevent this imagined potential for coercion would impose needless anti-competitive restraints.

Our fundamental concern is that restrictions such as this will sap the inherent competitive vitality of firms that offer a wide range of financial services. We and other major users of those services can only benefit if a greater number of able competitors vie for our business. We urge Congress to resist pressures to preserve the protected securities business of a few firms.

Ultimately, opening our financial markets to vigorous competition will aid the efficient flow of capital to productive uses in American industry and allow U.S. financial institutions to compete effectively in international markets. As you consider the legislation before you, we urge you to press for the comprehensive reform that will being us closer to this goal.

Sincerely,

AES Corporation, Arlington, Virginia.
AMSCO International, Inc., Pittsburgh, Pennsylvania.
Ashland Coal Inc., Huntington, West Virginia.
Ball Corporation, Muncie, Indiana.
Beverly Enterprises, Inc., Ft. Smith, Arkansas.
BP America Inc., Cleveland, Ohio.
Cincinnati Milacron, Inc., Cincinnati, Ohio.
Cone Mills Corporation, Greensboro, North Carolina.
The Dow Chemical Company, Midland, Michigan.
Faber-Castell Corporation, Parsippany, New Jersey.
Fluor Corporation, Irvine, California.
Geisinger Health Care System, Danville, Pennsylvania.
The Gillette Company, Boston, Massachusetts.
Hewlett-Packard Company, Palo Alto, California.
Ingersoll-Rand Company, Woodcliff Lake, New Jersey.
American Stores Company, Salt Lake City, Utah.
Apple Computer, Inc., Cupertino, California.
Ashland Oil, Inc., Ashland, Kentucky.
Barnes Hospital, St. Louis, Missouri.
Blount, Inc., Montgomery, Alabama.
C-TEC Corporation, Wilkes-Barre, Pennsylvania.
The Clorox Company, Oakland, California.
Cummins Engine Company, Inc., Columbus, Indiana.
Engelhard Corporation, Iselin, New Jersey.
Federal Paper Board Co., Inc., Montvale, New Jersey.
Ford Motor Company, Dearborn, Michigan.
Geo. A. Hormel & Co., Austin, Minnesota.
The Henry Ford Health System, Detroit, Michigan.
Household International Inc., Prospect Heights, Illinois.
InterMedia Partners, San Francisco, California.
Intermountain Power Agency, Murray, Utah.
Lifespan Inc./Abbott Northwestern Hospital, Minneapolis, Minnesota.
Lin Broadcasting Corporation, Kirkland, Washington.
Lukens, Inc., Coatesville, Pennsylvania.
McDermott International, Inc., New Orleans, Louisiana
The Methodist Hospital, Houston, Texas.
Mobil Corporation, Fairfax, Virginia.
Municipal Electric Authority of Georgia, Atlanta, Georgia.
National Rural Utilities Cooperative Finance Corporation, Herndon, Virginia.
The New York Hospital, New York, New York.
Newmont Mining Corporation, Denver, Colorado
PepsiCo Inc., Purchase, New York.
PHH Corporation, Hunt Valley, Maryland.
The Pittston Company, Stamford, Connecticut.
Ralston Purina Company, St. Louis, Missouri.
Service Corporation International, Houston, Texas.
Sonoco Products Company, Hartsville, South Carolina.
State of Delaware, Dover, Delaware.
State of South Carolina, Columbia, South Carolina.
J.C. Penny Company Inc., Dallas, Texas.
The Louisiana Land & Exploration Company, New Orleans, Louisiana.
McCaw Cellular Communications, Inc. Kirkland, Washington
McDonnell Douglas Corporation, St. Louis, Missouri.
Metropolitan Transportation Authority, New York, New York.
Modesto Irrigation District, Modesto, California.
Newmont Gold Company, Denver, Colorado.
PacifiCorp, Portland, Oregon.
Phelps Dodge Corporation, Phoenix, Arizona.
Phillips Petroleum Company, Bartlesville, Oklahoma.
The Procter & Gamble Company, Cincinnati, Ohio.
St. Luke's Episcopal Hospital, Houston, Texas.
Shell Oil Company, Houston, Texas.
Stanton Communications, Inc. Bellevue, Washington.
State of North Carolina, Raleigh, North Carolina.
Tenneco Inc., Houston, Texas.
The Texas A&M University System; College Station, Texas.
Textron Inc., Providence, Rhode Island.
Union Carbide Corporation, Danbury, Connecticut.
USAir Group, Inc., Arlington, Virginia.
Texas Instruments Incorporated, Dallas, Texas.
Tyson Foods, Inc., Springdale, Arkansas.
The University of Texas System, Austin, Texas.

Mr. McCAIN. Mr. President, on June 20, 1991, I expressed my concerns with the present state of our banking industry to Chairman RIEGLE and ranking minority member GARN. I thank them for their efforts on this much-needed legislation. Without this legislation, I fear that the taxpayer would be asked to bailout the commercial banking industry.

Congress simply cannot permit another taxpayer bailout because of inaction. Reform of our banking laws are crucial not only to stabilize our financial services industry, but to spurring economic growth. No economy can be expected to grow without a healthy financial services sector. We only need to examine the credit crunch to realize how important a vibrant banking sector is to economic growth.

The legislation before us is not as comprehensive as I had hoped. But, contained in this legislation is substantial and meaningful deposit insurance reform, fiancial services reform, and regulatory reform. I feel this legislation will make our financial system safer, sounder, and internationally competitive.

I had hoped that taxpayer exposure to deposit insurance could be limited, but my amendment on this issue failed. Nonetheless, I feel that the elimination of the too-big-to-fail policy will go a long way toward protecting the average American from another enormous taxpayer bailout.

Notwithstanding my desire to further protect the taxpayer, I feel passage of a broad-banking-reform package is virtually an economic necessity. Without modern and efficient credit markets, our economy and people will never reach their full potential.

In July, I espressed my desire that the Senate move expeditiously in its consideration of comprehensive bank-

ing reform. Now that the Senate has successfully passed a comprehensive reform bill, I call on my colleagues in the House to pass a broad-reform package.

A narrow banking bill which only recapitalizes the Bank Insurance Fund will only sow the seeds of another taxpayer bailout. Comprehensive reform of deposit insurance, financial services, and examination procedures is necessary to modernize our financial system and to protect the taxpayer from endless bailouts.

Let me take this opportunity to reiterate from my July statement a quote from Robert Frost's "The Road Not Taken" for my colleagues in the House. It goes like this:

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by
and that has made all the difference.

Mr. President, the Senate did not get lost in the woods and take the road more traveled. The road more traveled is the road to a taxpayer bailout. The Senate has taken the road less traveled, and I am confident that it will make all the difference.

I earnestly implore the House to follow the lead of the Senate and make a difference by reforming our banking laws. The House can join the Senate and effect reform that will modernize our banking industry, protect the taxpayer, and provide impetus for economic growth.

By acting judiciously, somewhere ages and ages hence, future Americans will laud the Congress for its foresight and reap the benefits of our diligence.

We must reform our banking system. We must reform it now.

DOLLAR COIN PROVISION OF S. 543

Mr. BRYAN. Mr. President, I would like to clarify a provision of the bill that would create a new dollar coin.

Nevada, and at least nine other States, has some form of lawful coin-operated gaming devices. Over 60 percent of Nevada's gaming revenue is derived from these machines. Of the approximately 136,000 machines in gaming establishments in Nevada, 27,500 are of dollar denomination. Many more machines are operated outside of gaming establishments. Because of the scarcity of Eisenhower dollars, almost all play is from dollar tokens. Dollar tokens are considerably larger than the Susan B. Anthony or the proposed dollar coin.

To accept the smaller coins, the gaming devices would have to be retrofitted with expensive electronic coin comparitors. The cost depending on the machine can vary from $300 to $1,200. In any case the end result would be tens of millions of dollars of additional costs to Nevada operators, not to mention other States. I am also advised that the multiple width of the proposed coin could require much greater machine maintenance and could be mistakenly inserted into the quarter machines.

I want to make sure, therefore, that no provision of S. 543, or the corresponding House bill, will in any way preclude the use of metal tokens for coin-operated gaming machines, or require or encourage a change in the Treasury Department's position allowing the use of metal tokens—contained in the "Final Statement of Treasury Policy Regarding the Use of Metal Tokens," Federal Register, page 28679, July 15, 1985—and that no provision will require operators of coin-operated gaming devices to bear the expense and potential problems resulting from retrofitting the devices to accept a new coin.

Mr. RIEGLE. I agree that it is not the intention of any provision of the bill to limit or eliminate the use of metal tokens, and that no provision of the bill is intended to require operators of coin-operated gaming devices to retrofit the devices to accept a new coin.

Mr. GARN. Mr. President, effective February 13 of this year the FDIC instituted a policy and procedures to minimize payments for outside legal services and reporting mechanisms to track such payments made during any previous consecutive 12-month period. I would like to commend the legal division for its timely action and its simple yet effective regulations.

At this time I would note the concern of my House colleagues regarding fees for legal, accounting, and investment banking services. We are all concerned that said services are minimized and when necessary that performed contracts be entered with sensitivity to geographical and regional distribution based on the location of assets or services rendered. We do not need to spawn another Washington, DC, monopoly.

At the same time we recognize that there will be cases where it is in the best interests of the taxpayers for the FDIC and the RTC to take advantage of the expertise and experience of some firms in this complex litigation area.

Mr. RIEGLE. To my good friend, I say we have mutually worked to minimize outside costs wherever possible. Perhaps it would assist our committee if the FDIC and the RTC each could advise us of particularly large fees or retainers, for example those in excess of $1 million per month. In most cases we anticipate that individual law firms' fees would not exceed more than such an amount of an annualized basis. Would Senator GARN agree?

Mr. GARN. I do, and I think the Senator has made some excellent points. I would like to join in requesting such information from the FDIC and the RTC.

INTERBANK LIABILITIES

Mr. BOND. Mr. President, I wonder if I might ask my colleague Senator RIEGLE, the chairman of the Banking Committee, a question about section 218 of this bill, which is entitled "Interbank Liabilities"?

Mr. RIEGLE. Certainly.

Mr. BOND. Do I understand correctly that the limit on interbank liabilities contemplated here would apply to a bank making a deposit at another bank, not to the bank receiving the deposit?

Mr. RIEGLE. That is correct.

Mr. BOND. I thank the Senator very much.

Mr. PRYOR. I also have a concern in this area. Might I also pose a question to my colleague, Senator RIEGLE?

Mr. RIEGLE. I would welcome the Senator's question.

Mr. PRYOR. I thank the Senator. My question relates to the Federal Reserve Board's role in implementing this section. The Federal Reserve is a bank regulator as well as our Nation's central bank, but in some respects it also competes with correspondent banks. I am concerned that it might use its authority under this section to put correspondent banks at a competitive disadvantage. What is the Senator's view on this?

Mr. RIEGLE. This section seeks to reduce the systemic risks posed by the failure or near-failure of a large depository institution. It is part of our attack on the notion that some banks are too big to fail. For the Federal Reserve to use its authority under this section to gain a leg up in competing for correspondent banking services would be inconsistent with the intent of this section and, in my view, a serious abuse of discretion.

Mr. PRYOR. I thank the Senator.

Mr. GRAHAM. Might I also ask a question about this section of the bill?

Mr. RIEGLE. By all means.

Mr. GRAHAM. My question relates to the possible effects of this section. One of my constituents, a bankers' bank in Florida, has expressed concern that a limit on interbank liabilities would prompt banks to redirect their correspondent balances from small banks to money center banks, figuring that a money center bank is too big to fail and deposits at that bank will therefore be immune from supervisory criticism.

Mr. RIEGLE. For the regulators to take such an approach would totally frustrate this section's purpose. That purpose is expressly stated in the statute: "to limit the risks that the failure of a large depository institution * * * would pose to insured depository institutions." In the scenario you describe, the regulators' policies would be exacerbating, not limiting, that risk. So I do not view that as a permissible result under section 218.

Mr. GRAHAM. I thank the chairman.

Mr. RIEGLE. The Senator is quite welcome.

Mr. WIRTH. Mr. President, the bank reform legislation (S. 543) has a number

of important and valuable elements. It addresses priorities such as providing the Bank Insurance Fund with the resources it needs to address the problems of our Nation's banks and making important improvements to the deposit insurance system.

Many of the legislation's deposit insurance reform proposals make good sense. I have strongly advocated the provisions designed to limit use of the too-big-to-fail doctrine, early intervention requirements, and risk-based insurance premiums. While the provisions included in the legislation fall short of comprehensive restructuring of the deposit insurance system, they do make a number of important improvements and will help reduce the risk to the taxpayer.

The Banking Committee adopted two amendments that I offered which I believe make important improvements to the legislation. The first would make a number of important reforms to bank accounting and auditing rules and procedures. These reforms are designed to improve the financial management and recordkeeping systems of large banks and help regulators better understand the financial condition of these institutions. The reforms will help large banks monitor and improve their own financial condition as well as protect the Deposit Insurance Fund.

The second amendment is an effort by Senator GRAN and I to push the regulators to adopt uniform standards with respect to real estate lending. Because there are no Federal limits on the amount a bank or thrift can lend for real estate, in some States, banks and thrifts can gamble and loan up to 100 percent of the appraised value of a real estate property. The volatility of the real estate market makes lending in this area without appropriate standards dangerous to the financial system.

Although FIRREA directed the regulators to adopt uniform real estate lending standards, they have not done so in the 2 years since that legislation was enacted. The amendment adopted by the committee would again direct regulators to adopt such standards. If the regulators do not act within 9 months of the legislation's enactment, specific loan-to-value ratios included in the amendment would go into effect 6 months later. I hope this amendment will spur regulators to act in this area.

The managers' amendment includes provisions that I had sought to require the public disclosure of examination reports of failed financial institutions if taxpayer dollars are used to resolve the failure or assist the institution, as well as the disclosure of settlement of government lawsuits related to such institutions. I did not offer the amendment during markup because I was concerned that debate on the matter would have prevented the committee from promptly completing work on the legislation. Senator GARN and I were able to resolve our differences on the proposal and incorporate a number of safeguards to protect customer privacy. I am pleased that our compromise became part of the legislation.

I believe there are other areas in which S. 543 needs significant improvement. BIF funding and recapitalization and real deposit insurance reform should be our priorities in crafting this legislation. I'm not convinced the legislation as it now stands does enough in either area.

The legislation provides funds to allow BIF to address the current problems in the banking industry and includes provisions to promote rebuilding the fund. However, I am concerned that the plan does not rely enough on industry resources and raises the very real prospect of a taxpayer bailout of the industry if the economy doesn't recover and banks are unable to repay the Treasury. I am also concerned that the recapitalization approach could leave BIF in dangerously weak condition which in turn could enable weak and failing banks to remain open, ultimately increasing the costs to taxpayers.

The economy has remained weak since we began developing the bank reform package last winter. The longer the recession lasts, the deeper my concerns about the possibility of an eventual taxpayer bailout and the effectiveness of the recapitalization plan.

The deposit insurance reform title makes a number of important improvements to current law. However, I am concerned that it does not go far enough to bring more market discipline into the process. Risk-based deposit insurance reform premiums and the reinsurance provisions offered by Senator DIXON are a step in this direction as are the provisions designed to attack the too-big-to-fail problem.

While I support these provisions, I am concerned that the reforms will reduce the frequency with which uninsured deposits are protected in bank and thrift failure but not eliminate the practice. Once the new procedures are in place, there still may be a handful of institutions that depositors believe are too-big-to-fail. The result could be an increasing concentration of large deposits in a handful of money center banks. The result could be greater taxpayer exposure in the event one of those institutions fail.

That's why I sought to require that uninsured depositors and creditors lose a portion of their funds if regulators invoke systemic risk and cover all of a large bank's deposits. Such a haircut would bring greater market discipline to uninsured deposits. I worked with Senator DOMENICI on a haircut amendment during the committee's markup. Unfortunately, the language that was ultimately adopted was relatively modest and can be improved. I wanted to amend the legislation to impose a haircut and complement the other provisions that seek to curb use of the too-big-to-fail doctrine. I did succeed in obtaining an amendment directing the Congressional Budget Office to study the haircut concept. However, I think we should do more than study the question.

S. 543 lacks substantial regulatory restructuring. In markup, the committee deleted my proposal to establish a new, independent regulator for both banks and thrifts. The legislation did include other provisions I had proposed to repeal the exemption bank and thrift securities have from Securities and Exchange Commission registration and reporting requirements.

At a time when the bank and thrift industries are in turmoil, I think regulatory authority over their securities should lie with the agency that has the most expertise in that area. Investors deserve that protection. And when billions of tax dollars are being spent to cover bank and thrift losses, with the ultimate scope of the problem still unclear, taxpayers deserve the protection of an improved regulatory structure. I'm not so sure that a bank reform package that doesn't include the regulatory restructuring we need is worthy of the name.

While the above three issues are my primary concerns with S. 543, I have reservations about a number of other aspects of the legislation. For example, I supported an amendment to the interstate branching provisions. I do think it is time to revamp the Federal laws restricting branching but I think we have to take the concerns of State governments into careful consideration. I also supported the basic banking/Government check-cashing provisions that were deleted from the package. They are not as onerous as some earlier proposals in this area and I think it was reasonable to include them in legislation that provides so much financial support to the industry.

I also have concerns about what we have done in title seven of the bill. I would have preferred that we enact good comprehensive legislation that addresses powers. Instead, we are again putting off the central financial restructuring questions for another day. I don't have a quarrel with that in this context; the votes are not there in the House for a bill that addresses expanded powers.

The legislation includes several provisions I support. However, I have serious concerns about other provisions—the BIF funding and recapitalization plan, too-big-to-fail, the lack of meaningful regulatory restructuring, as well as others.

In considering the overall package, I conclude that my concerns and reservations about S. 543 outweigh the positive elements of the package. For this reason, I have decided to oppose the legislation.

In some ways, I regret this decision. I have put a great deal of effort into the package. I am well aware that others have done more than I. The chairman and ranking member have been leading our efforts all year. It is not easy to oppose the product of these efforts. But in many ways, the legislation foundered on matters beyond their control. Regardless of whether this legislation is ultimately enacted into law, we will need to pass more comprehensive legislation in the future. That effort will benefit from the work that the committee has done this year.

Mr. ADAMS. Mr. President, I ask the chairman of the Senate Banking Committee if he would yield for a few minutes to discuss a couple of points I would like to make about this bill.

Mr. RIEGLE. I would be pleased to yield.

Mr. ADAMS. I thank my friend from Michigan.

Mr. President, I am concerned that the interstate branching structure envisioned in this bill will result in a loss of key safety and soundness reporting by banks.

Current law requires banking companies to report key safety and soundness information in quarterly financial reports. Since interstate banking companies are required to establish separate subsidiary banks in different States and each subsidiary must file a separate report, regulators today have access to this important information on a State-by-State basis.

Under S. 543, an interstate banking organizing operating under the new branching structure would only be required to file one quarterly financial report for its multistate operations. Gone would be State level information on outstanding loans. Gone would be information on nonperforming loans. Gone would be data on interest income, interest expenses, and loan loss rates.

Loan quality and profitability problems within a multistate branching company will not just show up overnight. Rather, they tend to begin in one State or region. Then, they spread throughout that company's sprawling interstate structure.

Without State level information, regulators will not be able to perform the job we ask of them in this bill, act fast and act decisively.

The reduction in vital safety and soundness information as a result of the interstate banking provisions is contrary to the mandate of this bill.

Title II of this legislation spells out that mandate. Risk-based capital ratios, risk-based assessments, and most importantly early intervention. Early detection of a bank's problems is essential if supervisory action is to be taken before problems spread. However, without State level reporting of key safety and soundness data by large interstate banks, regulators cannot possibly be expected to intervene before an institution is on the brink of failure.

In addition, without State-by-State reporting by large interstate branching companies, I believe we will also lose economic performance information. How will regional or State economic/development planners combat downturns in their economies without key information on vital economic indicators? Hidden in a multistate branching bank's quarterly financial reports will be specific data on the level of construction, commercial mortgage, residential mortgage, and agricultural production loans.

Growth in these areas are essential for pulling a region or State out of a recession. If large out-of-State branching companies are only required to file one report for their multistate operations, State planners will not have access to the data required to combat economic problems.

I am not willing to allow out-of-State banks to dictate the economic performance of Washington State. I doubt if there is a member of the Senate who would.

I ask the chairman of the Banking Committee if he is concerned about the loss of safety and soundness and key economic performance information as a result of banks organizing under the interstate branching structure?

Mr. RIEGLE. I am indeed concerned. During the markup of this legislation, the loss of information was considered. If the Senator will note, in section 557 of the committee print, the Banking Committee, recognizing the potential impact of this loss of information, required a GAO study.

Specifically, the Comptroller General is required to submit, within 9 months after enactment, a report that examines statutory and regulatory requirements for insured banks to report to regulators and to determine what new reporting requirements may be necessary to insure the interstate branching provisions do not result in a loss of safety and soundness reporting by banks.

Mr. ADAMS. If I may, I would like to continue in this same vein.

Mr. RIEGLE. I yield to my friend from Washington.

Mr. ADAMS. During the course of debate on this bill, I have listened to one Senator after another come to the floor to bemoan the credit crunch squeezing our economy, particularly in the small business area.

In fact, there have been a couple of amendments discussed on the floor that were drafted with small businesses in mind.

The devastating credit crunch sweeping through our economy has highlighted the importance of access to credit. A steady, consistent stream of lending is necessary for small businesses, the backbone of our economy.

A recent survey for the National Small Business United clearly showed that small business owners are feeling the pinch. Eighty percent of approximately 2,000 business owners who responded said small concerns are having a hard time getting credit for expanding firms. Seventy percent of these owners cited personal resources as the source of capital.

Our country depends on small business for its economic growth and expansion, particularly on the regional and local levels. Without access to credit, small businesses that are ready for expansion, ready to create new jobs, will not have the capital available.

I have discussed this credit access issue with some small business owners in Washington State, as well as trade groups representing thousands of small businesses across the country. I asked them what they thought about this bill and how we could improve it to ensure adequate credit is available.

They had some constructive comments that I would like to share here.

First, they believe that State-by-State data is needed by the Federal Reserve Board and small business organizations to analyze small business's credit crunch.

I agree with these groups that if we really want to help alleviate the small business crunch, we must have State-by-State information to make informed decisions.

Second, small businesses need to have a clear picture of small business lending for a State's various metropolitan areas, as well as rural areas. If a State or region is struggling through a recession or economic downturn, it would be essential that the specific metropolitan or rural areas be specified.

Mr. President, the announcement of a proposed merger between Bank of America and Security Pacific on the west coast has caused me deep concern. If this merger were to be completed today, the resulting money-center bank, operating out of San Francisco, would control over 50 percent of the total bank assets in my State and over 40 percent of the insured deposits. This is a tremendous concentration of banking power in one out-of-State institution.

I have asked myself what this will mean for my constituents. How will the proposed merger affect the cost and quality of services to consumers in Washington State? How will it affect the availability of credit to small businesses and farmers in my State. These are serious questions that must be answered before the merger is approved.

Regardless of the ultimate outcome of the proposed merger, it is clear to this Senator that megamergers are the wave of the future. But, if interstate branching is to become the norm, I want to have at my fingertips information on how any out-of-State banking conglomerate is operating in Washington State. It is vital for the economy of Washington that this information be available.

I ask my colleague from Michigan if he has heard the suggestions made by small business groups?

Mr. RIEGLE. Yes; I have.

Mr. ADAMS. During the course of the debate and ultimate dispensation of this bill, would the chairman accept proposals that address both the safety and soundness and economic performance reporting concerns raised here?

Mr. RIEGLE. I say to my colleague from Washington that I share his concerns and will do everything I can to address his concerns.

Mr. ADAMS. I thank the chairman for his consideration of my concerns and for the yielding me his time.

TITLE INSURANCE

Mr. BRYAN. Mr. President, when the Senate Banking Committee was considering this legislation, I filed an amendment that would have prohibited national banks from engaging in title insurance activities. I planned to offer this amendment because I was particularly concerned about how the combination of national banks underwriting title insurance and making mortgage loans might affect the safety and soundness of both banks and title insurers and whether consumers would be adequately protected. The various versions of the bill which were voted down in the House of Representatives, H.R. 6 and H.R. 2094, contained a provision similar to my amendment.

I would like to inquire about the treatment of national bank sale and underwriting of title insurance in the bill which is before us.

Mr. RIEGLE. The Senate has adopted a managers' amendment that addresses insurance issues and substitutes new sections 771 through 774 for those in the committee-reported bill. The amendment does not mention title insurance specifically. In general, section 771(c) of that manager's amendment provides that, with respect to ongoing litigation concerning OCC opinions allowing a national bank to engage in an activity under 12 U.S.C. 24, the incidental powers provision, the litigation will be governed by the statutes presently in effect, rather than the law as it will be altered by enactment of this bill.

Opponents of these OCC approvals under the incidental powers provision are arguing that 12 U.S.C. 92, the small towns provision, provides exclusive authority for banks to engage in title insurance activities. The manager's amendment modifies the small towns provision but contains no reference to title insurance. Consequently, arguments and rulings in pending litigation must also be based on 12 U.S.C. 92 as it existed prior to enactment of this legislation.

Mr. BRYAN. I remain concerned that the amendment does not specifically address title insurance, but I am reassured that the Senator believes that this legislation will not prejudice the outcome of any presently ongoing litigation or future litigation brought on OCC opinions. I also seek clarification from the Senator with respect to some language in section 771(c) which provides that activities are "lawfully engaged in to the extent that they are finally adjudged as lawful under laws in effect on May 1, 1991."

Mr. RIEGLE. It is my understanding that litigation concerning the ability of national banks to engage in title insurance activities under 12 U.S.C. 24 is presently pending in the second circuit. If that decision is not reviewed by the Supreme Court, it is the committee's intention that the final decision of the court of appeals regarding the lawfulness of the Comptroller's approval constitutes "final adjudication."

I agree with Senator BRYAN that the sale and the underwriting of title insurance are risky activities. I am also concerned that title insurance underwriting and sales by a national bank in connection with its own mortgage loans is a conflict of interest. If the decision in the second circuit creates problems, I anticipate that it may be necessary to revisit this issue.

Mr. PELL. Mr. President, it has been a long, hard fight to get this banking bill approved by the Senate and Senator RIEGLE has done a fine job of managing it on the floor. The primary goal of this bill is to provide continued funding for the Federal Deposit Insurance Corporation, which is the safety net for all federally insured banks. However in my view, a vital part of this bill is the $180 million Federal loan guarantee for Rhode Island.

This $180 million Federal loan guarantee will enable the State of Rhode Island to borrow the money needed to make depositors of closed Rhode Island banks and credit unions whole again.

Mr. President, I am truly pleased that the Senate has approved a banking bill that will help Rhode Island. I am also very grateful to the chairman of the Banking Committee, Senator RIEGLE, for his crucial support of efforts to help Rhode Island within the banking bill.

The Rhode Island banking crisis has had a severe emotional public impact in Rhode Island. The $180 million loan guarantee approved by the Senate will not solve Rhode Island's problems overnight, but if this loan guarantee is approved by the President, it will be of great assistance to our Governor, Bruce Sundlun, in his efforts to solve this terrible crisis.

Senator CHAFEE and I have been working for many months to lay the groundwork for Senate passage of this loan guarantee provision. I would also like to point out that it was Senator CHAFEE who introduced this measure in the Senate Banking Committee and that he did an excellent job of convincing his colleagues on the committee to approve it.

Now that this Rhode Island provision has been approved by the full Senate and the House of Representatives, we will continue to work with Congressman REED and Congressman MACHTLEY to secure the approval of the President.

Reaching the end of the Rhode Island banking crisis will not happen overnight. I know that depositors want their money now. I have seen the anger, misery, and pain of depositors firsthand. I also know that this loan guarantee, if it is approved by the President, will offer some light at the end of the tunnel. Lord knows we need that light.

I might state that, in the past, twice we have seen a situation where a rock can be thrown through the window of our Governor's house. Seven thousand Rhode Islanders were lined up in the rain to get free government food because they were hungry. This is an area where you have 9.6 percent unemployment. We have real misery in our State at this time, as we continue to be in a depression.

The Rhode Island banking crisis took years to develop, but nothing was done until Governor Sundlun closed these institutions on his first day in office. When this happened—and it was a necessary action, and he showed great courage in taking it—people were surprised. I know I was.

There should be no more surprises in Rhode Island. In the future, when we see a problem developing in our State, we should ask questions. And when somebody tries to wave us off and say, "It is no problem; do not worry about it," an alarm should go off in our heads, and we should ask even more questions.

If not for the activity of our Governor, on very short notice, we would be in even worse shape. This is a development of a good many years of misrule and misgoverning by previous Governors. We should not wait until problems become overwhelming, until we need Congress to step in to help pick up the pieces.

Henry Adams once said that "all experience is an arch to build upon." I hope that we Rhode Islanders can take the experience of this banking crisis, learn from our mistakes, and build a better future for our State.

I yield the floor.

Mr. ROTH. Mr. President, I wish to express my strong concern with removing the Securities and Exchange Commission from the compensation laws governing the vast majority of the executive branch. I hope and trust that the SEC and the Office of Personnel Management will use the next 6 months to address the Commission's recruitment and retention difficulties through the use of the pay reform law enacted last year.

As the ranking Republican member of the Committee on Governmental Affairs, which has jurisdiction over the civil service and compensation laws of the Federal Government, I can assure

this body that the committee and the administration worked very hard last year to pass a comprehensive Federal pay reform law. I am confident that the authorities under current law will help solve the difficulties being experienced by the SEC. I know the Director of the Office of Personnel Management, Connie Newman, believes so, and I trust that she is correct.

The pay reform law was designed specifically to meet the needs of all Federal agencies and employees, and to prevent the fragmentation of the Federal compensation system. The provision in the bill prior to the adoption of this amendment represents the very thing we were trying to avoid—the breakdown of the Federal pay system. This is not simply a jurisdictional issue, Mr. President, but an issue of fairness to the vast majority of other Federal employees who are under the current pay laws.

Why should a lawyer at the SEC be exempt from the pay caps and a lawyer at the Department of Justice be under the pay system? Why should a budget analyst at the SEC be exempt from the pay laws, and a budget analyst at the Department of Health and Human Services be covered by them?

It would probably be easy, Mr. President, for each individual agency to make a compelling argument that they should exempt from the pay law. But as the ranking Republican member of the committee of jurisdiction, I have to look at the Federal Government in total. And that is what I did in the Pay Reform Act. There may be special circumstances where an agency is experiencing severe recruitment problems—but there are provisions in the comprehensive reform law to address those difficulties.

Last year the Congress passed a comprehensive pay reform law to address recruitment and retention difficulties facing all Federal agencies including the SEC. In addition to new recruitment and relocation bonuses and retention allowances, the new law provides a process to close the Federal pay gap in those localities where a gap exists.

In addition, the 1989 Ethics in Government Act increased executive schedule salaries by 25 percent and senior executive service salaries by between 18 and 25 percent. Given the economic climate at the moment, the Federal Government is a very attractive place to work. The new pay laws are intended to make the Federal Government the employer of first resort in all economic times, not just periods of slowdown. It is my understanding that applications are flowing into certain Federal agencies at a very high rate.

If such difficulties exist at the SEC, to what extent does the agency plan to use the recruitment and retention authority already provided in law by the Pay Reform Act? This amendment mandates that the agencies work closely together to use the authorities under current law.

For instance, there is a special rate program which permits approval of higher minimum rates for particular occupational groups. Under the expanded authority provided by pay reform, special rates of up to 60 percent above the normal maximum rate may be approved. In addition, the pay law provides for critical pay for exceptionally well qualified individuals up to executive level I, which is currently close to $140,000.

Mr. President, the Pay Reform Act makes a fundamental change in the method for establishing Federal employee salaries. The Pay Reform Act is designed to help close the pay gap between the Federal and non-Federal sectors. The impetus for the law was the need to improve the ability of the Government to recruit and retain across the board, in all occupations, by channeling resources in those localities where problems are most pervasive.

During consideration of pay reform, there was a lot of talk about a quiet crisis facing the Government—failing to attract topnotch recruits and retain top employees. There was a very strong belief that pay was so low relative to the private sector that the Government would be unable to accomplish its many missions.

The Pay Reform Law provides new tools to attract personnel and meet these challenges, particularly with a more credible annual pay adjustment process and locality differentials.

Beginning in January 1994, the pay system moves to a locality based system. All employees will receive a pay raise equal to the change in the employment cost index minus 0.5 percent. The goal of the locality based system is to close any existing pay gap with non-Federal employees. The Bureau of Labor Statistics will conduct annual surveys in major geographic localities to determine if an adjustment is warranted.

By establishing a locality system, the law moves us away from a comparability gap nationwide and looks at the gap within each locality. This will focus the Federal Government's limited resources to those areas with the greatest recruitment and retention problems.

The most immediate benefit of the Pay Reform Act fell to those employees in New York, Los Angeles, and San Francisco, which were provided with 8 percent geographic differentials in January. This was provided to almost 13 percent of the SEC staff who work in these three major cities.

Other provisions will help improve recruitment and retention efforts including special bonuses with service agreements. Agencies have been given the flexibility to establish bonuses, up to 25 percent of basic pay, which would be available to employees who must relocate to fill a position in which the agency is having difficulty filling. An employee receiving such a bonus would have to agree to work for the Government for a certain period of time. In addition, agencies have the authority to provide 25 percent retention allowances to those employees the agency believes it must retain.

Mr. President, I am confident that the pay reform law, given time to work, will solve the recruitment and retention difficulties being experienced by the SEC. I read this amendment to require that full and complete consultation will occur between the SEC Commissioner and the OPM Director prior to any certification permitted under this amendment.

PRESIDENTIAL INSURANCE COMMISSION

Mr. DODD. Mr. President, title XI of the bill provides for the creation of a Presidential Insurance Commission to assess the condition of the property and casualty insurance, life insurance, and reinsurance industries and to make "any recommendations for legislation or administrative action that the commission considers appropriate. * * *"

First, I would like to thank Senator METZENBAUM for his contributions to the managers' amendment. I think his changes will make for a more focused and effective commission.

In short, Mr. President, this title represents an effort to try to get ahead of problem in the hope of avoiding one entirely, or at least mitigating its severity. The failure to appreciate the impact of the huge upward spike in interest rates in the late 1970's on the S&L business, and the failure to learn the lessons of the S&L debacle for bank reform have cost the taxpayers more than $200 billion and may well add billions more if we do not pass bank reform legislation that strengthens the bank charter.

The last few months have shown that the insurance industry is suffering from some of the same problems plaguing the banking industry. Thus, Executive Life, the insurer with by far the largest portfolio of junk bonds, failed in April. Then, in rapid succession, Monarch Capital failed in June because of real estate problems and then Mutual Benefit Life, a solvent insurer with a liquidity problem, was taken over by the State of New Jersey after experiencing runs in July, due to a loss of confidence in its real estate portfolio.

Further, the last 3 months have seen the private rating agencies downgrade the claims paying ability of many larger insurers. While they are still rated investment grade, clearly this action will lock some insurers out of some investment markets.

In many respects, these problems are part of the more general problem of the serious recession. However, the industry and the public—businesses and con-

sumers alike—have a number of other problems of a far different origin. Unfortunately, congressional consideration of these issues is scattered among many committees, so that the problems too often are being considered in isolation.

Just as you cannot separate deposit insurance reform from the strength of the banking industry itself, so you cannot separate the ability of insurers to remain solvent and strong—and thus have the ability to carry out their insurance commitments—from the nature of the insurance product and how it is regulated.

Over the last decade and a half, the industry has come under increasing pressure from a wide range of sources. In major part, the industry is the victim of its own success. When 156 million Americans are covered by life insurance; when more and more States mandate automobile insurance in order to drive a car; and when more and more businesses—from manufacturers to day care centers—realize they must carry insurance in order to do business, then as surely as the night follows the day, governments will try to make sure that insurance is available to all who need it and at a price they can afford.

The concept makes eminent good sense. However, the problem comes when we ask the insurance industry to pay more and more benefits, but not require the insurance consuming public to pay their full cost. The result may be good for consumers in the short run, but in the long run it can mean insolvent insurers who cannot meet their insurance commitments and who no longer will be available to write insurance in the future.

The same problem arises when the industry writes policies based on one assumption and then is forced to pay off under a different reality. Such, for example, has frequently been the case with respect to environmental liability insurance, particularly with respect to State and Federal superfund liability. Insurers write policies based on an assumption of limited liability, or of a lower risk associated with a particular hazard, then 20 years later the risk turns out to be far greater than anyone thought and the courts have expanded the ambit of liability to meet modern views of equity. The result may be good for the victims of environmental hazards, but bad for the solvency of insurers.

Similarly, last year the Congress in the budget deficit reduction agreement increased insurer taxes by $8 billion over 5 years. That may be good tax policy but, again, how does that help improve the solvency of an industry in need of more capital?

Clearly society needs a wide variety of insurance products at competitive prices to conduct our daily business. We cannot have such things if we do not have a strong, competitive and solvent insurance industry. Particularly given the limited involvement of the Federal Government with insurance issues—because they have historically been regulated at the State level—I believe that it is essential that we have a comprehensive look at all relevant issues so that if we decide to legislate in one or more areas, we do so in a way that will assure a financially healthy industry so that we can assure consumers the availability of adequate insurance coverage at competitive prices. We cannot have the latter without the former.

Title XI of the S. 543, as revised by the managers' amendment, addresses the problem by establishing a 25-member Presidential Commission—composed of the Secretary of the Treasury, the Attorney General, the Secretary of Transportation, the Secretary of Commerce, the Secretary of Labor, and the Chairman of the Federal Trade Commission—as well as 10 Members of the Congress and 9 individuals with expertise in insurance, State regulation of insurance, financial services, antitrust, liability law, and consumer affairs.

Mr. President, the mandate of the commission is very broad, both because there are a number of issues facing the industry and the public and because a good public policy resolution of those issues can be achieved only if we understand the interconnections among them. The only way we can be assured of the availability of a wide array of insurance products at competitive prices—and assure that insurers will have the funds needed to pay off when an insured event occurs—is by making sure that we have a strong and competitive insurance industry.

Mr. President, the commission has a truly challenging mandate, but I believe its successful completion will help us and the States to establish policies that will assure a strong, competitive insurance industry in the 21st century, will assure consumers a broad range of useful products at competitive premiums—and guarantee consumers that the industry will make good on its promises of insurance dollars when an event that should trigger coverage occurs.

THE LAMPF DECISION

Mr. SASSER. Mr. President, I have an inquiry about the interpretation of the provisions of the bill relating to the Supreme Court's decision in Lampf. It is my understanding that the purpose of this compromise is to return both plaintiffs and defendants to their positions that they had on June 19, 1991. This language is not intended to encourage, validate, or permit forum shopping.

Mr. RIEGLE. The Senator is absolutely correct. The language in the bill is designed to return plaintiffs and defendants to exactly the position that they had on June 19, 1991, and not in any way permit forum shopping.

Mr. GARN. Mr. President, I would like to address a question to the distinguished Senator from Michigan, the chairman of the Senate Committee on Banking, Housing, and Urban Affairs.

Mr. Chairman, earlier today the Senate adopted as part of the manager's amendment to S. 543 a provision relating to the retroactivity of the recent U.S. Supreme Court decision in Lampf, Pleva, Lipkind, Prupis & Petigrow versus Gilbertson. This amendment was intended to permit the courts, in cases arising under section 10(b) of the Securities Exchange Act of 1934, and pending at the time of the Lampf decision, to apply the statutes of limitation and principles of retroactivity applicable immediately prior to the Lampf decision in the jurisdictions in which such cases were commenced.

It is my understanding that this provision, designated as section 1126 of the bill, is not intended to apply to or in any way affect the parties or the claims in the Lampf decision itself. The Supreme Court's final judgment if the Lampf case will remain intact for the parties in that case. Is this your understanding?

Mr. RIEGLE. Yes, that is correct.

AILING BANKING SYSTEM NEEDS REFORM

Mr. SEYMOUR. Mr. President, last Wednesday I spoke on the Senate floor and expressed my disappointment with the inability of this body to do the Nation's business. Now, here we are today, wrapping up legislation that was supposed to overhaul and make more competitive the banking system; Instead, we are passing a watered down, narrow version. This measure should have been debated, amended, passed, and implemented months ago. I am not surprised that our constituents back home have become so cynical of Congress.

Our ailing banking system needs reform. It is essential that we take cooperative, bipartisan action to ensure the health of our banking institutions, calm the fear of their depositors, and put our banking system on a strong and stable footing. Bank failures have occurred at an unprecedented rate, the bank insurance fund has all but dried up, and our economy is being strangled by a lack of investment capital. A comprehensive and effective banking reform measure would have been one step forward in bringing this country's economic crisis to an end.

But, as we all know, the House has killed two banking reform measures. And, now our counterparts are back at the table for a third round. Well, I didn't come here to play legislative tennis with the administration and the House of Representatives, or engage in heated partisan politics. We have a duty and an obligation to the American people to do what is necessary to put this country on solid ground. I

challenge my colleagues to do what is right and get down to business. As I have said before, I am ready to stay here until Christmas to do it.

I agree this bill contains some very essential and necessary provisions. Replenishing the bank insurance fund will ensure that bank depositors are adequately protected. And, just as important, are the reforms in the bill that will help to safeguard against bank failures in the future. By strengthening the regulatory supervision of these institutions, intervening early when an institution finds itself in serious trouble, and eliminated abusive banking practices, we can succeed in restoring faith in our banking system.

I do not need to tell my distinguished colleagues about the very controversial provisions that exist in this bill and in the amendments presented. The powerful competing interests of those groups who will be financially affected by this legislation are great. I have heard from many independent bankers from cities and towns across my home State who are concerned that if larger, more powerful banks are allowed to enter into interstate banking, they will be virtually choked out of business. At the same time, larger institutions have expressed the illogic of the present system of haphazard State by State laws on interstate banking. Those in the insurance and securities industries have also voiced their concerns about certain provisions of this legislation.

Our Nation is facing a financial emergency and we must treat it as such. Mr. President, my constituents back home are afraid for their economic livelihoods and the economic future of this county. They feel that we here in Washington don't care. By enacting an effective banking reform package, we could have sent a clear message back home to our constituents that we can work together and get the job done.

I am disappointed that we could not have taken a dedicated, nonpolitical path to putting our banking system back on the straight and narrow. Not only have we abdicated our responsibility, but we have failed to ease the fears of our constituents and restore the public's faith in this institution.

Mr. SASSER. Mr. President, I rise in support of S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act. I voted against this bill in committee because I believed that the bill went further than is necessary and prudent considering the times.

I am therefore pleased that the distinguished chairman and ranking member have agreed, in particular, to strike the Glass-Steagall repeal provisions from the bill.

Mr. President, I believe that the expansive securities provision that was reported by the Banking Committee could have put the banking system and the taxpayers at increased risk.

As the full extent of the savings and loan debacle continues to unfold before us, increasing risk to the banking system—no matter how slight—is ill-advised and inappropriate. At this time the sole objective of any banking legislation should be safety and soundness—period.

Mr. President, the administration is currently asking Congress to make available $70 billion of Treasury funding to bolster the Federal Deposit Insurance Corporation. These funds are needed to cover losses and provide working capital in an estimated 588 bank failures that will occur in the next 4 years.

Mr. President, considering this enormous taxpayer loan, this is not a time for experimentation. Rather, it is a time to return to tried and true principles of safe and sound banking and conservative regulation.

Mr. President, unleashing federally insured banks on Wall Street—as this bill would have done—is not what the American people are seeking as a solution to the banking crisis. What the American people want is tough bank regulation, and an assurance that there is no threat to their hard-earned savings.

And importantly, they want banks to be banks again—to return to traditional lending so that banks can do their part in helping the economy climb out of this terrible recession.

The American people do not want any more federally insured loans to Donald Trump. They do not want banks to be making loans to corporate raiders or to Third World dictators. What the American people are demanding is that banks make loans to businesses to produce jobs and to consumers for purchases of homes and for education.

Mr. President, the record is out there: The banks that prospered in the 1980's have not been those that pursued speculative investments—like hostile takeover lending. The banks that have prospered, and will continue to prosper, are those that have concentrated on the traditional banking business.

Mr. President, as we all know, our financial system is in extremely sensitive condition. During the 1980's, we witnessed a financial calamity of unprecedented magnitude. The collapse of the savings and loan industry and its federally sponsored insurance fund is projected to cost the taxpayers several hundred billion dollars when the bills are paid.

There are a myriad of reasons for the savings and loan debacle—some political, some economic, and some technological. But I think lack of regulatory controls and oversight, and an expansion of powers to areas outside their expertise, weighs heavily as a contributor to the disaster.

There was a pervasive sentiment on the part of Reagan administration regulators that savings and loans would be better off if so-called entrepreneurs were brought in to run them, and if they could enter new fields, often beyond their expertise.

Unfortunately, the entrepreneurs often turned out to be high flyers and worse—downright crooks. By the time the regulators realized what was going on, it was too late. New fields all too often ended up meaning new risks and losses for federally insured institutions.

As an eerie followup to the savings and loan crisis, in the late 1980's, we began to see an emerging problem in the banking sector. Most importantly, there has been a dramatic decline in the financial resources of the FDIC. In 1987, the FDIC had $18 billion in reserves, today, according to the General Accounting Office, it is insolvent.

The rapid decline in the fortunes of the bank insurance fund is particularly shocking. The man in the street rightly asks "Where did the money go?" Unfortunately, the causes of the problems in banking are similar to those that caused the problems in savings and loans.

To a large degree, laissez-faire financial regulation, and overly zealous investments, contributed to the banking crisis.

Moreover, the so-called too-big-to-fail policy has been a major culprit. This policy, created by our banking regulators, has protected large banks in this country from failure. At the same time, however, banking regulators have shut the doors of our Nation's smaller community banks with dispatch.

For instance, when Freedom National Bank in Harlem ran into trouble last year, the FDIC promptly closed the bank. And it decided to only partially cover deposits over $100,000. Charities, such as the United Negro College Fund, that had invested in Freedom National because of the bank's important role in a poor minority community, took a big hit.

In contrast, at almost the same time, the FDIC arranged a so-called purchase and assumption of the National Bank of Washington. Rather than closing the bank, as the FDIC did in Harlem, it gave all the depositors a free ride over to a new bank. In particular, the foreign depositors, who had mega-holdings at the Bahamas branch of NBW, were made whole.

The inequitable treatment of these two banks is especially shocking when it's considered that no FDIC deposit insurance premiums are paid on foreign deposits. Under this policy, depositors and other creditors receive full and free insurance coverage in a large bank resolution courtesy of Uncle Sam, while depositors at small banks—who pay premiums on 100 percent of their deposits—often have the door slammed in their faces.

The fact that insurance premiums are not being paid on liabilities that are being insured creates a fundamental unfairness and distortion in the banking system. Look at the deposits of major U.S. banks—Citicorp pays insurance premiums on only 35 percent of its liabilities, and Morgan Guaranty pays premiums on only 11 percent of its liabilities.

Under too big to fail, all these liabilities are almost certainly insured by the FDIC, but no premiums are assessed against them. This stands in contrast to banks in my home State of Tennessee. For instance, SunTrust pay premiums on 89 percent of it liabilities and C&S/Sovran pays premiums on 85 percent of its liabilities.

Mr. President, the coverage of all liabilities—even uninsured liabilities—in bank failures has made it very easy for large banks to raise and lend money. During the 1980's, money gravitated to the big institutions, away from community banks.

Obviously, large sophisticated investors would choose to give their money to a failsafe large institution than to a small bank—hundreds of which were closed in the 1980's.

Easy money meant easy lending, and problems for the FDIC. Too big to fail contributed to the explosion in commercial real estate lending by large banks. Banks more than doubled the percentage of their assets in commercial real estate. As a result, there is more word among our leading banks then was that these loans were as safe as Fort Knox—sovereign nations didn't default on their debts. Well, now we know how false that premise was.

Mr. President, lack of regulation, policies like too-big-to-fail, and bad investments by banks during the last decade have nurtured the crisis we face today. They are a large part of the reason why the FDIC needs a $70 billion Treasury line of credit.

Mr. President, in several respects this bill moves in the right direction of encouraging safe and sound banking and correcting the mistakes of the past. Requiring that regulators intervene early before banks accrue massive losses is a critical reform that will not only reduce exposure to the insurance fund but also lay a major blow to too-big-to-fail.

Requiring that FDIC use the least costly method of resolution, restricting interbank deposits, and limiting the Fed's authority to lend to failing banks through the discount window should also curtail too-big-to-fail.

Charging premiums for deposit insurance based on risk is critical. Under the present system, banks pay a flat rate for deposit insurance no matter how they invest their funds. If a bank makes a loan to Donald Trump, it pays the same premiums as does a bank that makes a loan to a young family to buy a home.

Deposit insurance under the current structure does not provide an incentive to make a safe loan. There's a moral hazard—there's no reward for pursuing avenues that place the FDIC at the least risk.

Making banks pay more on funds that they may use on speculative investments will decrease the likelihood that they'll make such investments and that's important. Risk based premiums will help banks get back to basics.

Moreover, the bill contains a compromise on the foreign deposits issue, that I worked on in committee, that I believe will go a long way to addressing this great inequity. Under the provision contained in the bill, foreign deposits can only be covered in a bank failure if it is the least costly means to resolve the institution. And if they are covered, there must be an assessment levied only on banks that hold foreign deposits to pay for the cost of covering foreign deposits.

Under this provision, a community bank will never again have to bear the cost of insuring a foreign deposit of a large bank. Only banks that have foreign deposits will insure foreign deposits.

Mr. President, as I mentioned earlier, I support the decision of the managers to strike the Glass-Steagall provisions of the bill. I do not agree with some of my colleagues that permitting bank holding companies to fully enter the securities business is the answer to the banks' problems.

I quote the Chairman of the Securities and Exchange Commission, Richard Breeden, who said this year:

> Those who think that there's this fountain of profits in the securities industry that will cure the income problems of banks, have not looked at recent numbers. There are no profits at present in the securities industry.

According to the Comptroller General, the GAO "couldn't find the evidence * * * that by automatically granting these powers * * * that [banks] would [use them] on a profitable basis. Some companies obviously will * * * but others won't."

Indeed, I fear that if we permit an expansion of powers for large banks there will be a great temptation on the part of the regulators to attempt to let the new powers solve the old problems. That, I submit, Mr. President, would be a prescription for disaster. We should not repeat the mistakes of the past.

Mr. President, I think our first order of business is to start with the basics. Our first priority should be restoring the solvency of the insurance fund and assuring depositor confidence in banks and the economy. And next, we should make sure that we have a sound regulatory scheme in place.

I think the bill has been improved from the version that was reported by the Banking Committee.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Do the managers yield back their time?

Mr. RIEGLE. I yield back the time.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

So the bill (S. 543), as amended, was passed.

(Note: The text of S. 543, as passed on this date, November 21, 1991, will appear in a future edition of the RECORD.)

The title was amended so as to read: "A bill to reform Federal deposit insurance, protect the deposit insurance funds, recapitalize the Bank Insurance Fund, improve supervision and regulations of insured depository institutions, and for other purposes.".

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

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

The motion to lay on the table was agreed to.

ANNOUNCEMENT OF A POSITION ON A VOTE

Mr. GARN. Mr. President, I ask unanimous consent Senators BURNS and GORTON be recorded as "no" on the bill. If we had had a rollcall vote, they would have each voted "no."

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

Mr. BRADLEY. Mr. President, there has been no vote on this bill, I wish the RECORD to show my opposition and grave concerns with this legislation.

In the last decade, the Congress has passed laws that have resulted in losses of hundreds of billions of dollars that taxpayers have had to make up for, the administration has imposed regulations that have made it harder for banks to make good loans, and the bankers themselves have pursued short-sighted and sometimes self-destructive strategies. In 1989, I voted against the Financial Institutions, Reform, Recovery, and Enforcement Act. Earlier this year I voted against the $30 billion recapitalization of the RTC.

On all those occasions, I said that what we should be passing was legislation that presents a clear vision of the role that financial institutions can and should play in our Nation's economy and lays out a strategy for achieving that vision. That was my position throughout the 1980's, and it is my position today. The bill does not do that. Again we have backed away.

The financial sector is one of the keys to growth in the American economy, and the American people deserve more than the least common denominator.

Mr. WELLSTONE. Mr. President, I learn every day, and I guess I would not have believed that we would have voted on a bill, tens of billions of dollars, on a voice vote. If I had known that no one in the Senate was going to ask for the yeas and nays, I certainly would have. I deeply regret that a Senator did not ask for the yeas and nays. I deeply regret that we did this by voice vote.

In my honest view, as much as I love being here, I think it reflects poorly on the Senate. I think it is a tough vote. I think our vote should be recorded. I think that is what people want from us, and I want it recorded that if we had had a recorded vote, my vote would have been "no."

Mr. GORTON. Mr. President, I will briefly discuss why I opposed the final version of S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991. I remain open to a comprehensive reform bill which provides significant taxpayer protection from a future savings and loan type bailout. This bill is not comprehensive and does not protect taxpayers from a future bailout of the banking industry. The only winners in this debate are the money center banks and the big insurance companies.

The banking bill which was debated and passed here tonight was the worst of all worlds for Washington's banks. The original concept behind this bill was everyone would get something and give up other things. Tighter regulation for the banks coupled with a willingness for the industry to pay for recapitalizing the bank insurance fund was to be traded off against greater bank powers for the industry. My State's banks, however, were asked to give up everything and received nothing.

Under the interstate branching provisions, large money center banks can open branches throughout Washington State draining deposits from Washington's banks and financial resources from the State's economy. Luckily, Washington banks are among the best run and well capitalized banks in the country. In the long run, I believe Washington's banks will withstand the assault of the money center banks if the legislation isn't changed in conference with the House. But solely because of this bill's passage, Washington's banks will be engaged in a struggle for their existence.

The bill's insurance provisions requires Washington's State banks which sell insurance to divest themselves of those profitable activities. Because of a compromise in the insurance area, however, Delaware State banks are now allowed to sell insurance throughout Washington State. I argued against this amendment because of its affect on Washington's banks because it was simply not fair. Those banks allowed to engage in insurance by their State regulators should be able to sell insurance if it posed no threat to the bank.

Mr. President, there are two notable accomplishments in the bill. First, Congress recapitalized the bank insurance fund. Without adequate recapitalization, the fund soon will be insolvent, and taxpayer funds rightly will be used to prevent depositors from losing their savings. Second, the bill tightens up the regulatory structures governing banks in several important ways, creating a more sound banking system.

Mr. President, Congress didn't need to kowtow to the big banks and insurance companies to get this bill passed. When it became clear that Congress could not achieve true reform, it should have done a narrow bill accomplishing only what had to be done to protect insured depositor's money. These big bank and insurance company interests should not have their wish list filled at the expense of the rest of the country's banking industry. Without significant modification, I remain skeptical of being able to support the conference report on the bill.

Mr. DOLE. Mr. President, I rise to make a few brief remarks on the legislation which this body has just passed, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

First and foremost, the legislation is critically important to restoring the deposit insurance system that has fallen into serious jeopardy in recent years. The point of this legislation is not to point fingers but to reform the system before we find ourselves facing another debacle like the savings and loan crisis for which American taxpayers are now footing the staggering bill.

I do not pretend to maintain that this legislation is perfect with respect to all my concerns or that all the interest groups are going to go home happy. In fact, I suspect that every group following this legislation will likely find something to complain about.

In this connection, I want to commend the valiant efforts of the distinguished chairman, Senator RIEGLE, and the ranking member, Senator GARN, who have not had an easy job in seeking to strike a fair balance among the many competing interests inherent to this far-reaching and highly complicated legislation. I also wish to commend them for their leadership in moving this legislation through to passage.

The work on this legislation is, of course, not over yet, and there are certain important issues that will need to be carefully addressed during the conference between the House and Senate bills.

One provision that has certainly raised a lot of eyebrows is the amendment passed by the Senate which imposed a cap on credit card rates. I am not going to stand here and say that this provision should become law as it is. Indeed, as I have previously said on this issue, there are sometimes matters that Congress meddles with that recognize a problem but which perhaps could be handled a little differently.

While I am well aware that banks need to make a profit—particularly in these rough times for the industry—it also seems that the system has a shortcircuit in it when the average bankcard interest rate—presently 18.9 percent—is almost four times the discount rate, which is at its lowest level since January 1973.

The issue for the conferees will be how to address this shortcircuit without otherwise harming the financial services industry and the many valuable services it provides to American consumers. In so doing, they will be making it a little bit easier for the consumer to find a fair deal, while increasing confidence and assisting this Nation's economic recovery.

Mr. President, I hope that when all is said and done on banking reform legislation that this legislation will be recognized as having provided the urgently needed financial resources to the deposit insurance system with certain much-needed reforms to revitalize the banking industry and ensure its survival, and prosperity into the next century.

Mr. GRAHAM. Mr. President, I share the concern of the Senator from Minnesota relative to the manner in which the banking bill was passed. The bill which represents one of the most significant financial commitments of the United States, second only to the savings and loan industry, in terms of a financial commitment for a potential failure in our financial services industry. That was an issue that deserved the thoughtful attention of the Senate on a recorded vote.

Mr. President, beyond the fact that it was passed in this manner, I have a series of substantive concerns about the bill. I am concerned about the fact that it was essentially disrespectful to a major source of innovation in financial services: the States; provisions relative to insurance sales; to override State environmental laws; and to the State's limited involvement in interstate banking; and I believe were disrespectful to the dual system that has served our financial services industry well.

I am also deeply concerned that we have not adequately protected the bank insurance fund, that we have continued to allow, through devices such as the concept of too big to fail, and the allowance of brokered deposits, for a continued growth in the exposure of the American taxpayer to an ultimate bailout.

I am concerned that the economic data upon which the $70 billion, which was voted by voice vote earlier this evening, was calculated is unrealistic and that in fact the total cost of this program will be significantly greater, and I fear it will be beyond the ability of the commercial banks themselves to carry the responsibility.

But my greatest concern, Mr. President, is that this bill is not responsive to the economic needs of America at a time when there is no concern more on the minds of Americans than their economic well-being.

That failure to respond is not by accident. This bill was never structured

from the orientation of what is in the interest of the users of the system, the people who depend upon our financial services system, in order to support their individual business, corporate, or commercial activities. We have heard from users in this bill; we heard a position expressed by home builders, by farmers, by individual consumers, and in too many instances what we did is reject those calls for assistance through this legislation.

I am also concerned, economically, that we are setting up the FDIC exactly on the same course of behavior which has led to the RTC and all of its problems, with which we are so familiar.

So, Mr. President, I am distressed at what has occurred, and the manner in which this legislation is adopted. Had we had a recorded vote, I would have voted "no." I hope that this matter goes further through the process and that the concerns which I have expressed will be ameliorated.

The PRESIDING OFFICER. The Senator from Arkansas is recognized under the previous unanimous-consent request.

Mr. BUMPERS. Mr. President, I think the Senate has just made a very serious mistake.

Could we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Those in the back of the Chamber wishing to converse will please retire. The Senate will be in order.

The Senator from Arkansas.

Mr. RIEGLE. Will the Senator yield for one moment?

Mr. BUMPERS. I am happy to yield.

Mr. RIEGLE. Senator DECONCINI sent a message that he wants it known he also would have voted against the bill.

I yield.

I thank the Senator.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, there are some provisions in this bill that make a lot of sense, but overall and on balance this bill will cause irreparable damage to banks. The whole rationale for this banking bill was to assist banks in becoming more profitable, and to give troubled banks a better chance to avoid being closed.

Titles II and II of this bill are the provisions to recapitalize the bank insurance fund so that troubled banks can be closed, and depositors can be protected. I am not really criticizing that part of the bill.

But, Mr. President, when you look through the rest of the bill, you find that States are forced into interstate banking and almost forced into interstate branching. I made my case the other day and I lost. I got 39 votes for my amendment and I still do not understand why anyone would oppose it.

But this bill strongly encourages States, indeed, almost forces States into interstate branch banking. I do not like the idea. I do not want it in my State unless the legislature wants it. Right now the legislature does not want it, and the banks in my State do not want it. So why are we forcing this on them?

Senator NUNN and I have a very comprehensive bill pending in the Senate to reduce paperwork. We have been talking about reducing paperwork around here ever since I came to the Senate. But we keep passing bill after bill after bill that requires more paperwork of the business community.

This bill is a killer from the standpoint of paperwork. It costs the banks. If we really want to help banks, why are we imposing this unbelieveable burden on them?

Now I have no doubt that the provision setting credit card rates at 14 percent will never become law. I am not worried about that. That will be the first thing dropped in conference.

But go back and look at title V of this bill, the so-called consumer title. It contains just one thing after another that banks have to keep tabs on, that banks have to furnish, that banks have to disclose, or that banks have to report.

Mr. President, I believe in consumer protection. I believe as long as the cost is acceptable, it is fine. But the need for the information must be balanced against the cost. The Government paperwork burden is killing business in America.

So, Mr. President, for all of those reasons and others—it is a very comprehensive bill—I felt constrained to vote no. Frankly, I hope the House will not accept our bill. I would like to see everything after the enacting clause stricken and the House bill inserted. What the House has done is simply recapitalized the bank insurance fund so that if it can function, and that is all we should do.

So, Mr. President, even though there was not a rollcall vote I voted a loud "no." I wanted this short time to explain that vote.

Mr. GARN addressed the chair.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Utah.

Mr. GARN. Mr. President, I would like to explain that there is one amendment in this bill that made it difficult for me to be in favor of and I think everyone knows what that is. It is the cap on credit card interest.

I am not going to take all the time to explain the bad public policy and the difficult implications for the economy and for a lot of banks and savings and loans and credit unions in this country, and the violations of the free market with that amendment, and how disappointed I am that the Senate passed that. Nevertheless, we have the responsibility to recap the bank insurance fund before we leave. It would be irresponsible not to.

But I want to assure every colleague, being the only one who spoke against that amendment last week, that it will not become law. The House will not accept that because we are simply not going to let it come out of conference.

I have said to some of my colleagues who wished to vote against the bill because that was in the bill and they wished they had not voted for it to begin with, I have assured everybody today who says, "Well, I will not vote for the bill if that stays in it," it will not stay in the law, because this Senator will make sure, if, by some accident, it came back from the House in the conference report, that I would oppose the conference report.

I have one further assurance for those who are concerned about the implications of that; that, if by some way the chairman and I fail to dump that miserable amendment in conference, the President will veto the bill if that stays in it.

So let the word go out to everybody that wants to listen, I wish there was some way to remove that. I wish we had not put it in the bill to begin with. But it will not become law. Let all of the lobbyists outside of the Chamber who were so concerned about that hear this statement, too. It will not become law. There are no circumstances where it will.

I am sure we can kill it in conference. But as I say if, by some wild parliamentary maneuver, it stays in and we cannot kill the conference report, the President will veto it. So everybody quit squirming out there. We are not going to interfere in the free market. We are not going to mandate interest rate ceilings on anything. We are not going to determine the price of cars or airline fares or anything else by 535 Members of Congress arbitrarily making those decisions, no matter how seductive the politics of some of those issues are.

I do not know how to make it any clearer. The D'Amato amendment will not become law.

Now let me just say how much I appreciate the chairman's work on this. This is not just a few day's work. This has been more than a year's work. I do not know when I have been in a situation where both the majority and minority staff members have worked as closely together or when so many of my colleagues have been so cooperative.

The Senator from Colorado, Senator WIRTH, is standing there. We resolved an issue we have been working on for months; Senator BRYAN and Senator DOMENICI and others; Senator DODD; and Senator GRAMM of Texas. So there has been a lot of good will by both staff and Members and I would like to thank and congratulate all of them.

Mr. President, I would like to thank the staffs on both sides for their long hours of work on this bill.

My colleague from Michigan and I have had many disagreements over the details of this bill. However, this bill, and in particular, refunding the bank insurance fund, is crucial to our financial system. We have worked over the past few months to reach this result and I am most appreciative to all my colleagues and their staffs on the Banking Committee.

Again, I would like to thank all the banking committee staff, especially Lamar Smith, Ray Natter, Ira Paull, John Walsh, Brad Belt, Kris Siglin, Wayne Abernathy, Ruth Amberg, Joel Miller, Barbara Matthews, Margarette Musket, Shelly Berlin, Paul Jarmen, and Mattius Jenke.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, let me just say I, too, want to thank my colleague from Utah for the great effort that he has made and for the way we have been able to work as a team on this issue now for some time. This is an extraordinarily complex and difficult issue. We have done our best to try to reconcile competing views here within the Senate and do it in a fashion that gives us a chance to build a much stronger banking system in the future.

Huge problems have accumulated in the banking system. We have seen a record level of bank failures. We see more bank failures coming ahead of us. We have taken steps here in this legislation to recapitalize the bank insurance fund, to put a much stronger set of regulatory reform measures in place so that the system will be stronger in the future. We have added certain other major elements of this including an improvement, I think, in the prospect of the bank business charter in the sense of allowing a measured way to let interstate banking take place. That allows banks to undergo some orderly consolidation and to be able to put geographic diversification in as a way to cushion against some of the large regional economic shocks that occur from time to time across our country.

So I think that interstate banking provision will help banks accumulate more capital and put more strength in place to protect the deposit insurance fund in the future.

There are some very important consumer safeguards in this legislation. There is the truth-in-lending requirement. There is a fair lending requirement to deal with the problems of discrimination based on one's status in the society. We move against those problems. We deal with the problems of money laundering in banks. We set in motion reforms that will stop future BCCI cases from occurring here in the United States. We move in the area of changes in SEC laws to allow some of the most important securities fraud cases that have been brought by people in court actions to be preserved through an extension of the time period that will allow those suits to be brought forward. We have done that both at the request of the SEC, and because it is good public policy.

This bill has a number of important elements in it. I would say each part is important in and of itself, and has been designed to meet that standard of being solid, section-by-section, title-by-title within the bill.

But perhaps the most important part of the legislation is something that is very difficult to see in just going through the bill. That is how each section cross-relates and cross-connects to each section. Because, while each section has its own purpose they work in combination, and we have designed this bill so that each section will reinforce each other section.

So the reforms, in terms of early intervention, by requiring regulators to move more quickly when banks get into trouble, to require that they restrict and end practices that are risky and that lead in the wrong direction, to require certain other steps, corrective steps to be taken to stop dividends from being paid by banks that are in that type of situation, to actually, finally be able to move in and close that bank before it finally reaches the point of causing a major loss of money from the deposit insurance system.

All of these issues, as I say, are designed to work in combination with each other. I think as this legislation is analyzed, it will be obvious that this legislation will have that effect.

It also needs to be said with respect to the $70 billion loan that is being made by all of us, as taxpayers, to the bank insurance fund, that this legislation requires that every dime of that be repaid by the banking system itself over the next 15 years, in terms of the insurance premiums that they must pay into the fund. If the projections that we have been given by the experts in Government who are responsible for making this kind of a future assessment, the people at the FDIC, the people at the Treasury Department, the people in the Federal Reserve—if they are accurate with the projections they have made, then that amount of money that is being provided in this bill would be sufficient to cover the level of losses that they are forecasting in even the worst case, as they see it.

There are several thousand professional employees in those agencies that have helped construct those official estimates that we have been given, and upon which we must rely in terms of asking for money here. Having said that, I have said before and I want to say again, I have great concern and I have great apprehension that their estimates may not be accurate; that the amount of moneys needed may in fact prove to be larger. I hope that is not the case. But I think it is entirely possible that may turn out to be the case. It will depend, importantly, on how the economy itself performs.

If the economy goes into a double-dip recession and we see more economic damage accumulate, it is entirely possible that the situation will be such that the losses will increase, and we certainly hope that is not the case. One hopes we will do things to strengthen the economy to avoid that turn of events.

Mr. President, I will not take much longer but I think it is important to summarize what is happening here because the bill has been on the floor for several days, it had to be taken down when we took up the unemployment issue, and as we debated the technical issues it was easy to lose sight of what the bill is intended to do.

I want everyone to be on notice that whatever the losses are that we are to see in the future in the banking system, many of those losses are already in place. They represent investments made, decisions made, and the full wisdom or lack of wisdom in those investments will only be clear as the months go by, and, as I say, in the context of what the economy itself looks like the rest of this year and on into the next several years.

If we find that we have a worse set of economic circumstances on our hands—and, God, I hope we do not—but if it turns out we do, the amount of money we provide in this bill will not be enough and we will have to revisit that issue.

As I say, I hope that is not the case. I have great apprehension about it. As we said at the outset of this debate, there are no guarantees on this issue because there is no one who can be found in this country today who can say with certainty exactly what the size of this problem may turn out to be.

I can say this, I think within the scope of what is available for us to do at this time and is within our capacity to do, recognizing how our system works with the executive branch and the legislative branch, this legislation attempts to deal with these problems in the most direct and forceful way we know how to do it. So I think we have moved in every way that we can with the tools that we have available to us now, to try to deal with this situation.

I want to say just two other things. The Senator from Utah spoke about the amendment that was offered on the credit card situation. There was a colloquy as well in that area.

There is concern about the size of interest rates being charged on credit cards and also the point that has been raised about the fact that a number of the major credit card companies and lenders have a uniform rate. It raises the question as to whether there really is active competition.

When that amendment was offered the other day many of us voted for it

because it was an expression of a feeling that we have that, if a reasonable way, a sensible way can be found to bring rates down, certainly we ought to try to do it. Certainly generally interest rates have been falling. We have not seen any real movement on credit card interest rates.

It is not practical to try to write a law per se that mandates a given rate that is somehow going to affect all situations for all time. I mean, there is a great temptation to do it. I find it a very attractive idea. But in terms of a practical solution, a one-shot adjustment, I think poses major difficulties not just from people who have a vested interest in that issue who have responded quickly, but also I think we have seen it from arm's-length professionals who have looked at the situation. We have seen reactions in the financial markets as well.

For better or worse, we are a country that is profoundly based on consumer-driven consumption. Probably too much so. But you cannot change that overnight.

So the momentum and the strength of our economy depends very importantly on the degree to which the consumer side of our economy can remain as strong as possible. Any action we might take to change those patterns, if it were to have an unintended consequence of withdrawing any significant amount of credit to people who now have credit, I do not think that would be a consequence that any of us would want.

If we are going to find a way to address that issue through some manner of policy or some manner of market adjustment, I think it has to be done over a period of time in an orderly fashion and, hopefully, if there are advantages to be gained that way it can be done in a fashion that would not in any material way destabilize the economy.

Mr. D'AMATO. Will the Senator yield for a question?

Mr. RIEGLE. In just a moment I will, because I am speaking just extemporaneously, here, as the Senator can see.

What I am saying is that I think our economy today, as well, is in a very dangerous circumstance. If you look at all of the data, the manufacturing data, the retail sales data, consumer confidence data, trade data, debt level information—I see flashing red lights everywhere I look.

We need a comprehensive plan for America to work through this. And the issue of credit, credit availability, credit cost is a very important part of that equation. It needs to be looked at. It needs to be dealt with. That involves not just Federal Reserve policy but all the way through the issue in terms of whether small businesses and other borrowers of funds are getting the credit they need. Are they getting it at rates they can afford? Is there the strength in the economy to pull through the level of economic creativity and job creation that we need? So the point that is raised is an important point.

I know, seeing the Senator from New York on this floor, I have as great a concern about those issues as does he. Not just in my State, which is in trouble, or his State, which is having difficulties, and his region, but the whole country. But let me yield to his comment.

I yield for a question.

Mr. D'AMATO. Would it be a fair characterization to say that one of the reasons that my good friend, the senior Senator from Michigan, voted for the credit card interest limitation, the floating cap, was to send a message that these are inordinately high interest rates, the national average being close to 19 percent?

Mr. RIEGLE. I would say to the Senator, if I may——

Mr. D'AMATO. This is not a trick question.

Mr. RIEGLE. I understand. It is a very important question and it is a very relevant question and one I thought about and thought about that day because I think one can argue on the one side that large scale credit card offering companies develop a customer base and a risk profile with that customer base. Out of that comes a level of interest that they end up establishing that they think earns a profit, covers the risk of loss, and so forth.

Fine, that is an established part of the business. When you see a very sharp and long-term decline in interest rates——

Mr. D'AMATO. The cost of money.

Mr. RIEGLE. The cost of money, the cost of funds going down, the Federal Reserve lowering interest rates, you see interest rates generally dropping.

Mr. D'AMATO. Would it be fair to say the Fed is lowering those interest rates, that is, the cost of money to the banks, to bring consumer interest rates down also?

Mr. RIEGLE. Yes, that would be my view, and the Senator and I have the same feeling on that. I have argued other times and other places the same thing. I am distressed that in many cases that the banks or other lenders have not passed along the lower cost of funds, the advantage they gain from a different monetary policy, and after a while, you start to ask yourself the question, when the cost of funds is dropping so much, why is the price for borrowing the money staying up high?

Now you assume the same risk profile is out there and so, if you started out with a certain charge for a credit card to fit that risk profile, as your cost of funds drop, it would seem that at some point there ought to be a downward adjustment in the credit card costs.

And, so, yes, that thought was very much in my mind, and I suspect that when the President made his suggestion at a speech in New York that the Senator from New York was attending, I think maybe the President may have had that same thought in mind, that with the cost of funds having dropped so much, was there not a way in which costs being charged for credit could also start to show, start to work their way down to show the fact that there was a lower cost of funds to these companies?

Mr. D'AMATO. And if the cost of money had come down by almost half, where the rate at one time was close to 8 percent and it is now 4.5, and the cost of money basically coming down in half, where at one time they were paying for money 8 percent, now the average is 4.5 percent, and, indeed, in the period of 1985 to today, instead of seeing any reduction nationally taking all of the credit card companies together that, indeed, instead of there being any reduction, that the total average went up 1 to two-tenths of a point, does that not send an alarm that somehow the free market system is not operating as it should and that rates are being kept artificially high?

Mr. RIEGLE. I think it does cause one to raise that question and to wonder about it, although I think what also has to be said is that there are different kinds of people in the credit card business.

If you take a bank that is in the credit card business, their cost of funds is going to have a different look to it because they have access to Federal Reserve——

Mr. D'AMATO. Correct, discount.

Mr. RIEGLE. Discount help. They also have access to federally insured deposits, which is a tremendous advantage to them and, in fact, I think if you look at the cost of funds to banks or to any financial institution with Federal deposit insurance, you will find it has dropped faster to a lower point than any other institution. But there are other kinds of companies in the credit card business that have to go out and get their funds in the commercial market and have to pay a different rate, if you will, for their funds that would be the rate available to banks generally.

So there is that difference, but that gets into the subtleties of the different kinds of players that are in that market. The bottom line is I, too, think we should be seeing some lowering of these rates on credit cards because the cost of funds has dropped as much as it has, and I cannot believe, myself, that the risk profiles are going to change that dramatically in such a short space of time to sop up all the difference.

Mr. D'AMATO. I only ask one other thing, at least this Senator found it very disturbing—and I know Senator SEYMOUR is patiently waiting here and I am going to conclude this——

Mr. RIEGLE. I have one other comment to make, but let me yield just another minute.

Mr. D'AMATO. It seems to me that something cries out, and that is why I wrote to the Attorney General today for an investigation. When 7 out of the top 10 issuers of credit cards are charging the precise rate, 19.80, to the decimal, and if we look at 10 of the largest credit card companies and it accounts for over 50 percent of the business, one has to say that real competition, in the sense that we think of it, in the commercial sense of advertising, of demonstrating better rates when we see that there are much lower rates available is not being undertaken.

I have to suggest to my colleagues that maybe we want to make excuses, maybe we are afraid to face the truth, and it seems to be it is kind of like the king who had no suit and everyone told him what a wonderful suit of clothes he had.

If we really think there is real competition going on with the major issuers, and I am talking for the most part, then I think either we do not know or we are deceiving ourselves. If we want to say that the subsidy of billions of dollars as a result of these inordinately high interest rates is something that is necessary to keep some of the large money center banks afloat, and it is basically a hidden subsidy because we do not go to the taxpayer directly and levy a tax; that would be more honest.

I believe that is why many of my colleagues support this amendment because they know that inherently the free market competition that would bring those rates down, if it was actively promoted, would result in much lower interest rates.

Mr. RIEGLE. Let me just say to the Senator on that point, I think many Senators, including this one, have a concern about a uniform level of rate that does not seem to move or show any kind of competitive variance by major companies. That, I think, is pattern which on its face raises questions. I am sure they would argue that they are not competing on price, they are competing maybe on service or the nature of the way in which they manage their accounts, and so forth, what they offer their customers, and what have you.

But I think it is appropriate that there be price competition as well, and there are some credit card companies and different outfits that offer credit card services that have interest rates that are much lower than the prevailing rates on very large——

Mr. D'AMATO. Simmons First National Bank in Pine Bluff, AR, 9.5; Wachovia Bank in Delaware, 10.4; Bank of New York, 13.4.

So when people say, oh, no, we could not do it, there are many institutions who are offering rates who are making money—all of these are making money.

So for us to blindly sign on to the fact that we are interfering in the free economic competitive system when we attempt to say at some point there should be some rate you do not go above and if you are charging above this the free market is not working, I would suggest that the free market has been impeded.

Mr. RIEGLE. Let me just conclude on that point. I think when you have had a dramatic fall in interest rates, meaning the cost of money, the cost of funds—you normally expect that there is going to be some adjustment on the price side where those savings are used or in effect made available in other forms, and we have seen it in a lot of areas. Mortgage interest rates are now down. They have come down.

Mr. D'AMATO. That is right.

Mr. RIEGLE. In many cases the rates to finance cars are dropping as well, with various incentives being offered in that area. So I think on the issue of the uniformity of rates, the Senator has a point to make. I think we need to assure ourselves there is competition and competition is providing access to credit and fair pricing of that credit throughout the system.

Let me say one other thing and then I really must yield the floor. That is this. I want to thank the staff of the Senate Banking Committee for an extraordinary job in this difficult situation. I think if anyone takes the time to really look at the scope of this legislation, in terms of the number of titles and the kind of complex law that is involved in each of the titles, it just takes a tremendous amount of time and technical expertise to work through these questions.

A vast number of people have been very helpful to us, a number of witnesses. We had several days, weeks of hearings from expert witnesses of all kinds. But I want to say to the staff, for the long hours, 7 days a week, day and night, to produce a bill of this complexity and this quality, it has been an outstanding work effort. I thank each and every one of them for service above and beyond the call of duty.

This is not joyous legislation because this is not a happy subject generally, to have to work through problems as difficult as these. They are a great challenge. We carry a great responsibility here, all of us in working on it. I think we have discharged that responsibility. This is a good piece of legislation, and I think we can take some pride in it.

I yield the floor.

Mr. GORE. Mr. President, I thank my distinguished colleague, the Senator from California, for his courtesy in allowing me to make these very brief remarks even though he was on his feet waiting for recognition.

I congratulate the chairman and ranking Republican member of the Banking Committee for a job well done. It has been a very arduous task and I know that they and their staffs are glad to have this phase of it behind them.

Mr. President, very briefly, I would like to thank my colleagues for allowing the Senate to go formally on record this evening with a sense-of-the-Senate resolution attached to this bill which states our sense that United States policy toward Yugoslavia must now change. We have gone on record as saying that if the Serbian Republic does not stop this offensive and does not comply with the European Community cease-fire terms, then it should be our policy to promptly consult with the EC and other nations bilaterally and with the United Nations about the possibility of recognizing the independence of those republics that will comply with the cease-fire terms, and that includes, of course, Croatia and Slovenia.

Many think this is an arcane subject. It is not to me. A member of my family was called into a great war because of violence spilling out of the Balkans, and now with the peace of Europe once again threatened with the first war to rage on European soil in quite a long time, I think the world community needs to speak out. Since the European Community has been so timid, I think the United States should provide leadership, and by the terms of this sense-of-the-Senate resolution it will be prepared to do so.

Mr. President, again I thank my colleague from California for his courtesy. I yield the floor.

Mr. SEYMOUR. Mr. President, I request permission to speak as if in morning business.

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

Mr. SEYMOUR. I thank the Chair.

(The remarks of Mr. SEYMOUR pertaining to the introduction of S. 2016 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

Mr. DECONCINI. Mr. President, the distinguished chairman, Senator RIEGLE, of the Banking Committee, did announce that I would vote against him in opposition to the banking bill, S. 543. I wanted to say that I first want to compliment the Senator from Michigan, as he knows my personal respect and friendship for him and his family, and also that of the ranking member, Senator GARN.

However, this bill, though they have labored on it for so long, had some fundamental problems that I think are

very detrimental to my State. It has branch banking. That will be another disaster, as we have found out that interstate banking has been. It has the ability of brokering funds, and we saw what happened in the S&L problem with brokering funds. We did not adopt the amendment of the Senator from Arkansas, Mr. BUMPERS, about letting States not participate in this effort.

It has, I think, overmandated the ability of the Federal banking authorities to take over banks at almost their own discretion. I think it is a ticking time bomb that is going to come back and haunt us. I am very upset that we passed this bill and wanted to be recorded in opposition.

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. DECONCINI assumed the chair.)

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

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1992 AND 1993—CONFERENCE REPORT

Mr. NUNN. Mr. President, I submit a report of the committee of conference on H.R. 2100 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2100) to authorize appropriations for fiscal years 1992 and 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 14, 1991.)

Mr. NUNN. Mr. President, I am pleased to lay before the Senate the conference report on H.R. 2100, the National Defense Authorization Act for fiscal years 1992 and 1993. This conference report authorizes programs for the Department of Defense, the national security programs of the Department of Energy, and Civil Defense for fiscal years 1992 and 1993.

The conferees have worked very hard for the past 10 weeks to resolve more than 1,400 funding and policy differences between the House and Senate versions of this bill. I want to thank Chairman ASPIN, Congressman DICKINSON, and the other conferees from the House for their cooperation in this conference. I also want to thank my friend and colleague, Senator WARNER, the ranking minority member of the Armed Services Committee, and all of the members of the committee on both sides of the aisle, Democratic and Republican, for their cooperation and support during the conference.

I think the Senator from Virginia will likely be here before this debate is over on this conference report tonight, but he is being ably represented by the Senator from Arizona [Mr. MCCAIN], who is a very valuable member of our committee. I thank Senator MCCAIN for his diligence and his efforts on behalf of this bill and conference report.

Mr. President, the Armed Services Committee has been working on this defense authorization bill for the past 10 months. During that time, there have been some dramatic events and momentous changes that will affect our national security posture for many years to come.

U.S. military forces led a multinational coalition to an overwhelming victory in the Persian Gulf against the forces of Saddam Hussein.

Hardliners in the Soviet Union tried and failed to stem the forces of reform in that country. The unsuccessful coup last August has hastened the disintegration of the Soviet Union's rigid centralized government.

In response to events in the Soviet Union, President Bush has announced a series of changes in our Nation's nuclear forces, and President Gorbachev has responded to those changes with changes in the Soviet nuclear forces, particularly the tactical nuclear components of those forces, and these steps have immediate impacts on our defense and our budgetary consideration.

All of these events require changes in our national security policies and our military strategy. Some of these changes are still being debated, and this bill could not and does not make all the changes that will be necessary in the months and years ahead, because the conference had already started, and both the House and Senate bills had passed well before the President made his sweeping proposals on September 27, 1991.

However, this bill continues the process of reducing and restructuring our military establishment in an orderly manner, while strengthening the basic security foundation to protect our Nation against the threats of the future.

BUDGET IMPACT OF THE CONFERENCE REPORT

For the third time, the Defense authorization conference report authorizes national defense programs for 2 fiscal years. For fiscal year 1992, the conference report authorizes funding of $290.8 billion in budget authority, the same level contained in the Budget Resolution and the budget summit agreement.

For fiscal year 1993, the conference report authorizes approximately $165 billion, which is about 60 percent of the total amount requested. As we have done in the past, authorization of fiscal year 1993 funding for several controversial programs was deferred without prejudice until next year.

The world is changing and the threats to our national security are changing. However, I want to remind everyone that this year's defense budget and the current 5 year defense plan actually are based on the assumption that many of the positive changes taking place in the world will continue. Fiscal year 1992 will be the seventh year of real decline in Defense budget authority. Under current plans, fiscal year 1996 Defense budget authority will be 34 percent below fiscal year 1985. The fiscal year 1996 Defense budget will be 3.6 percent of GNP, the lowest level since 1940.

I want to take a few minutes to outline for our colleagues some of the major provisions in this conference report.

FORGING A CONSENSUS ON SDI

Mr. President, I am very pleased that the conferees reached agreement on a historic first step toward providing a highly effective defense of the United States against limited attacks of ballistic missiles. The ABM provision adopted by the conferees incorporates a two-track approach to attaining this goal: a deployment track and an arms control track.

First, the conference report directs the Secretary of Defense to develop for deployment by the earliest date allowed by the availability of appropriate technology or by fiscal year 1996 a cost-effective, operationally effective, and ABM Treaty compliant antiballistic missile system at Grand Forks, ND. There will be several years of defense authorization and appropriations bills before 1996, and this act does not constitute a final congressional authorization for a Grand Forks deployment. Furthermore, the conferees agreed that there is no commitment to procure ABM systems or components for deployment before the technology for these systems or components is ready. However, the conferees underscored that to meet the 1996 deployment goal it will be necessary to accelerate normal acquisition processes and procedures.

The treaty-compliant missile defense system that we have in mind would include:

One hundred ground-based interceptors, with the design to be determined by competition and down-selection for the most capable interceptor or interceptors;

Fixed, ground-based antiballistic missile battle management radars; and

Optimum utilization of space-based sensors, including sensors capable of cueing ground-based antiballistic mis-

sile interceptors and providing initial targeting vectors, and other sensor systems that also are not prohibited by the ABM Treaty, such as a ground-based suborbital surveillance and tracking system.

This is a general outline of the architecture, but we are looking to the Defense Department and the Strategic Defense Initiative Organization to develop a detailed proposal for the Grand Forks deployment. The conference report requires a report laying out the proposed architecture to be submitted within 180 days.

To fund the ABM research and development activities specified in the act, the conferees agreed to authorize $4.15 billion for SDI in fiscal year 1992, including $1.52 billion for ground-based ABM systems associated with the Grand Forks deployment plan. The conference report specifically excludes any deployment of the Brilliant Pebbles space-based interceptor program as part of the limited ABM defense architecture. However, the conferees agreed that robust research and development funding for promising follow-on antiballistic missile technologies, including Brilliant Pebbles, is required, and $390 million is authorized for this program in fiscal year 1992.

The conferees also recommended the implementation of a parallel arms control track. The conference report includes a provision urging the President to pursue immediate discussions with the Soviet Union to determine the feasibility and mutual interest of the two nations with regard to amendments to the ABM Treaty to permit the following:

First, additional antiballistic missile sites and additional ground-based antiballistic missile interceptors;

Second, increased utilization of space-based sensors for direct battle management;

Third, clarification of what constitutes permissible development and testing of space-based missile defenses;

Fourth, increased flexibility for technology development of advanced ballistic missile defenses; and

Fifth, clarification of the distinctions between theater missile defenses and antiballistic missiles, including interceptors and radars.

I want to stress, Mr. President, that this conference report in no way constitutes an authorization to violate the ABM Treaty. What we are calling for are negotiations. There is no commitment, explicit or implicit, to withdraw from or abrogate the ABM Treaty if the Soviet Union does not agree to these amendments.

MAINTAINING NUCLEAR DETERRENCE AT LOWER LEVELS AND WITH GREATER STABILITY

For other strategic programs, the conferees agreed on the importance of maintaining nuclear deterrence at lower and more stable force levels, particularly in light of the continuing changes in the Soviet Union.

Funding for the B-2 bomber was one of the most difficult issues facing the conference. After a lengthy debate, the conferees authorized one new production B-2 bomber and a total of $4.4 billion in fiscal year 1992 funds for the B-2, including $1.6 billion for continued R&D and $2.8 billion for procurement. The full $1.6 billion in R&D and $1.8 billion in procurement are immediately available for the B-2 program. The remaining $1.0 billion in procurement and final assembly of the one new production B-2 bomber authorized in fiscal year 1992 are fenced pending various performance certifications and a second congressional vote to authorize obligation of these funds.

The conferees disagreed with President Bush's decision to terminate further research and development of mobile basing for the small ICBM. The conference agreement authorizes $548 million for continued R&D on the small ICBM, but prohibits the Defense Department from spending any of these funds unless the Secretary of Defense certifies that a sufficient amount of these funds will be obligated to conduct a viable R&D program on mobile basing options.

The conferees agreed with the President's decision to terminate the SRAM-II missile and Rail Garrison MX programs. No funds are authorized for these programs in fiscal year 1992.

APPLYING THE "LESSONS LEARNED" FROM OPERATION DESERT SHIELD/DESERT STORM

This year our committee made a major effort to incorporate some of the major "lessons learned" from the recent conflict in the Persian Gulf. I am pleased that all of our committee's major initiatives were endorsed by the conferees and included in this conference report.

The Persian Gulf conflict clearly demonstrated that stealth technology has revolutionized air warfare. The conferees agreed with the Senate position that the F-117 stealth fighter was one of the superstars of Operation Desert Storm, and that the current inventory of F-117 aircraft is insufficient to meet future requirements. This conference agreement authorizes $560 million in fiscal year 1992 to purchase the first of 4 F-117 Stealth fighters of a total limited buy of 12 aircraft.

Another lesson of the Persian Gulf conflict is that our Navy is woefully short of mine countermeasures. This conference report follows the Senate bill in including a major initiative to improve mine countermeasures capability. A total of $553 million is authorized for Navy mine countermeasures program, $165 million above the budget request. These programs include $361 million for 3 coastal minehunter ships, one above the budget request; $129 million for mine countermeasures helicopters—the amount requested—$14 million to continue the promising Magic Lantern mine countermeasures program; and $21 million to accelerate other mine countermeasures research and development efforts.

Our committee also concluded from Operation Desert Storm that modernization in the Marine Corps has lagged far behind the other services. The conferees adopted a major package of initiatives to improve the capability of the Marine Corps, many of which were first recommended in our committee by Senator WARNER. These programs include $100 million above the budget request to improve the flow of tactical intelligence to Marine Corps combat commanders; $95 million to buy multiple launch rocket systems for the Marine Corps—none were requested; $39 million for the purchase of night vision equipment; $2.5 million to develop a lighter weight 155 mm howitzer; and $2.3 million to provide a new night sight for the light armored vehicle [LAV].

The Persian Gulf conflict also revealed shortcomings in intelligence support to unified commanders and their combat forces. I am pleased that the conferees agreed to several important Senate proposals to address this problem. The conference agreement strengthens the authority of the Director of the Defense Intelligence Agency to manage defense intelligence, and directs the Defense Department to exercise the use of national intelligence systems on a regular basis to improve readiness and capabilities to support the combatant commanders in wartime.

DEVELOPING SENSIBLE WEAPONS ACQUISITION PROGRAMS

The conferees recognized that far-reaching changes have taken place in the threats to our national security. We are also realistic about the fiscal constraints on the defense budget in the coming years. Changes have to be made in some of the weapons acquisition programs of the military services, and this conference report includes some of these changes. At the same time, however, we are concerned about the need to preserve the defense industrial base in this country during this period of substantial restructuring.

The conferees authorized $1.1 billion to procure 48 F-16 aircraft and $78 million for advance procurement of 24 aircraft in fiscal year 1992, the same amount requested in the budget. The Senate had terminated the F-16 program 2 years ahead of Defense Department plans. At the insistence of the House conferees, keeps this program in production because of concern for the industrial base and the need to preserve an ongoing fighter manufacturing capability until the Air Force decides the future of the multirole fighter.

In action on other major acquisition programs, the conferees:

Authorized $625 million in new funding for building and testing 3 addi-

tional production-representative V-22 aircraft;

Authorized $1.6 billion for 4 C-17 aircraft in fiscal year 1992, and required continued adherence to performance milestones to ensure that further procurement is tied to the program's production and testing progress;

Authorized $32 million above the budget request to upgrade existing AH-64 helicopters to reflect lessons learned in Operation Desert Storm and to preserve a key element of the defense industrial base;

Terminated any further modification of F-14's, and authorized the Navy's request of $2.1 billion to procure 48 F-18 aircraft and $484.1 million to upgrade the F-18; and

Authorized $90 million above the budget request to buy 60 additional M1 tanks and $225 million above the budget request to continue the modification of early model M1 tanks into the M1A2 configuration.

STRENGTHENING DEFENSE TECHNOLOGY, EDUCATION AND MANUFACTURING

The conference report includes a number of provisions intended to strengthen America's defense technological superiority.

One of the difficult issues facing the conference in this area was the proposal in the House bill to provide full reimbursement for so-called IR&D—Independent Research and Development—costs of defense contractors beginning in fiscal year 1993. After lengthy debate and discussion with appropriate Defense Department officials, the conferees agree to require the Defense Department to fully reimburse the defense industry for independent research and development expenditures on matters of potential interest to the Department of Defense. Ceilings on reimbursement would be gradually increased over a 3-year period, with full reimbursement commencing in fiscal year 1996.

In other defense technology programs, the conferees:

Strengthened the dual-use critical technology partnership program and authorized additional funding of $100 million in fiscal year 1992 for this program. No funding was requested by the Defense Department for the program.

Authorized $75 million in additional funding for DARPA to develop high definition display technology and $70 million for DARPA support of advanced lithography technologies. No funding was requested by the Defense Department for these programs.

Authorized $183 million above the budget request of $97 million for defense manufacturing technology programs;

Authorized $50 million for regional Critical Technology Application Centers that will, in partnership with industry and State governments, help small high-technology firms that support the defense industrial base;

Authorized $50 million for a new DOD manufacturing extension program, and $30 million for a new DOD manufacturing engineering education grant program; and

Authorized $30 million for the Pilot Mentor Protege Program to encourage defense contractors to subcontract with small disadvantaged businesses, and $15 million for defense research at historically black colleges and universities and other military institutions.

MINIMIZING THE EFFECTS OF DEFENSE TRANSITION ON PEOPLE

Mr. President, one of our committee's highest priorities over the past 2 years has been to sustain and, where possible, enhance the well-being and combat effectiveness of military personnel as the military force structure shrinks over the next 5 years. With this concern in mind, the conferees authorized active duty military personnel endstrengths for fiscal years 1992 and 1993 that are 106,400 and 91,000, respectively, below the previous fiscal year's level. These strengths will keep the military services on a gradual glide path to achieve fiscal year 1995 targets established by the Congress last year.

The conferees are increasingly concerned over the prospect of involuntary separations of career military personnel. As a result, the conferees authorized a program to encourage voluntary separations to avoid involuntary separations as the military services build down. Under this program, certain military members who face the possibilty of involuntary separation would be offered the choice of two incentive packages to leave the military service voluntarily.

Under the first option, a military member could receive a lump sum payment of 15 percent of basic pay multiplied by the number of years of service of the volunteer. For example, in the case of an E-6 with 10 years of service, the lump-sum payment would be $27,000. This member would also be eligible for certain transition assistance, such as temporary military medical coverage, employment assistance, commissary and exchange shopping, temporary military housing, relocation assistance, and leave and travel benefits.

Under the second option, a military member could receive an annuity of 2.5 percent of basic pay, multiplied by the number of years of service of the volunteer, to be paid out over twice the number of years of service. For example, in the case of an E-6 with 10 years of service, the annuity would be $4,500 per year for the next 20 years.

In addition to these incentives, the act provides authority to the Secretary of Defense to waive the active duty strengths prescribed for fiscal year 1992, and to transfer funds to the manpower account to fund higher strength levels to avoid involuntary separations.

Mr. President, I believe that the Department of Defense should be able to avoid involuntary separations of career military members by prudently exercising these authorities.

To improve the quality of life for military members and their families, the conference report includes a January 1, 1992, military pay raise of 4.2 percent; authorizes the reimbursement of adoption expenses for military families; and enhances several military medical benefits, including an improved dental insurance plan for dependents and hospice care under CHAMPUS.

MAKING GREATER USE OF RESERVE FORCES

Last year the Armed Services Committee included greater use of Reserve Forces as a cornerstone of our new strategy. Operation Desert Shield/Desert Storm demonstrated the strength and vitality of the total force concept. This conference report continues to emphasize greater utilization of Reserve Forces as the overall size of the military services is reduced.

The conferees approved personnel endstrengths for the National Guard and Reserves that are approximately 67,500 and 118,700 higher than those requested for fiscal years 1992 and 1993, respectively. This still represents a reduction from current levels of about 37,600 in fiscal year 1992 and an additional reduction of 28,600 in fiscal year 1993.

In an effort to strengthen the Reserve components' combat capability, the conferees authorized $1 billion above the budget request of $1.5 billion for procurement of new equipment for National Guard and Reserve units, including $110 million for multiple launch rocket systems for the Army National Guard; $45 million for the LANTIRN night navigational system for the Air National Guard; and $129 million for four MH-53 mine warfare helicopters for the Navy Reserve.

Finally, the conferees also adopted a provision to prohibit the Navy from deactivating its Navy Reserve helicopter minesweeping squadrons. The Navy Reserve has been very successful in supporting minesweeping operations. Minesweeping was a key deficiency in the Persian Gulf conflict, and the conferees found no basis to support the Navy's recommendation to deactivate these squadrons.

CONCLUSION

Mr. President, in closing I want to again thank all of the members of the Armed Services Committee for their diligent work throughout the year on this bill. I owe a special debt of thanks to the chairmen and ranking minority members of the subcommittees who performed the lion's share of the work of the conference.

I want to thank the staffs of both the House and Senate Armed Services Committees for their untiring and professional efforts on this bill. The staffs of the Armed Services Committees provide superb support all year round.

I also want to add a special note of thanks to Greg Scott and Charlie Armstrong of the Senate Legislative Counsel, and Bob Cover, Sherry Chriss, and Greg Kostka of the House Legislative Counsel for their work on this bill.

Mr. President, this conference report represents the culmination of a great deal of hard work by many Senators. It is a good bill which continues the process of reducing and restructuring our Defense Establishment in an orderly process to meet the challenges of the next decade. I urge my colleagues to support it.

Mr. President, I will be offering further comments after Senator MCCAIN, the Senator from Arizona, has had a chance to make his opening comments, and I will also, of course, yield the floor to Senators who would like to be heard on this as they come in.

Mr. WARNER. Mr. President, the recommendations contained in the conference report to accompany the fiscal year 1992-93 National Defense Authorization Act, H.R. 2100, represent the culmination of a difficult year's work on the part of both the Senate and House Armed Services Committees. Under the strong and able leadership of our chairman, Senator NUNN, together with the assistance and cooperation of our colleagues in the House of Representatives and our respective staff, we have put together one of the most balanced and, frankly, best defense bills since I have been a Member of the Senate. I urge its adoption.

While the conferees considered and reached agreement on thousands of national security programs, in my view, the Missile Defense Act of 1991, which is included as part C of title II of the conference report, represents an historic event. The conferees agreed to a plan to provide the United States with a defense system against limited ballistic missile strikes. The plan also approves an aggressive effort to build a highly effective defense system to protect our forward deployed and expeditionary forces overseas and our friends and allies from ballistic missile threats. The plan marks the first time in over 20 years that Congress has approved an anti-ballistic-missile system for the United States.

The conferees' approval of this bipartisan plan to provide the American people with defenses against the threat of ballistic missiles represents the culmination of many months of effort. In March of this year, I proposed an amendment to begin the debate on the need for an effective missile defense system for our Nation and to address the limitations of the ABM Treaty on our ability to have such a system. Subsequently, with the support and assistance of Senator COHEN, Senator NUNN, Senator WALLOP, Senator LUGAR, as well as the cooperation of the other Senate cosponsors of the Missile Defense Act, we have finally forged the necessary bipartisan consensus to aggressively deploy defenses for all Americans against limited ballistic missile attacks.

In the Missile Defense Act, the conferees have approved the deployment by fiscal year 1996 of an initial ABM system in the United States. While this initial defense site is limited, as is proper, by the terms of the ABM Treaty, the conferees also endorsed immediate discussions with the Soviet Union to amend the Treaty to permit the deployment of greater numbers of interceptors at additional sites in order to provide a highly effective defense against limited strikes.

By providing $4.15 billion for the Warner-Nunn missile defense plan, the conferees agreed on the highest level of funding for SDI in the history of the program. Included in this amount is $465 million for space-based interceptor programs, of which $390 million is approved for Brilliant Pebbles. This decision of the conferees protects U.S. options for future defensive systems.

Mr. President, the conferees' agreement on the Missile Defense Act provides for the future security of our country and the well-being of our Armed Forces overseas, as well as our friends and allies. The investment in SDI research since 1983 has provided us with the ability to make this critical decision to begin deployment of missile defenses. In short, the committee's program establishes a simple but vital goal that has significant implications for future generations of Americans, as well as friends and allies. I commend my colleagues on both sides of the aisle in both Houses for their far-sighted and well-considered decision to approve the Missile Defense Act of 1991.

Mr. President, I would like also to highlight briefly another important decision of the conferees—to approve several measures intended to enhance modernization of Marine Corps ground combat capabilities. The war in the Persian Gulf revealed a great deal about the capabilities and effectiveness of our Armed Forces, and the victory of the U.S.-led multinational coalition incorporated into weapons systems and equipment through modernization programs over many years. However, during three trips to the Persian Gulf region during the crisis and based on testimony by marines to our committee after the war, I developed concerns regarding several areas in the Marine Corps where modernization had not kept pace with that of other services.

Because of these concerns, I sponsored a modernization package which includes funding for both research and development as well as procurement actions focused on armor, artillery, night-fighting capabilities, intelligence, mine detection and clearing, and air defense. The conferees agreed to authorize through this initiative for the Marine Corps M-1 Abrams tanks, multiple launch rocket systems, the latest generation of night vision equipment, and improved intelligence capabilities.

Mr. President, I am privileged to have once served in the Marine Corps, and there is no intent here to be critical of the corps. The marines have always taken pride in getting along with less and sometimes we have to help them a bit with more resources. As part of this conference report, the conferees agreed to provide additional funding for Marine Corps modernization initiatives totaling over $300 million for fiscal year 1992, which will help alleviate the imbalance in equipment modernization identified during the Persian Gulf war.

And finally, Mr. President, while this may be wishful thinking on my part, it is my sincere hope that the budget summit agreement of October 1990 will remain in place throughout its entire term until fiscal year 1996. As a result of the long and difficult negotiations between Congress and the administration which led to the agreement, defense spending over 5 years will be reduced by more than $180 billion; domestic spending was permitted to remain relatively constant during that time. But just a year later, we have been hearing repeated calls for greater cuts in the defense budget, sometimes to pay for tax relief and sometimes to allow more domestic spending. If we depart from the summit agreement, military personnel will have to bear the brunt of the ensuing hardships.

Mr. President, defense spending took more than a fair share of the deficit reduction in the budget agreement; it took all the cuts. The Department of Defense has lived up to its commitments under the agreement and has proposed a long-term budget which reduces the U.S. military force structure by 25 percent. In the future, greater defense cuts may be possible if the changing world situation stabilizes into one that is less potentially threatening to our national security. But we cannot predict the future, and we should not make further reductions in the defense budget until we are able to assess their impact on the safety and well-being of the American people, and also on the U.S. economy. This bill will be enacted against the greatest degree of uncertainty respecting the Soviet Union since the close of World War II.

Mr. President, the 1990 budget summit agreement, which governs not only defense spending but all areas of the Federal budget including revenues, also has allowed the Congress to focus its attention on the priorities within the defense budget rather than requiring a prolonged debate over the total budget, as had been the norm in past years.

Stability in the defense topline has been crucial to the administration's planning for defense and to congres-

sional decisions on funding for defense programs, both of which have been extraordinarily complicated in the past few years by the ongoing, remarkable changes in Eastern Europe and the Soviet Union and the continuing instability in the Middle East. Most important, a predictable defense budget level has allowed both the administration and Congress to concentrate our efforts on ensuring that the United States maintains its military capabilities, which served us so well during the Persian Gulf war, and is prepared when necessary to defend our interests and the interests of our friends and allies around the world.

Mr. President, this conference report represents a balanced approach to the difficult choices involved in funding our national defense priorities within the constraints of a declining budget. The conferees attempted to minimize the negative impact of downsizing the Department of Defense on military personnel, the U.S. industrial base, and the economy in general, while providing the foundation to maintain our national security into the future.

I urge my colleagues to vote in favor of the conference report.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, first of all, I express my deep and sincere appreciation for the thousands of hours of effort on the part of the distinguished chairman, Senator NUNN, who in my view has presided over an Armed Services Committee and a conference that has had no precedent since the end of World War II in trying to reshape this Nation's Defense Establishment. He and the ranking minority member, Senator WARNER, have had to react to the dramatic events of the last 2 to 3 years, events that none of us ever anticipated, in shaping our present force posture.

There are those who may argue that we have not sufficiently adjusted our defense spending, and adapted our forces to suit the end of the cold war and the new threats to this Nation and peace throughout the world.

I believe we all recognize that further changes are necessary. But I suggest to you, Mr. President, that the product of the 10 months of effort on the part of the chairman, the ranking minority member, my other colleagues on the Senate Armed Services Committee, and the House Armed Services Committee represents a viable and reasonable blueprint for the incredibly difficult decisions which we have to make.

We are dealing with the most dramatic reduction in defense spending since 1947, and this poses special difficulties. In many ways it is easier to build up a defense establishment than it is to reduce it. I believe that Senator NUNN, Senator WARNER, my close friend Senator GLENN, who I work with on the Manpower and Personnel Subcommittee, and many others have contributed enormously in making sure we fulfill that obligation. We have addressed the issue of the strategic defense initiative. We have addressed, I think in a reasonable and compromising fashion, the issue of the B-2 bomber. We have shaped other major weapons systems programs to fit the dramatically changed threat that we face in the world today.

As I say, Mr. President, this is probably the most contentious era for defense that those of us now serving in this body have ever faced, and I congratulate the chairman for his leadership and his calm demeanor during very stormy times. All of us feel passionately about the issues that we have debated. Yet, as our chairman mentioned, over 1,400 items of disagreement between the Senate and the House were resolved in this conference.

Most importantly, I believe that we have largely satisfied the obligation we have to the men and women in the military and to the people of the United States. We have done our best with an ever-decreasing budget and to face future years of ever-decreasing defense spending. We have done our best to provide them with the peace and security that they deserve.

Mr. President, I will reserve my further remarks until after the chairman makes his statement.

I thank the Chair.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from Georgia.

Mr. NUNN. Mr. President, I thank my friend from Arizona and also again repeat my praise of his efforts and the efforts of Senator GLENN in the Manpower Subcommittee. I chaired that subcommittee myself for several years. I cannot think of any subcommittee more important to our military and to our security because it deals with the people of the military.

The men and women in uniform are the key to our military, no matter what weapons systems we have, no matter how sophisticated. Without the dedication, the willingness to sacrifice and the constant sacrifice of these men and women in the military we would not and cannot have a strong national defense posture.

So I thank the Senator from Arizona for his overall work on the committee and particularly for his dedicated efforts with Senator GLENN, who is chairman of the Manpower Subcommittee, in this important subcommittee.

Mr. President, there is a missing part of this bill that I wish I could report on tonight. I wish it were in this bill, because I worked hard to get it in this bill. But I felt that the bill itself was jeopardized because of opposition to this particular provision, which is a provision that Congressman ASPIN and I worked on with other members of the committee. But it is not in this bill and not in this conference report.

It is my hope, however, that we are not forever forsaking the opportunity here to address this issue, to address what I think is the largest threat we have had of proliferation of weapons of mass destruction and the knowledge of how to build those systems that we had in this century, perhaps in the history of mankind. Certainly in terms of the nuclear systems and other weapons of mass destruction, it is indeed without any doubt the greatest proliferation danger we have faced in the history of mankind.

Mr. President, an important report by a Harvard group was released today. This report underscores the urgency of the problems and dangers we face in the era of nuclear proliferation. The report is called "Soviet Nuclear Fission: Control of the Nuclear Arsenal in a Disintegrating Soviet Union." It is by Mr. Ashton Carter, Mr. Kirk Campbell, Mr. Steven Miller, Mr. Charles A. Sorett.

The study has been put together by these experts who are all affiliated with Harvard University's Center for Science and International Affairs. Mr. President, I just want to read one passage from the introduction of the report which explains most vividly the challenge, the opportunity, and the grave danger we face in the circumstances of the disintegration of the world's largest military arsenal.

I am quoting from introductory material of that report:

> The Soviet nuclear command and control is at root a social and political creation. However successful its designers have been insulating it from all the problems they could foresee, it cannot be assumed capable of standing apart from the turmoil throughout the society within which it is imbedded. And even if 1/100 of 1 percent of the nuclear weapons in the Soviet stockpile fall into the wrong hands, destruction greater than the world has seen since Hiroshima and Nagasaki could result.

Continuing the quotation.

> The destiny of the 27,000 nuclear weapons on the territory of what is increasingly referred to as the former Soviet Union is, therefore, a paramount concern of our times. It is now without precedent and, therefore, without settled guidance. It calls for specific actions to be taken in the near term. There is no option to wait, deliberate or negotiate at length.
>
> Yet each and every one of the near term options is pregnant with long-term consequence. Thus an unusual amount of wisdom, foresight and thorough analysis of the possibilities are required from all citizens concerned, or all parties concerned, the citizens of the former Soviet Union, the United States, and nations around the world.

Mr. President, I commend this report to my colleagues. I hope they will read it or at least get an introductory summary of it from their staffs if they do not have time to read it in the next 2 or 3 days. Working with the Senator from Indiana, Senator LUGAR, and oth-

ers, Senator BOREN, chairman of the Intelligence Committee, Senator PELL, chairman of the Foreign Relations Committee, Senator BIDEN and a number of Republicans, including Senator DOMENICI, the ranking Republican on the Budget Committee, and many others Senators who indicated interest in this, it is my intention to give the Senate an opportunity to address this issue. I hope we can do it before this session is concluded because I, too, agree with the team from Harvard that we do not have time to waste.

By the time we come back here in Janaury, by the time we really get cranked up in February, it may be that we have already missed a great opportunity, and it may be that we have already failed to mitigate a great danger. We do not have time in this respect.

Mr. President, I see the Senator from Virginia on the floor. I have already commended him for his great leadership and his partnership with the chairman of the committee in producing this bill. I have some other remarks I am planning to make, but I thank my colleague from Virginia. I know he is in a conference on the highway bill, which is another enormously important piece of legislation, and he is being ably represented here by the Senator from Arizona.

But I yield the floor at this time to my friend from Virginia and I will complete my remarks later on both the opportunity for destruction of nuclear weapons in the Soviet Union and the great danger of proliferation of those weapons and the technology and the expertise and experts who may very well be in demand around the world, people who have been experienced and have the know-how in making weapons of mass destruction and other sophisticated military equipment.

So I yield the floor at this time so that the Senator from Virginia may make his remarks.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, as my distinguished colleague and good friend said, I am now in the highway conference. There are other colleagues here from our committee who will make their presentations shortly, the Senator from Arizona and the Senator from Wyoming, and then I will follow on later this evening. And then I wish to say that the Senator from Pennsylvania [Mr. SPECTER] at some point wishes to address the conference report.

But, Mr. President, it is always a pleasure to acknowledge a working relationship of some 13 years duration now that the Senator from Georgia and I have had working on the Armed Forces bill through these years. And I think this year in many respects is a high-water mark, particularly as it relates to the Strategic Defense Initiative and other strategic programs in which the Senator from Georgia took a great leadership role together with Members on this side and forged what I feel is a good compromise in the interests between the Senate and the House as it relates to programs which are of great importance to our Nation, and so stated by our President and the Secretary of Defense.

I have also been working again this morning with the Senator from Georgia as it relates to a proposal which hopefully we will submit to the White House—I presume the Senator has mentioned that—within the next day or so, at which time I am optimistic that there will be a consensus, a broad bipartisan consensus, in the Congress and the executive branch that at this time it is in the security interest of this country and indeed that of our allies that some authority be given to the President of the United States—I say "authority," discretionary authority—to perhaps deal with some events which are unforeseeable at the moment.

The key to it though, Mr. President, as we discussed this morning, the Senator from Georgia, and I, and others, is that we must be very careful to send a balanced message in this legislation, balanced in the sense that whatever we do as the United States cannot resolve all the problems that might occur, and it must be joined in a coordinated way with other allied and Western Nations. And, secondly, we must send a message in a way not to in any way instill fear in the minds of those in the Soviet Union or elsewhere in the world, particularly as it relates to any particular contingency with respect to nuclear weapons.

We all address the fact that these weapons have to be handled with great care and hopefully dismantled under the various arms control agreements and that agreement reached by President Bush and President Gorbachev, but we have to provide that technical assistance in such a way as not to instill any sense of fear.

At this time, Mr. President, I yield the floor such that other Members might address the bill, and I will follow on later this evening.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Parliamentary inquiry. Was there a specific amount of time reserved for the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has been allocated 30 minutes under the previous agreement.

Mr. LEAHY. Mr. President, I yield myself such time as I may need, and I know the distinguished senior Senator from Tennessee is also going to require some of my time. So I will try to make sure I leave some time for him.

I might say, before I begin the subject I want to talk about, I say to the distinguished Senator from Virginia, Senator WARNER, my good friend, if I might have his attention, I have heard what he and others have said about the concern for the Soviet Union weapons that are there. Nobody disagrees with that. Everybody would like to see a plan I think, one that unites Democrats and Republicans in the body, a plan that might see the eventual dismantling of the nuclear weapons that are scattered throughout the Soviet Union. Even an accounting, an accurate accounting, a specific and accurate accounting would be very helpful to all of us.

Mr. WARNER. Could I interrupt my distinguished colleague? Senator NUNN initiated the discussion about the conference report. I have opted to speak later. I wonder if one of my two colleagues here on the other side, between themselves, if they could set the framework from this side. Will the Senator yield with respect to the conference report and then to be followed by other Members?

Mr. LEAHY. I understand. If this was an inappropriate time for me to speak on the issues—is that what the Senator is suggesting?

Mr. WARNER. I am suggesting that I would prefer the framework of the bill be addressed in its entirety, presumably by the Senator from Arizona, and then we shall alternate as the evening goes on, if that is agreeable.

Mr. LEAHY. Mr. President, I might say to the chairman, the manager of the bill, if he had others that he had intended to speak first, I will withhold and use my time at a different time.

Mr. NUNN. I would say, I have no order in mind at all. It is a matter of who gets recognized, and everyone is entitled to the same rules of recognition. I would say that I did have a request from the Senator from Wyoming to speak, I believe, for 5 minutes.

Mr. LEAHY. Might I make this unanimous-consent request, Mr. President—the Senator from Georgia has at least two members of the committee apparently who wish to speak—that I be recognized once the Senator from Wyoming has finished speaking, and at that time my half-hour would begin.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, let me begin by thanking the Senator from Vermont. That is most gracious of him. I shall not be so long as he had intended to be.

Mr. President, let me say a couple of things about the Armed Services authorization. First is that the Senator from Wyoming has been, since 1979, trying to focus the attention of the Senate and finally of the Congress and the President of the United States on

the need for a defense of our people against ballistic missiles.

With the events of the late eighties having been perhaps the most exciting events, watershed events, in world history, we now see that the principal thing that threatens Americans in their homes, in their States, within the boundaries of their country, are missiles, not just the old Soviet missile threat, but the possibility of missiles from Third World countries. Our Secretary of State was not enormously successful with the Chinese. He may in time be. But the fact of it is that which threatens Americans is missiles.

I do not know of anybody who now believes that the Soviet land or air invasion of the United States is a plausible threat any longer. I do not know of anybody who believes that a threat by any other country presently an ally, or at some future date an enemy, or anything else, is a plausible threat to Americans.

But I know of no one who has thought about those things which can threaten Americans and in fact guarantee, if you will, our diplomacy and our national will through the use of missilery who can possibly say that we have not come a long way. Thanks indeed to the Senator from Virginia and the Senator from Georgia, the chairman and ranking member of our committee, to bring us to the decision, not only to deploy SDI, a ground-based one, a very limited one, but to commit ourselves to examining the future of defense for America.

If the occupant of the chair were not from a centrally located State in America but a coastal State, or Alaska or Hawaii, he might think it less than satisfactory that defense of mainland America was provided but that the coasts and the extraterritorial States were simply not a part of the equation.

I know of no American who was not pleased to see a very inadequate defense against missiles which was, in fact, designed as a defense against aircraft, used in the Middle East, the Patriot. The Patriot saved lives, sustained the courage and integrity of a courageous ally—of Israel. Israel was able to stay out of the gulf war because they were, and we were, able to provide a defense. I know of no one, as inadequate as that defense was, who does not believe that any citizen in Riyadh was much better served by having the Patriot there and shooting down missiles than they would have been had they not had such a defense.

What those events did was take the "gee whiz" out of missile defense and demonstrated to the world, and especially to our people that these things are now possible.

Knowing that they are now possible, the American public must demand some means by which they can be defended against the arbitrary, the whimsical, the accidental or the purposeful use of such weapons against our people.

So, that which is provided in this authorization for future study of space-based missile defense and other kinds of defenses is extremely important. But, as the Senator from Wyoming—who has from time to time been able to persuade the Senate to go on record as favoring a defense but has never been able to persuade either administrations or both Houses of Congress that it was important—I have to say I personally am grateful to the chairman and the ranking member for the effort that they put in to bring us to the point at which we now find ourselves.

Fourteen years of trying is a long time. I know that my two colleagues have tried other things for longer than that. But, nonetheless, I have to say that 14 years is a long time in trying and I genuinely appreciate the effort that they put in and I am certain the American public does, too.

Let me also say that, as we look at this bill and the enormous changes that are in it, and must by their nature follow in future authorizations that are coming down, that I have to say to the Senate and I have to say to the Congress and the Department of Defense and the American people that as we reduce our acquisition of those things necessary to project the interests of the United States, to defend the interests of the United States, we will no longer be able to focus solely on the unit cost of those weapons. To buy 5 instead of 50 is going to make the 5, by the piece, necessarily more expensive.

So we must find a way to choose those things which are really necessary for the survival of the United States, for the ability of the United States to project and to defend its interests at home and abroad. We must focus less on what one item costs us than what we would do without that one item or those several items.

Mr. President, this is a warning: in the future we are going to have to get used to a tank that costs more money because we are buying 50 or 500 instead of 1,000 or 5,000; to an airplane for which we no longer need hundreds, but 10's or 20's. We may have to live with buying a submarine for which we once thought our needs—and thank heaven they no longer exist—would have cost in the hundreds of millions of dollars, and may now cost billions of dollars. But the need of the United States to be a strong presence in the world will not disappear in the shadow of unit costs.

So I am suggesting that Congress begin to look at the reality of appropriations and of authorizations in the light of need and not so much the cost of one unit over several. Because our need for several may no longer exist.

Last, Mr. President, I would say I am still skeptical of a package that is devoted or directed toward dismantling of Soviet nuclear weaponry, not because I disagree with its goal but because I fundamentally feel that there is a small level of naivete which attaches to this, and that is the economic fundamental that money is fungible. And so long as there is any strategic weapons modernization program in existence in the Soviet Union, we should not be funding their dismantlement of nuclear weapons for this most simple reason: We will, in effect, be subsidizing that modernization whose only use can be against the peoples of the United States and their allies.

It is not that the goal is wrong but perhaps that the time is wrong, or the criteria are wrong. We will discuss this because I have the greatest admiration for those who support this proposal. I understand their purpose and do not quarrel with it. I just have a quarrel with the potential mechanism and the timing of it and the criteria under which it might be approved.

I do not think that Americans would like to be subsidizing those things which ultimately could be used against them.

So, Mr. President, once again, I genuinely thank the Chairman and the ranking member, Senator COHEN, and others who have worked on this bill. This is a milestone piece of legislation, and it was recognized as such by the Appropriations Committee which, for all the faults of that document, still understood what it was that we tried to do. I think what we tried to do will be gratefully received by the American people once they understand what a long step toward their own safety we have achieved.

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. WARNER. If the Senator will yield for a moment, Mr. President, as we developed through these months this whole concept of the SDI as developed in this bill, indeed there were many who shared equally, and, indeed, the Senator from Wyoming was one of the principals in the negotiations and, if I had to put a mark on the bill, it would be in that section that relates to Brilliant Pebbles.

He also was steadfast on the floor, in terms of funding, overall funding.

As we went back and forth, Senator COHEN, Senator LUGAR, Senator MCCAIN, the Senator from South Carolina, and myself, and Senator NUNN, there was always that. There stood the Senator from Wyoming, MALCOLM WALLOP, with certain irreducible minimums, and backed up with a corporate knowledge second to none, through the years, as it relates to missile defense.

So I thank the Senator for his marvelous contribution.

Mr. NUNN. Mr. President, second to none, n-o-n-e; correct?

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I understand I am recognized for 30 minutes.

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I understand the Senator from Arizona wished to speak for 5 minutes.

I ask unanimous consent the Senator from Arizona be recognized for 5 minutes, and then we go back to me under the original order.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. Mr. President, will the Senator kindly also allow one of the managers to ask that the Senator from South Carolina could be recognized for 2 minutes?

Mr. THURMOND. One minute.

Mr. WARNER. Just for the purpose of introducing a statement.

Mr. LEAHY. I am perfectly willing to do that; 6 minutes, on the understanding that 6 minutes from now I will be recognized under the previous order.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield such time as the Senator from South Carolina may desire.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise to commend the able chairman, Senator NUNN, and the able ranking member, Senator WARNER, for the splendid leadership they have provided on this bill and the great job they have done in connection with it. I also would like to praise every member of the committee especially those on the minority side—Senator COHEN, Senator LOTT, Senator COATS, Senator SMITH, Senator MACK, for their interest and good work on this particular bill.

The distinguished Senator from Arizona, Mr. MCCAIN, has done an outstanding job as the ranking member of the Subcommittee on Manpower and Personnel. Senator WALLOP from Wyoming has done an outstanding job as the ranking member on the Subcommittee on Conventional Forces and Regional Defense. As the ranking member of the Subcommittee on Strategic Forces and Nuclear Deterrence it has been a pleasure to work with the distinguished chairman, Senator EXON. I want to thank him for his leadership and cooperation. Mr. President, we are very proud to bring this bill to the floor.

Mr. President, I rise to speak in support of the conference report on the National Defense Authorization Act for fiscal year 1992. Today's floor action brings to a close almost 9 weeks of intense negotiations and compromise. I want to emphasize the word compromise, because the bill before us is a compromise between various philosophies on the future of our Nation's defense. Despite the compromises, I endorse the legislation because it does not compromise the defense of our country and the welfare of our men and women in uniform.

Mr. President, this conference report reflects the significant changes that transpired after the Senate and House passed their respective authorization bills. I am referring to the August coup attempt in the Soviet Union and the President's September 21 announcement to eliminate almost one-third of the Nation's nuclear weapons. The report also reflects the realization that we are in a fiscal crisis, which, if not corrected, will cause more harm to our Nation than any aggressor's attack.

Mr. President, the conference report worked out under the able leadership of Chairman NUNN and the ranking member, Senator WARNER, reflects the resolution of over 1,400 funding and language differences between the Senate and House bills. It provides $291 billion to fund the Nation's defense programs for the next year. It also continues the rational process of reducing and restructuring our military establishment that this body endorsed last year. Although I am dismayed that the conference report essentially terminates the B-2 bomber program and funds several programs, such as the F-117, that are not requested by the Department of Defense; it is a good bill that deserves our support.

I am especially pleased with the bill's strong support of the strategic defense initiative. For the first time, we recognize the need to build an antimissile defense system to defend against limited ballistic missile attacks. To support this program and other SDI projects, the conferees agreed to authorize $4.15 billion in fiscal year 1992. This represents a milestone in this Nation's history and assures the country will not be held hostage to a missile threat such as the one made against Israel during Operation Desert Storm.

Mr. President, the most agonizing aspect of this bill is that it will eliminate approximately 106,000 spaces in our military force structure. These spaces are held by the men and women who served with such distinction during Operation Desert Shield and Operation Desert Storm. They are not the draftees of the past generations, but men and women of the highest caliber who volunteered to serve this great Nation. To ease the reductions, the bill provides temporary incentive programs to encourage individuals to volunteer for separation and, hopefully help avoid the specter of involuntary separations. The bill also provides increased benefits of those who remain on active duty. We should all keep in mind that our Nation's most precious assets are the men and women who wear its uniform.

As we confront the Nation's fiscal crisis, it is essential that we get more bang for the buck. To this end, the conferees agreed on the need to put greater emphasis on the use of our Reserve components. Our citizen soldiers served with great distinction and personal sacrifice during the Persian Gulf conflict. They demonstrated that they could provide this Nation with a capable and highly effective partner to the Active Forces at a lesser cost. I, therefore, applaud the conferees decision to significantly reduce the Department of Defense's proposed cuts in our Reserve components. Concurrent with these significantly lower cut in reserve end strengths, I support the language in the report which requires an independent study of our Reserve Force structure. We must have a better understanding of our defense needs prior to making recommendations on further cuts in this vital defense asset.

Finally, Mr. President, I want to comment on the important initiative in this legislation which are targeted at maintaining and strengthening our critical defense industrial base in these times of reduced resources. The conference report requires the Department of Defense to review the production base for its dependence on foreign suppliers and the barriers that prevent the integration of the defense and commercial production base. To encourage further development of our technology base, the bill provides over $6.0 billion for defense science and technology activities and almost $300 million for defense manufacturing technology programs. These programs are essential if we are to maintain this Nation's technological advantage that was so critical in our victory over Saddam Hussein and his forces.

Mr. President, as I indicated earlier, this is a compromise bill, but a sound bill. I urge adoption of the conference report and congratulate both Senator NUNN and Senator WARNER for their superb leadership of the Senate Armed Services Committee.

Thank you, Mr. President.

Mr. LOTT. Mr. President, it has been a long year and a difficult fight to get this bill to this point. But now we are approaching the end of a long and difficult process. The conferees have done a good job and produced a bill that will preserve our critical national defense capability during a time of severe cuts. I want to commend the committee chairman and ranking members for their diligence and hard work to produce this result. They have a tough job—but they have met the challenge.

There are many outstanding provisions in this bill which chart new waters in the defense of this country. I am particularly pleased with the dramatic accomplishments achieved in the area of the strategic defense initiative SDI. Finally—after spending some $24 billion—the Congress has now given some direction and focus to the program.

Passage of this bill and adoption of this report sends a clear and striking message—the Congress fully acknowl-

edges that the strategic defense of the people of America makes more sense than pursuing the insane objective of mutually assured destruction.

No longer will strategic defense be a theoretical model which suffers from misunderstanding and hostile opposition. The world changed when Saddam Hussein fired the first Scud missile last year. The American people were instantly educated about the importance of missile defenses—it was a lesson captured live as millions watched in terror all over the world—courtesy of CNN. This bill significantly improves our ability to protect America—and it is an achievement which has been long in coming.

We are also keeping the B-2 program alive by passing this bill. Some people say we no longer need this plane—they say it is a composite albatross hanging round the neck of a classic cold-war warrior. I have had some questions about the B-2—I voted for it, but I have had some questions. But the course identified in this bill makes sense—it does not hastily kill the program, it slows production and gives us time to consider it further next year. It is an approach that makes sense and one that I support.

I am especially pleased that this report reflects the big lessons of the past year. We cannot get away from the lessons of Desert Shield and Desert Storm. We were all gratified by the performance of American men and women—and American technology and training in the sands of Saudi Arabia and Iraq. We have reason to be proud—but this bill presses forward and does not allow us to rest on our accomplishments. We can always improve on a successful formula—and this bill moves us in that direction. With improvements in mine counterwarfare, the Marine Corps will improve their ability to project power over the beaches and littorals of the world—and that is important.

This bill improves our battlefield management and intelligence capability by providing for the advance procurement of one of the brightest stars from Desert Storm—JSTARS. We also firmly support the need for an enhanced marine capability with the acquisition of heavier tanks and an improved night fighting capability.

Mr. President, it is no secret that I oppose the big cuts in the defense budget forced by the 1990 budget agreement. I did not like them then and 2 years later, I still do not like them. We should not cut so much, so fast. The cuts we are making are hurting our Nation's defense and our Nation's economy. We sit around here and pontificate and wonder cluelessly why the economy is listless—why unemployment continues to increase and why the deficit continues to rise. When you put 210,000 people out of work—people who used to work for the Department of Defense—you do not help the economy. So when somebody stands up and starts complaining we are not cutting enough—think about what you doing to the economy, the communities and the defense industry of this country.

I am also concerned that the shipbuilding aspects of this bill are too weak. It does not do all that we need. Without a robust naval shipbuilding program—in 30 years we will not have a navy with over 250 ships and that is insufficient. This shipbuilding program does not ensure America will have the naval power necessary to meet the challenges we may face in 10 years. Mr. President, it takes 5 years to build a Navy ship and with a ship life of 30 years—if we don't build as we go, we will not have the ships in the fleet to do the job and that is a concern.

Recognizing that there are things which I do not like in this bill, I am also a realist. We must work within the budget constraints we face. The conferees have done a good job working within those restraints. We, in the Congress, are doing what we agreed to do in the budget agreement of 1990. This conference report meets the budget summit totals and should be approved.

I urge my colleagues to approve this conference report. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I am proud of much of what we have accomplished in the fiscal year 1992 Defense authorization bill. I am proud that we have taken impressive new steps to help our men and women in uniform. I am proud of the new program we have developed for SDI. I am proud of the many force improvements we have funded to take advantage of the lessons of Desert Storm. I again want to thank our distinguished chairman, our ranking member, Senator WARNER, and also my dear friend, Senator JOHN GLENN, for the partnership we have enjoyed on manpower issues, for his important contributions and for his bipartisan willingness to accept ideas and suggestions.

PROGRESS IN MANPOWER ISSUES AND VOLUNTARY SEPARATION

Mr. President, there are three aspects of our action on personnel that I believe deserve special note:

Mr. President, there are three aspects of our action on personnel that I believe deserve special note:

VOLUNTARY SEPARATION PAY

The first area is voluntary separation pay. Mr. President, it is no secret that our Armed Forces are faced with cuts of a magnitude not seen since the end of the Vietnam war and that many men and women who had desired to make the military a career, will not be able to do so. So, for the first time in history, the Congress has authorized voluntary incentives for men and women to leave the service and return to the private sector.

In taking this action, we chose to offer two plans to the individual service member and let the service member choose which plan best fits his or her financial situation. The first plan was submitted by the Department of Defense and is called the voluntary separation incentive.

Under this plan an individual who has 6 or more years of service and serves in an overstrength military occupation specialty will receive an annuity for a period of time equal to twice the number of years the individual served.

The amount of the yearly annuity is equal to 2.5 percent of the member's basic pay multiplied by the number of years of service.

For example, someone with 10 years of service would receive 25 percent of their annual basic pay for a period of 20 years.

Mr. President, many of us were skeptical of this plan because by the Department's best estimates, slightly more than half of those eligible would select this option. For this reason, the conferees agreed to offer an alternative plan, and allow the individual to choose.

Our plan is quite simple. It is based upon the package of benefits offered to involuntarily separated personnel with an increased lump-sum payment.

Under this plan, an individual would be given a lump-sum payment equal to 15 percent of basic pay multiplied by years of service. Someone with 10 years of service would receive a year and one-half's pay upon separation.

But, that is not all. They would get the following additional benefits: preseparation counseling and employment assistance; job training assistance; transitional health care for 120 days; commissary and PX usage for 2 years; use of military family housing for up to 180 days following separation; relocation assistance for personnel currently serving overseas who elect to separate; and permissive leave for the purposes of job search and relocation.

Mr. President, between these two options, it is our hope that the number of involuntary separations can be greatly reduced. While we cannot assure the Senate that the two plans will eliminate the need for involuntary separations, we are confident that a choice between two entirely separate programs will encourage many young men and women who are candidates for involuntary separation to apply for voluntary separation.

COMMISSION ON WOMEN IN THE MILITARY

Mr. President, the second area is the role of women in the military. The Senate Armed Services Committee conducted an extended hearing concerning the repeal of all combat exclusion laws that limit the roles of women in the military services. Because the hearing raised many more questions than it answered, such as the desirabil-

ity of registering women for the draft and whether or not it should be mandated in law, Senate voted to create a Presidential Commission to review the role of women in the military and to make recommendations to the President concerning the repeal of all combat exclusion laws.

The Commission will be composed of 15 members from various walks of life, who have expertise in law, sociology, women's issues, and most importantly, combat. It was our intent to ensure that the membership be diverse, and we believe we have achieved that end.

During the Commission's review, the Secretary of Defense will have authority to waive all combat exclusion laws for the purpose of testing women's abilities in various military occupational specialties from which they are now prohibited from serving in.

The Commission has to forward its report to the President not later than November 15, 1992 and the President must submit to the Congress not later than December 15, 1992.

PAY RAISE

Mr. President, the third area is military pay. Military personnel will receive an across-the-board pay raise of 4.2 percent on January 1, 1992. While military compensation has not kept pace with private sector wages in recent years, we feel confident that the current pay and allowances provide a good standard of living for our men and women in uniform.

PROGRESS IN MILITARY MEDICAL ISSUES

I am also pleased, Mr. President, that the Conference retained a number of important health provisions that I authored.

CHAMPUS COVERAGE OF THE DISABLED

The first is the provision to restore CHAMPUS coverage for those who lose it due to becoming disabled while on active duty, or if retired and prior to the age of 65. Mr. President, I do not believe it is fair to pull the rug out from underneath one who has become disabled. We have an obligation to these individuals, and I can think of no earthly reason why our obligation ought to be any less due to the fact that they have a disability.

Of course, these individuals are eligible for Social Security disability after 2 full years of disability. But, that coverage is less than that enjoyed by those individuals who will continue to enjoy CHAMPUS coverage as a result of their not being disabled. If anything, we should provide an extra hand to the disabled—certainly, not pull our hand back. This provision will ensure that those individuals who become disabled will receive the same benefit they would have realized had they not become disabled, not be penalized as a result.

HOSPICE COVERAGE FOR ACTIVE DUTY MILITARY

The second is a provision to provide hospice coverage to our Nation's active duty military, their dependents and retiree's who become terminally ill. Mr. President, the Medicare Program has enjoyed the ability to provide terminally ill Medicare beneficiaries with the option of selecting hospice as an alternative to traditional long-term care.

This critical option is cost-effective and often the preferred choice of terminally ill Medicare beneficiaries and their families. I am pleased that the Conference retained my provision, and that military families will now have this critical option, that is available to so many others in society, available to them.

COMPREHENSIVE STUDY OF DEPARTMENT OF DEFENSE HEALTH CARE

And, third, Mr. President, is a comprehensive study of the Department of Defense's health care delivery system. I believe we need to begin to focus on the health reform that must come along with our changing national defense structure, in order to ensure that we can effectively serve the health care needs of our Nation's active duty, dependents and retirees. As such, I am pleased that the Conference retained my proposal requiring that a study be conducted of the Department of Defense's health care delivery system. Not only will this study help us know where we are, with regard to capabilities and costs, it will be instrumental in helping us chart the future course.

The study will examine:

Current and projected costs of military health care over the coming 5 years. The Department's policy regarding various types of user fees and deductibles, and future plans for increasing or reducing such fees by category of service and user;

The availability of military health care to the uniformed personnel of each service—highlighting any shortfalls in the type of care or coverage by service, State, and overseas deployment;

The availability of care alternatives for military families—specifically, the average length of time it takes to gain access to military facilities and access to civilian alternatives by service, State, and area of overseas deployment and report on comparative costs per member and per family with regional indemnity and HMO insurance plans;

Existing alternatives to the traditional military medical system for military retirees and their families by service, State and area of overseas deployment, including Medicare risk contractors. Also, the level of access to military facilities for retirees;

Existing regulations to ensure proper treatment of disabled active and reserve personnel, and the preservation of their full level of benefits; and

The effect of base-closures on access to care, and what can be done to address the needs left unmet with base-closures.

THE FIGHT AGAINST PROLIFERATION

Mr. President, there are many useful portions and amendments in this bill concerning proliferation. One expands the current reporting on missile proliferation to cover all forms of proliferation: nuclear, biological, chemical, aircraft, and other delivery systems. It calls on the President to identify the merchants and buyers of weapons of mass destruction by name.

Exposure is one of the two most potent checks to proliferation, and I hope at some time we will move on to adopting sanctions for those who provide the weapons of mass destruction and the means to deliver them which pose the greatest threat to peace and security for the rest of this century and into the next century.

THE PROBLEM OF ENTITLEMENTS

At the same time, Mr. President, there are aspects of this bill that concern me. I believe that we have made a serious mistake in introducing more activities in the defense budget which have only a tenuous relationship to national security.

We now have costly programs that really belong in other parts of the Federal budget and that threaten to become entitlements programs, Federal subsidies that will drain our defense resources for years to come.

INDUSTRIAL DEVELOPMENT

One such area involves industrial development and the technology base. We have redirected a total of $918 million to programs in these areas, and many involve activities that threaten to make such funding another entitlements program.

Yet, far too many of these programs are largely undefined and inadequately structured. In several cases, the most detailed plans for how millions of defense dollars will be spent is found only in the language of this bill and the accompanying report.

It is worth noting that approximately $150 million was cut from Defense-wide support facilities—which primarily support our test and evaluation activities—to fund these other programs. These are the facilities we depend upon to support the extensive testing of our missiles, aircraft, and other weapons systems.

The Armed Services Committee has put increased emphasis on the test and evaluation phase of weapon system development through the concept of "fly before buy." But, it has effectively robbed these accounts in ways that will inevitably reduce and delay the test and evaluation of our new weapons systems.

I believe that we need to invest in programs to protect the industrial base and to strengthen the technology base. I believe we need national programs to improve our competitiveness and strengthen the private sector.

However, we should not fund general programs to deal with national industrial policy out of the defense budget. We should not spend money on educating K-12 students or establishing fel-

lowship programs with only tenuous ties to defense. We should not drift into trying to reshape all of American industry out of a defense budget whose R&D and procurement levels are likely to drop by 33 to 50 percent by the end of 1997.

We should not embark on annual programs that only make sense if they are funded for years to come and at a steadily increasing level to reach the scale necessary to have a national impact. We are being asked to either waste money on half formed programs that are far too small to have meaning or back into a national industrial policy where most of the real issues affect the civil sector and a truly vast investment would be required to have any real effect.

ENVIRONMENTAL RESEARCH

Second, we will spend $50 million on defense environmental research. Once again, no one can deny the need to protect our environment. However, we are already spending $6.4 billion from the Defense—$2.2 billion plus $400 million for base closings—and defense portion of the Department of Energy budget, $3.8 billion, to clean up military facilities.

Over the next 5 years we will spend $11.5 billion on such clean up programs, and the Department of Defense has estimated that the total cost of environmental clean up for the current round of base closings will cost $424.5 million.

THE ENTITLEMENTS PROBLEM

We should never repeat this kind of mistake. We should either spend Defense dollars on Defense programs, or return them to the taxpayer in the form of tax and deficit reductions. We should never use these dollars to duplicate civil programs.

In saying this, there are some figures to support this point that are dramatic:

First, the growth of entitlements has long outstripped the growth in Defense spending and our economy. In the years since the height of the cold war in 1962, our GNP has increased by 150 percent in constant fiscal year 1992 dollars. In contrast, our real defense spending has risen by 33 percent, our discretionary Federal programs have risen by 194 percent, and our nondiscretionary Federal spending—or entitlements programs—have risen by 474 percent;

Second, defense spending has already been cut enough to sharply reduce the burden it places on our economy and the Federal budget. If we go back to the height of the Reagan Defense buildup, defense spending has dropped from 27 percent of the Federal budget in fiscal year 1985 to 21 percent in fiscal year 1992—a drop of 6 percent. Discretionary Federal spending has stayed nearly constant at 16 to 17 percent, and nondiscretionary Federal spending has leaped from 46 to 52 percent—a rise of 6 percent;

Third, these cuts in defense spending have already produced a major peace dividend. Defense spending has dropped in real terms during each of the last 6 years. Measured in fiscal year 1992 dollars, it has dropped from $366 billion in fiscal year 1985 to $278 billion this year. If one uses the fiscal year 1985 level as a standard of reference, this peace dividend has already reached $347 billion; and

Fourth, the contrast between the drop in real spending and the growth of entitlements has accelerated in recent years. If we measure the drop in real Defense spending in percentage terms, it has dropped by 24 percent in real terms, and 12 percent of this drop has occurred since 1990. In contrast, non-Defense discretionary spending has risen from $187 billion in fiscal year 1992 dollars in fiscal year 1985 to $212 billion in fiscal year 1992. This is a rise in real terms of 13 percent since fiscal year 1985, and 7 percent since fiscal year 1990.

The point, Mr. President, is obvious. Defense dollars are not large enough to feed the ravenous maw of our entitlement programs. They can be used to buy national security, or to provide a peace dividend and to cut our deficit and taxes.

But, they simply must not be used to disguise the fact that we are adding to Federal spending which is draining our economy of growth, costing us jobs, and reducing our standard of living.

I believe that wasting the peace dividend is the last thing the American people want or need. The majority of the American people want a sound economy, jobs, and lower taxes—not more exercises in congressional efforts to manage their lives and personal budgets.

They know that the best solution to our domestic problems is to allow the American people to solve them by reducing the budget deficit and/or Federal taxes. This is the path to a full and robust economic recovery, to more jobs and high wages, to the growth that funds better schools and services, and to a stronger America.

Before any Member of this body, or the other House, rises to recommend that we shift defense funds to any other federal activity, he or she owes the American people an explanation. That explanation must be detailed and comprehensive, and it must decisively show that such shifts are more important than cutting our deficit or reducing taxes. I suggest, Mr. President, that no such explanation will ever be forthcoming.

THE PROBLEM OF STRATEGY

Important as the issue of entitlements is, Mr. President, there is another problem shaping this year's Defense authorization bill that is equally important. This is the problem of strategy.

This is the last year we will be able to deal with our present force structure and strategy and treat them as another annual exercise in Defense budgeting. We face changes that require fundamental shifts in U.S. policy and strategy, and in our Defense priorities.

If we make these shifts in the right way, we can aid the American people and our economy, develop a force posture that meets the new strategic needs of the 1990's, and fund the forces we need by canceling projects whose time and value has passed.

If we make these shifts in the wrong way, we risk adding to domestic waste and our budget deficit. We will lose the capabilities we need to help maintain world peace and meet the new challenges to peace in the developing world. And, we will waste billions on dinosaurs like the B-2 and SSN-21, while failing to protect our men and women in uniform.

GIVING THE AMERICAN PEOPLE A REAL PEACE DIVIDEND

Let me begin by discussing the issue of Defense spending. I believe that there is little doubt that if the current trends in the Soviet Union continue, we will be able to make additional cuts in Defense spending. At the same time, I believe we must be cautious in overestimating the size of that cut, and cautious in the way we use the resulting savings.

Our current force plans already call for a 25-percent cut in our military forces by fiscal year 1996. They call for cuts of 33 percent in our number of active divisions, 40 percent in our Reserve divisions, 18 percent in our naval battle force, 38 percent in active tactical air wings, and 33 percent in our strategic bombers.

We must not rush to take a further peace dividend before we are certain we can still fund the forces we need. There is no question that we live in a time of strategic change, and that our present strategy and forces do not reflect that change.

We will have to change our forces far more drastically during the next few years than we have yet admitted in shaping this year's Defense authorization and appropriations acts. We must be careful to make these changes at the right pace.

We cannot lose sight of the fact that the future nature and leadership of the Soviet Union are still highly unpredictable, that the future of the Soviet Union's military forces remains uncertain. Above all, we cannot ignore the fact that we still need military forces to defend our interests and those of our allies in other parts of the world.

I would not argue for a moment that we need everything funded in our current defense budget. As I have already argued in this body, programs like the B-2 have become a strategic albatross, and programs like the SSN-21 have become the equivalent of a lead balloon, and we can certainly make further cuts in our forces for Europe and the so-

called reconstitution forces whose only purpose is to fight world war III.

We need to firmly recognize, however, that we have been spending our peace divided for more than half a decade. We need to recognize that the ongoing reductions in Defense spending will bring us close to the bare minimum we will need to make orderly cuts and changes in our forces, and to convert from cold war strategy and force posture to one oriented toward the power projection missions of the future.

This power projection strategy, and the force posture necessary to implement it, are the inevitable result of our position in the world. We cannot stand aside from history and try to shape it at the same time. We cannot seek a peaceful world, and global economic interdependence, and pretend there will not be new Saddam Hussein's in the future.

We need this strategy, and the proper forces, for the same reasons we needed a maritime strategy from the time we attacked the Barbary Pirates to the beginning of World War II. We need it for the same reasons we have used military force more than 220 times since the end of World War II to defend the interests of our citizens, our friends and allies, and our Nation in contingencies that had nothing to do with the Soviet Union and the Warsaw Pact.

We also should not have any illusions about the size of the forces we are cutting. We did not size or structure our forces to challenge the Soviet Union alone. We shaped them to take account of alliances like NATO, our alliance with Japan and South Korea, and our alliances with a host of friendly states like Israel, Egypt, and Saudi Arabia.

We also have made countless compromises in the past, in order to reduce the burden defense places on our economy. In fact, we have long accepted the military risk of having only about half the total mix of forces for NATO and power projection missions that many joint staff studies have shown we really need.

The resulting shortfalls were exemplified during Operation Desert Storm. We must remember that this crisis came at a time when many members of this body were stating there were no major threats in the developing world—and when some were saying that the Iran-Iraq war has brought a new stability to the region. We must remember that our victory was only made possible because Saddam Hussein sat and waited for 5 months, and failed to bring his forces to the readiness they had shown against Iran only 2 years before.

We must remember that we encountered major shortfalls in airlift and sealift during the build-up for Operation Desert Storm. We must remember that we were critically short of heavy armor and firepower for our Army and Marine forces up to the final weeks before the war began. We must remember that we used many of our ground forces for NATO, virtually all of our combat deployable carrier strength, at least two-thirds of our Marines, and a large portion of our tactical aviation and bombers for this one contingency.

We must remember that even this build up was only possible because of the cooperation of friends like Bahrain, Saudi Arabia, and the UAE. We must remember, for all our successes, that the political and strategic outcome might have been dramatically different if it had not been for Israel's courage and restraint, and if we had to escalate to a very different level of conflict. We must remember that we were part of a coalition and that our forces were successful because they fought along side the forces of Britain, France, Egypt, and many other nations.

We cannot afford the illusion that we have a vast surplus of forces we can easily eliminate. We must not cut defense spending without a clear picture of the force posture we wish to preserve and the strategic capabilities we wish to preserve or create.

We do not have a surplus of power projection capabilities, and it is important to note that our current defense spending and force plans will leave them badly short of sea and airlift, modern amphibious forces, long range tactical strike aircraft, mobile armored forces, and a host of other capabilities. As we cancel programs suited to the cold war, we may well need to shift these resources to the other military capabilities that will ensure we can rapidly and decisively project power without suffering serious casualties.

Above all, we must not confuse a new period in history with the end of the history. Like it or not, we have become the one power in the world that can project enough military force anywhere in the world to halt aggression, deter conflict, and protect our interests and those of our allies.

SETTING NEW PRIORITIES FOR DEFENSE SPENDING

This leads me to my final point, the need to set new priorities for Defense spending. I believe that we need to urgently concentrate our resources on power projection missions, and that we need to ensure that we fully fund the core forces we have in being, and the necessary air and sea lift, rather than indulge in high cost and high technology experiments that we may never be able to afford.

To be specific, we should not cut our carrier task groups or our Marine Corps combat forces. We should not cut the combat ready Army and tactical Air Force units, and their reserve counterparts, whose primary mission is power projection. We should keep elements of our forces forward deployed for missions in Asia, the gulf, and Europe—not rush forces home that we will need to redeploy in the emergencies and crises that are certain to come.

Where we can make cuts is in the nucear forces that will be cut as part of START, and which are certain to be the subject of ongoing force cuts as our relations with the Soviet Union or its successors improve. We can legitimately demand that it is our European allies that bear the overwhelming burden of their own defense, as we shift to a power projection role.

We can ruthlessly pare our Active and Reserve Force structure to eliminate those forces whose primary mission was to fight a prolonged conventional war in Europe. We do not need these forces, or the expensive shell of a reconstitution mission, and this should permit major further cuts in our force structure, support structure, and headquarters in the United States.

We need to recognize that as the Soviet threat continues to diminish, we need to emphasize maintaining our high quality of men and women in uniform, and the overall readiness of our forces, not technology per se. This is why we can and must kill expensive dinosaurs like the B-2 and SSN-21, and show extreme caution in depriving our defense industrial base of proven weapons and munitions in the hope that we actually produce sweeping advances in technology after the year 2000.

We cannot afford to throw away two birds in our hands for one in the bush. We cannot afford to leave tactical aviation unfunded to buy the B-2. We cannot afford to consume 25 percent of our ship building budget by buying an SSN-21 whose only justification is that the Navy failed to budget for the smaller submarine we actually need.

We cannot afford to halt production of all our current fighters in the hope some aircraft whose technical details remain uncertain may become a reality. We cannot halt the production of proven and easily upgradable armored weapons, and helicopters like the AH-64, for promises of unknown price and performance.

THE NEW CHALLENGE OF DEFENSE PLANNING AND BUDGETING

In conclusion, let me note that this year's authorization bill is only a prelude to the real Defense debate that will come next year.

I believe that that debate must focus on how to obtain a peace dividend in a way that will preserve our key capabilities. I believe that it must focus on using that peace dividend to cut our budget deficit and taxes.

I do not believe that it will serve the national interest in any way to confuse these real issues with yet additional spending on entitlements.

We cannot foresee all of those changes today. However, unless we make the right beginnings we will de-

prive the American people of the true peace dividend they deserve, we will pursue the wrong strategy and threaten the peace, and we will waste billions we cannot afford on forces and equipment we do not need. The central issue is how to cut our spending and our forces in a way that will preserve and expand the power projection forces we need for the future. This is the only meaningful standard for judging our success.

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

The PRESIDING OFFICER. The Senator from Vermont.

Mr. WARNER. Mr. President, could I be allowed just to thank 1 year's worth of participation and hard work for 1 minute?

Mr. LEAHY. I do not want to be discouraged. I have had the floor five times and yielded the floor five times to others. Certainly, if the distinguished Senator from Virginia needs his 2 minutes, I will yield the 2 minutes without it coming out of my 30 minutes.

Mr. WARNER. I thank the Senator from Vermont. I simply wanted to acknowledge 1 year's hard work by the Senator from Arizona, working in partnership with Senator GLENN. Our committee is fortunate to have these two individuals because they draw on an extensive background of personal experience at all levels of the military, and those experiences are brought to bear on tough decisions, like the most recent in terms of how we deal with this, as the Senator from Maine used to say, the build-down, the personnel structure of the Armed Forces as we take 5 percent per year. I want to personally thank both Senator MCCAIN and, at this time, Senator GLENN for their work in the personnel area.

The PRESIDING OFFICER. The Senator from Vermont has 30 minutes.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to yield 2 minutes, not out of my 30 minutes, to the Senator from Georgia, without losing my right to the floor.

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

Mr. NUNN. I thank the Senator from Vermont for his great patience. I know he has important remarks to make, and I do thank him for his willingness to yield.

I can announce on behalf of the majority leader that there will be no further rollcall votes this evening.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I was glad to yield to the Senator from Georgia. I think the American public is probably thrilled, excited, and enchanted by the unanimous-consent request. They are probably right on the edge of their seats if they were watching or listening. Probably nowhere near as excited and enchanted as our colleagues when, at the very end, he said no more rollcall votes.

Mr. NUNN. Mr. President, it was one of my better speeches.

Mr. LEAHY. Mr. President, the press heralded a compromise between the House and Senate negotiators. The said the compromise was the death knell of the B-2 stealth bomber program. As the Senator who offered the first amendment to terminate the B-2 in 1989, I do not think anybody would be happier than I would be to see this monument of waste and inefficiency ended.

Mr. President, I was stunned, as I believe many others were, once we read the details of the final agreement that was made available on November 14. To paraphrase a famous statement of another Vermont Senator, we have declared defeat and pressed on.

Reports of the B-2's demise are based on the agreement of negotiators that only one additional plane would be authorized. You may recall the administration requested four. The fate of this last B-2 is still subject to approval next year by both the House and the Senate, and the House has killed the program for 2 years running. The Senate came within two votes of ending this boondoggle this year.

But this decision to conditionally authorize just one more plane, Mr. President, is a Trojan horse. There is some small print attached to the deal that has been missed by the press. It has been missed by the headline writers. I would hope that even at this late hour, there are those in the press who are following what is going on, because they missed the point.

The conferees also included a deal that virtually assures that the B-2 is going to be back for a rerun as a far more attractive program, to that dwindling percentage of people in this country who still support this flying boondoggle. The House and the Senate conferees approved $1.8 billion in unrestricted funds. The Air Force will use the funds to purchase parts and sections known as kits for future B-2's that have not yet been authorized by Congress.

This program is drowning in money. The B-2 is about the only thing in this country that has more money than it can even use.

The Air Force is sitting on a $3 billion pool of unobligated B-2 funds that were previously approved by Congress that has not even been tapped yet. It is almost like their own Swiss bank account. Northrop, the B-2 contractor, has been unable to show it can produce the aircraft orders planned by the Air Force.

Ironically, the problems that plague the B-2 program may actually save it from extinction. Can you imagine? The same failures, the same faults, the same design failures—all these things that should have killed the plane—we now find that the worse it got, the more it got screwed up, the longer it took, the more time it took, that may have actually saved it.

It has taken Northrop millions of man-hours to build each bomber. It will be years before Northrop and the Air Force need the actual authorization to assembly these kits into future planes.

This conference report is the wedge to pressure billions more taxpayer dollars in the future for a plane that became obsolete while it was still on the drawing board.

I hope that no Senator is deceived by this agreement that allows the Pentagon to spend billions on planes that have never been approved.

I can hear the Air Force testimony now that will be on the record in another year or so. They will bring in new pictures describing a new mission for the B-2. After all, nobody is going to hold onto the old mission, because we know it is anachronistic. The cold war is over.

The Air Force will tell Congress: well, it will be cheaper to build more planes with the kits that we have already purchased than it is to terminate the program.

How many times have we heard that? We pour so much money we do not need into a program, and the Pentagon says: But we have to spend a few billion more because, gee, we would waste all this money we spent. We would waste the money we wasted if we do not waste money.

Anywhere else in the world, this would be fantasyland. Here it is the defense budget.

How many kits do we have now? Who knows? But after this agreement, we are going to have even more. The Pentagon will argue that we have the parts, so why not put them together? And Congress will end up buying more B-2's, unless somebody is willing to stop this nonsense.

The narrow vote in the Senate on September 25 indicates the rapidly eroding support for the B-2 program. This plane, designed to elude Soviet radar and deliver nuclear weapons to downtown Moscow, lacks a mission. And, only weeks before the Senate vote, the Air Force announced that the B-2 had failed a flight test designed to test its stealthy features.

Does it sound a little bit like what went on with the B-1? During the Persian Gulf war, we used everything in our arsenal except the B-1. We found out to get it over there, we would have to have the Navy ship it over, and they did not really want it.

After spending $30 billion on the B-1, the Air Force now wishes that the Congress had killed it. Now, they have to pay for the crews, the pilots, and the upkeep. And now they are going to do the same thing to us on the B-2.

While the effort to kill the program failed when the Senate voted on it, we

did restrict release of any further B-2 funds until a vote next year, and only after the plane met its original stealth requirements. The Senate restriction is a sensible fallback position.

If the House voted to kill the program, and the Senate restricted the funding, it would usually be a safe assumption that the House and Senate conferees would reach an agreement on such a troubled program that was somewhere between the two positions.

Well, this is the most novel compromise I think I have ever seen in my years in the Senate. The conferees rescued this program against all odds, and Senators should realize that it was not the posse but the cavalry that determined the B-2's fate. It got killed for all effective purposes in the Senate; it got killed for all effective purposes in the House.

And all of a sudden, in the dark of night, from the closed doors, out of the conference comes the B-2, alive and well—not able to fly very well, not able to elude radar very well, but sure as heck able to tap into the Treasury like a big vacuum cleaner.

No, Virginia, there is no peace dividend for the American taxpayer in the near future, because the Pentagon and some Members of Congress still believe in the Stealth bomber.

With all the problems of the B-2 bomber, we find that it has one mission, and only one, that it can successfully carry out. That is to milk the American taxpayers over and over and over again.

I yield to the distinguished Senator from Tennessee.

I yield the Senator control of the remainder of my time.

Mr. SASSER. I thank my friend from Vermont.

Mr. President, I have closely followed the progress of the armed services authorization bill and of defense spending in general over the course of this year, and I intend to follow it even more closely next year. I have watched this bill evolve into its present form, and I have expressed my views at various intersections along the way as the bill has evolved.

Mr. President, the Armed Services Committee has worked diligently, very hard, and the chairman and the distinguished ranking member both have struggled very ably with a varity of complex problems. This conference report is a product of diligent and conscientious effort for all concerned.

But, Mr. President, I shall vote against it. In broad terms, the legislation before us this evening simply authorizes too much spending for military purposes. I would observe that the record of the bill's history and development unequivocally proves beyond a shadow of a doubt that it spends too much in its current form.

Early this year, my colleagues will recall that I offered an amendment to the defense appropriations bill that cut military spending modestly, with the savings aimed at deficit reductions, simply taking some money off military spending and using it to reduce the deficit in this new era in international relations in which we find ourselves.

I offered that amendment to bring our pattern of military spending in conformity with the rigorous demands proposed by the budget agreement in coming years.

I proposed a prudent cut. I put a heavy premium on getting deficit savings, on reducing the deficit, without impairing the readiness of our military force structure in the near term or after.

I would call my colleagues' attention to a chart which indicates the problem we have now with the budget agreement scheduled to expire in fiscal year 1995.

It indicates that if we continue to spend at the present level of discretionary spending, by 1995 we will have exceeded the caps by a substantial margin; by fiscal year 1993, we will have exceeded the budget agreement by $9.4 billion; by 1994, by $19.8 billion; by 1995, by $24.8 billion.

I pointed out to my colleagues earlier this year the problem we have. The yellow represents the limit on discretionary spending that is imposed upon this Government by the budget agreement, slated to expire in fiscal year 1995. The red area represents where we are going if we continue to spend at the present level. You can see that clearly we are going to exceed our statutory spending authority under the budget agreement by a substantial margin beginning in fiscal year 1993 and continuing on out to 1995.

I tried to present the evidence documented by the Congressional Budget Office that big ticket programs are on a collision course with the discretionary spending limits. Ultimately, mine was an argument for preserving the budget agreement, saying simply that, if we continue to spend in the military area at the rate we are going, we are going to exceed the caps. I also indicated that would occur in domestic spending as well. I argued for presering the budget agreement. Curiously enough, I was opposed on the grounds of violating the agreement.

In the intervening period, we have had an effort by the armed services conference itself to cut even more out of defense in fiscal year 1992 than I purposed in my amendment. There was a proposal in the armed services conference to cut $1 billion in outlays for fiscal year 1992, roughly $250 million more than I proposed to cut myself in fiscal year 1992. That money was not going to deficit reduction, which it would have to under the terms of the budget agreement. It was going to be spent. Moreover, it was to be spent in a manner that, unlike my amendment, would actually have violated the budget agreement.

Even more surprising, the transfer would have come from sensitive operations and maintenance accounts, which was have been told in years past are sacrosanct and would have affected force structure immediately. The amendment that I offer was carefully tailored to avoid that.

Mr. President, the lesson in all of this could hardly be more clear. Every time some of us come to this floor to try to bring military spending down to conformity with the world we live in today and the threats that we face today, the reduced threats I might say that we are faced with today, we are confronted with the charges, oh, that cannot be done; that will weaken our security. Oh, this is an ad hoc cut. We have not looked into this. We have not had hearings on it, and that violates the budget agreement.

Yet, when the committee of jurisdiction itself wants to make cuts in a conference for reasons of its own choosing—and I do not contest the validity and the wisdom of those reasons—suddenly there is $1 billion that can be carved from the Pentagon budget without any perceptible consequences to our security. Typically, the defenders of military spending do not admit that we can simply take $1 billion in outlay out of our military budget, but this year we have a tacit confession that, yes, it can be done.

The committee's actions confirm that $1 billion under the defense cap does not really need to be spent for military purposes this year. Clearly, if defense cuts can be made for a transfer to the Soviet Union, them they can be made without impairing our defense.

Now that the Soviet aid will come from other budgetary resources, is that $1 billion that was originally allocated to go to the Soviet Union available for deficit reduction? Is it available for education, for health care, for roads, for crime prevention? Why, of course not. It is right back in the military budget, and we are told once again that every dollar of that bill is sacrosanct.

Mr. President, I want to emphasize that I am not opposed to aid to the Soviet Union. I want to commend the distinguished chairman of the Armed Services Committee for having the wisdom and the foresight to anticipate the problems that we are going to encounter in the breakup of the Soviet Union.

I wish that the President of the United States, and I wish that this administration would evidence the wisdom and the foresight that the distinguished chairman manifested when he isolated what I perceive to be one of the greatest dangers to the United States, and indeed to our lives, coming from the breakup of the Soviet Union itself. I do not contest that for one moment.

But the larger point that I am making this evening to my colleagues is

that the Pentagon does not need all the money that is requested for military spending this year. If the Armed Services Committees can offer up $1 billion with relative ease and do it with the administration's initial approval, then I submit that the cap for defense spending in 1992 was simply too high to begin with. And it follows just as certainly as night follows day that the caps for 1993, 1994, and 1995 also are unrealistically high and should be reduced.

Having made that observation, Mr. President, I want to touch briefly on a specific request in this bill that I find most troubling—the proposal to dramatically increase spending on the strategic defense initiative. This bill would have the American people lay out $4.12 billion this year for the strategic defense initiative, the so-called star wars system that was conceived in the darkest days of the cold war, now to be deployed at the expense of far more pressing national needs.

It is a proposition, I submit, that has been totally unexamined by the vast majority in this body. It has not been debated in any public forum that I am aware of. It is a continuation of big ticket military spending that promises to misuse our fiscal resources for decades to come.

Mr. President, the vast majority of the House of Representatives and 50 Members of this body are on record opposing expansion of the strategic defense initiative and deployment of it. A majority of Congress believes that the strategic defense initiative is both strategically unwarranted and fiscally unsustainable.

Yet, an influential minority has pushed it forward with hardly a whisper about strategic considerations or expense. At a time when most committee chairmen are forced to tell their members there are no new initiatives to be funded in the health area, in the area of crime prevention in the area of education, and the infrastructure area, the Armed Services Committee plans not only to fund a new initiative, but to fund it at over $4 billion next year, and $10 to $20 billion in the coming years.

I have argued in the past that we need to put this whole issue in a national context. What exactly is this kind of protection worth to the American people? Does the threat of a rogue Soviet missile striking us really match the threat that we face internally? I do not need to go through the whole litany of decaying inner cities, a culture that is on the edge of disaster, a collapsing infrastructure, sagging test scores, a population desperately in need of some kind of sustainable health care system.

Does the possibility of a missile attack from Libya, from Pakistan, or even North Korea really weigh equally in the balance with the dangers posed by what we see right here, such as crime on the streets of our neighborhoods, where one is afraid to walk three or four blocks away from the Capitol after 8 or 9 o'clock at night? That is where the threats to this country and this culture and this system come from.

Well, the same questions, I think, have to be asked about our military budget that we ask about all other Federal expenditures. Why in the world are we spending so much money for the military in a world that has changed so dramatically? What are the real threats that face this Government and face the American people? That debate, in my judgment, has not occurred yet to an adequate degree. Until it does, I will continue to oppose military spending at the levels offered in this conference report today.

I would be remiss, Mr. President, if I did not also at this time pay tribute to the distinguished chairman of the Armed Services Committee for trying to point the way to this administration, and I think point the way to many others, of the new approach that needs to be taken in dealing with our former enemy, the Soviet Union. I think he is on the right track.

I disagree with the manner in which this effort was first put forward by the Armed Services Committee. But, indeed, I do think that there is a significant threat to our national security, and a significant national threat to all of the democratic countries that can emanate from the breakup of the Soviet Union, from the spread of nuclear weapons technology, and the very weapons themselves, coming out of the Soviet Union.

But that does not subtract from my main point that we are spending too much for the military at this time in our history, that this military spending can be reduced, and that we have seen by the actions of the Armed Services Committee itself, that it could be reduced by at least $1 billion, without jeopardizing the security of this country.

Mr. President, I yield the floor.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, pursuant to a previous order, I send a cloture motion to the desk and ask that it be read.

The PRESIDING OFFICER. The cloture motion, having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant 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 Senate Resolution 198, to amend Senate Resolution 62 (102d Congress) to authorize the Committee on Foreign Relations to exercise certain investigatory powers in connection with its inquiry into the release of the U.S. hostages in Iran:

Paul Sarbanes, Don Riegle, Claiborne Pell, Dennis DeConcini, Jim Sasser, Paul Wellstone, Bob Graham, Wendell Ford, Pat Leahy, Carl Levin, John Glenn, Paul Simon, Howard M. Metzenbaum, J.J. Exon, George Mitchell, Harris Wofford.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. NUNN. Will the Senator from Ohio let me make one brief comment and ask the Senator from Tennessee a question before he leaves the floor?

Mr. GLENN. Yes. I yield to Senator NUNN.

Mr. NUNN. Mr. President, I would like the Senator from Tennessee to correct me if any of my information is incorrect. And, if not tonight, I would certainly like to have this information tomorrow, because while we may disagree on some of the policies, we should not have any disagreement on the facts as to the budget applications, or actual number of outlays in authorization authority here.

Mr. President, it is my understanding, and I believe this is absolutely factual, that the defense spending in this bill does not violate the budget agreement in 1992 and is not on a course to violate the agreement in 1993, 1994, and 1995, based on all of the analyses I have.

I think what the Senator has demonstrated here is, if you combine all discretionary, including defense, we are perhaps on a course to be over the budget in the outyears. But it is my view, and we have had this debate once, that that was a discretionary problem rather than a defense problem.

Let me just ask the Senator this: We understand—and we have the scoring from the Congressional Budget Office—that this bill is $1 billion under the budget resolution level in outlays, that we are not spending up to the cap. I do not believe you are going to find any other committee on Capitol Hill that is under the cap. We, in effect, are spending $1 billion under the cap in outlays in this bill.

Does the Senator have any information that he can confirm, or anything contrary to this information?

Mr. SASSER. Well, I have no information that would either confirm or indicate that the Senator from Georgia is incorrect. I just have no way of knowing.

Mr. NUNN. Would the Senator mind checking on that tomorrow and making a little statement for the RECORD, because of the respect that he has as chairman of the Budget Committee, and people listen very carefully to what he says, and perhaps if he agrees with this, we could indeed set an example here. But we are not spending up to the authority. We are $1 billion below the authority and, in essence, what the

Senator proposed on the floor was to cut, I believe—what was his proposal?

Mr. SASSER. I am proposing to cut approximately $750 million in outlays.

Mr. NUNN. We can save more than that in this conference report.

Mr. SASSER. Is that in outlays?

Mr. NUNN. Yes, in outlays.

Mr. SASSER. Well, if the Senator is coming in below the caps, then I want to commend him for that, and I would encourage him to do even more in the years ahead. I look forward to working with him in that respect and would give him all possible encouragement.

Mr. NUNN. I ask the Senator to make his congratulations contingent on further checking with the CBO. But this is the information that we have, the best information I have, and if it is not correct, I would like to know, and I would like to know where we differ in numbers.

If it is correct, I think it would certainly be helpful, and maybe it would stimulate other committees, if we are saving this much—and I believe we are—to have that known by the chairman of the Budget Committee.

Mr. SASSER. We will certainly check that in the Congressional Budget Office and get an affirmative response to the chairman of the Armed Services Committee, and if indeed the committee is coming in $1 billion below its cap that is commendable and the fact that that amounts to perhaps less than one-half of 1 percent of defense outlays should be taken into consideration. It is the motive.

Mr. NUNN. It is actually 25 percent above what the Senator from Tennessee asks us to save, so we have taken his comments to heart and we have done our best. I hope we are accurate.

Mr. SASSER. I respect the distinguished chairman.

The PRESIDING OFFICER. The time under the control of the Senator from Tennessee has now expired.

Mr. SMITH addressed the Chair.

Mr. GLENN. Mr. President, I had already been recognized I believe. I yielded to Senator NUNN.

The PRESIDING OFFICER. Who seeks recognition at this time?

Mr. GLENN. Mr. President, I seek recognition.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GLENN. I believe I had already been recognized.

Mr. NUNN. The Senator from Ohio yielded to me.

Mr. GLENN. I had already been recognized and not made my statement yet. The Senator yielded me time to make a statement, I believe.

Mr. SMITH. I make a parliamentary inquiry.

The PRESIDING OFFICER. The Chair does not believe that the Senator from Ohio had been recognized. The Senator from Tennessee was the last recognized. The Senator from New Hampshire is ranking minority member of the committee and present on the floor at this time.

Mr. SASSER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SASSER. Was I advised all my time was expired?

The PRESIDING OFFICER. Yes.

Mr. SASSER. A further parliamentary inquiry: Was I controlling the time in opposition?

Mr. NUNN. Mr. President, I thought I was controlling the time on this side.

Mr. SMITH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Under the previous agreement the Senator from Vermont was given 30 minutes and yielded the remainder of his time to the Senator from Tennessee.

Mr. SASSER. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GLENN. Mr. President, I object. I was recognized and Senator NUNN asked to make a couple comments after I had been recognized.

Mr. SMITH. Mr. President, I make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SMITH. The time has been controlled by 5 or 6 speakers on the other side for the past 45 to 50 minutes with nobody on this side, few of whom are even members of the committee. We accepted the unanimous consent. Surely, the Senator from Ohio can afford us the courtesy to allowing someone to speak on this side.

I seek recognition, Mr. President.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. Mr. President, I appreciate the Chair's courtesy.

Mr. President, I rise today to support this defense authorization conference report and offer some personal comments concerning this bill before us.

First of all, I commend the distinguished chairman, Senator NUNN, and the ranking member, Senator WARNER, for their leadership and fairness throughout the Armed Services Committee's deliberations this year. I am a junior member of this committee, and this was my first opportunity to work with these two Senators, and their courtesy throughout the whole process is very much appreciated.

Mr. President, the bill before us reflects 10 months of hard tedious work by this committee and some 7 weeks of negotiations with the House of Representatives to try to fashion a defense bill which advances our national security interests in a rapidly changing world environment. Let me be clear from the outset. The task was very formidable. The House and the Senate-passed authorization bills embodied extremely divergent philosophies. They were different on national defense, national security, and other matters. The process of reconciling the disparities was tumultuous and difficult. In the end, we reached a compromise, but as always with compromises, neither side was completely satisfied, some winners, some losers.

The conference bill is something of a mixed bag of goods. On the one hand, there are many provisions which I strongly support. In particular, I am extremely pleased that the Senate and the House finally recognized, finally, the immense value of ballistic missile defense, and endorsed the goal of deploying a multiple site ABM system. Contrary to the remarks of the Senator from Tennessee, I believe we need very much that multiple site ABM system.

This long overdue initiative sets the groundwork for the United States to transition from the dangerous policy of mutual destruction to a deterrent posture which integrates both offensive and defensive forces. Furthermore, the legislation calls upon the administration to negotiate modifications in the ABM Treaty to permit multiple interceptor sites, increased utilization of space-based sensors for battle management, and clarification on deployment and testing of space-based defenses.

Mr. President, these are historic initiatives, controversial, but historic.

Mr. President, while I strongly support these initiatives, I would have preferred that Congress adopt the President's SDI program, known as Global Protection Against Limited Strikes. As we saw in Desert Storm, the proliferation of ballistic missiles and weapons of mass destruction pose a clear and present danger to our national security, even in Tennessee, Mr. President.

In my opinion, the President's program, which combines both ground- and space-based interceptor systems, is far more effective and responsive to these threats.

But we had to fight for every word and every penny of funding in the Missile Defense Act. And against my fervent opposition, SDI opponents succeeded in exempting Brilliant Pebbles from the initial architecture and reducing funding to $390 million. Nonetheless, the program survived, it survived. And the U.S. Congress has taken what I hope to be an irreversible step, and a long overdue one, to endorse a multiple site missile defense system.

On the other hand, Mr. President, I am disturbed by the scope and the pace of reductions in our military forces. As my colleagues know, I have often cautioned that we are embarking on unilateral reductions which go too far, too fast. Yet, in the days since August and abortive Soviet coup, I have heard countless demands to further constrain defense spending. So that no one

should forget, last year's budget summit agreement set the framework for a 24-percent reduction in defense spending by 1995—24 percent, Mr. President. The cumulative result of these and previous budget cuts will entail an approximate one-third reduction in overall defense spending between 1985 and 1995. Defense spending as a percentage of the Federal budget will fall to approximately 18 percent; 25 to 30 years ago it was 47 percent of our budget. In the very near future, perhaps by the end of this century, we will be spending more on interest on the national debt than on the defense of the United States of America. That is simply wrong.

Before my colleagues hastily jump on the so-called peace dividend bandwagon, I would urge them to consider the full range of military and economic effects of these actions. For instance, the bill before us keeps the United States on a track to eliminate some 500,000 military personnel in the next 5 years. Yet, as usual, unfortunately, politics and parochialism prevailed, and Congress approved only a fraction of the Reserve Force reduction requested by the administration. This action wreaks havoc on the budget and on the budget process and undermines the total force balance.

Furthermore, the myriad of budget driven program terminations and consolidations contained in this bill will eliminate tens of thousands of industrial-based jobs throughout the United States of America. This is hardly the kind of medicine needed to cure the nagging recession, especially in the high-technology corridors of California and New England.

At the same time, the United States is pulling ground forces out of Europe and Asia, we are eliminating a substantial number of naval vessels which form the very backbone of our forward deployed military posture. Thus, not only is John Lehman's vision of a 600-ship Navy dead, but our Nation's power projection capabilities are dying, as well.

Mr. President, without question, the world is a different place than it was just a few short years ago.

But it is in flux, and no one knows for sure how the various international transformations will play out. The Persian Gulf war vindicated Ronald Reagan's courageous and visionary defense buildup and it validated the equipment and war fighting doctrine of our Armed Forces as we saw in the Persian Gulf. Let us not sacrifice this hard fought superiority and replay the mistakes of the post-Vietnam era. Let us not make those mistakes again. We owe more than that to our national security and to the men and women who put the uniform on.

In conclusion, Mr. President, I caution my colleagues against falling into a trap of complacency. Because just as we benefited, we did benefit from the lessons learned in the Persian Gulf. But I might add, so did our adversaries. So did our adversaries learn a very, very difficult lesson, especially Iraq.

The United States must be prepared to fight the wars of the future—of the future; not the past, the future. And while the bill before us is not what I believe to be best for national interests, it is the best we could get out of this Congress. Believe me, it is the best we could get out of this Congress. In my opinion, it represents the minimum necessary to balance our military requirements with current fiscal realities. Hopefully, future Congresses will oppose further pillaging of the defense budget.

Mr. President, I yield the floor, and again thank the Chair for his courtesy.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, there are parts of this conference report that I believe the Senate can take great pride in. While there are some provisions with which I disagree, this conference report is balanced overall. Therefore, I intend to support passage.

One of the most important provisions contained in this conference report is the Missile Defense Act of 1991. This legal, conceptual, and arms control framework for proceeding with the development and deployment of theater and strategic defenses represents an historical consensus within Congress. While all Members have not endorsed it, the Missile Defense Act has brought together an overwhelming majority in Congress on this issue. I am hopeful that it represents an end to the wasteful and divisive debate over SDI that we have engaged in since 1983.

I was also pleased that full funding for the B-2 bomber was retained, although I realize that the program must pass some very stringent testing requirements before Congress will authorize additional aircraft. I believe that the B-2 must pass these performance standards, but I do not agree with some who have argued that the program is dead, that this year's actions merely signaled a last gasp for the program. If the B-2 successfully meets the technical standards set for it, I hope Congress will settle the procurement issue next year, once and for all. Each year, we defer a final decision on the B-2, the program becomes more expensive. Next year we should either terminate this program or proceed to buy the remaining aircraft at an economically efficient rate.

Mr. President, despite my general satisfaction with the conference report, I am deeply disappointed that the conferees dropped the provision, passed twice this year on the floor of the Senate, to allow localities first right to assume control of property associated with bases that are being closed. While I understand the opposition to this amendment, in both the administration and Congress, I believe this is a matter of fundamental fairness. I realize that the administration regards this provision as a source of revenue loss and an alteration to established means for disposing Federal property. In the case of base closure, however, there is an overriding concern: The needs of the communities that have served this country for years and who hold great pride in the bases that are located in their midst.

Given the sacrifices we are asking these communities to make, and given the Federal Government's already significant responsibility to help mitigate the impact of these planned closings, it may well be in the taxpayer's interest to turn these properties over to local governments where coherent planning is likely to get them back in the productive private sector sooner rather than later. In my view, we must do everything within our power to ensure that those individuals who must bear the negative impact of base closures at least have the opportunity to determine their reuse options.

I also realize that the Department of Defense has expressed a willingness to examine, on a case-by-case basis, the merits of local reuse proposals. While I appreciate this effort at flexibility, I believe we owe these communities stronger guarantees.

I am disappointed that we were unable to find an acceptable compromise this year. Therefore, Mr. President, I fully intend to revisit this issue next year.

If members of the Senate who have offered this amendment previously do not plan to do so in the future, I will do so. I intend to make it a matter of priority within the Senate Armed Services Committee. I think the U.S. Senate and the U.S. Congress needs to review this issue very, very carefully. And if we have to pass it a dozen times to make the point, then we should do so.

It is unfair to local communities who are devastated by the impact of closing a defense establishment or a military post to have to be last in line to receive the right to utilize the property to revitalize their area and to bring back the private sector growth to replace the loss incurred by the closing of the base. They should be first in line, not last in line. And the Johnston-Breaux amendment, which this Senate passed, and the Roth amendment, which clarified that amendment, clearly put the Senate on record as supporting that reversal of procedure which gives these communities first right.

I am disappointed that this was dropped in the conference and we could not secure DOD or administration sup-

port or even support from key members of the committee on either side of the aisle. But I intend to press forward on this issue. It is a matter of equity and fairness to the communities involved, and I hope to revisit it early next year.

Mr. President, with that, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. EXON addressed the Chair.

Mr. NUNN. Mr. President, how much time is remaining, and how much time does the manager on this side have remaining?

The PRESIDING OFFICER. The Senator from Georgia has 46 minutes 14 seconds.

Mr. NUNN. Mr. President, I yield to the Senator from Nebraska such time as he may desire and thank him for his tremendous leadership in the committee as a whole and particularly in the Strategic Subcommittee which is one of our most difficult and important subcommittees. I thank the Senator from Nebraska. I know of no one who is a stronger supporter of national defense and also a strong supporter of spending our taxpayers' money wisely in pursuit of strong national security than the Senator from Nebraska. I thank him for his leadership, and I yield him such time as he may desire.

Mr. EXON. I thank my friend and colleague from the State of Georgia, the very distinguished and able chairman of the Armed Services Committee.

I wish to join my colleagues, Mr. President, in saluting the leadership of not only Senator NUNN, as just referenced, but also the great team that he has with Senator WARNER of the State of Virginia. We admire both of these individuals from both sides of the aisle in the Armed Services Committee where there is probably less partisanship than any other committee in the U.S. Senate. We have our disagreements. We work them out as best we can.

I rise to briefly make some points with regard to the defense authorization conference report. I urge my colleagues to support this effort that has been one of the most difficult efforts that we have ever made in coming to some kind of an agreement with the House of Representatives. Never before in my memory of 13 years on the Armed Services Committee have we had such a wide disparity of positions and such a great disagreement as we have had this particular year.

I would simply like to say that and come to the defense of the chairman of the committee in response to some implied criticism of whether or not we came within the budget constraints under which our committee continually operates. We discussed coming in under or at the budget figures time and time again in our hours of deliberation in the Armed Services Committee, which takes a tremendous amount of time of all of its members.

I would also like to just touch on a few things with regard to the strategic programs that come out of the jurisdiction of this Senator as chairman of that subcommittee of the Armed Services. Once again tonight we have had impassioned speeches by two Members of the Senate who have given those same impassioned speeches time and time again on the floor of the U.S. Senate about some programs that they have opposed for a long, long time. I think the record will clearly show that this Senator has been one of the leading advocates of eliminating programs that have outlived their usefulness or programs that we simply cannot afford under the total new philosophy under which we are operating.

I would simply cite, Mr. President, that indeed the Armed Services Committee is working very diligently—in the years ahead, not just this year—on meeting, for example, the reduction of 25 percent of our personnel. I have called—and call again tonight—for further reductions in many of our troops scattered all around this planet that we obviously do not need and cannot justify for the purposes of national defense. More of them should be called home as we face the difficult decisions of a trimmed-down national security budget but still one that is producing the lean and the mean military force that we need.

I simply cite, this Senator, in addition to leading the effort in many areas where we can make large savings, was, I think, the first to call for the elimination of the rail garrison MX program. When I offered an amendment to cancel that, we lost by one or two votes. Subsequently, on an appropriations bill, it was eliminated.

Also, this Senator has been involved in many other programs like the rail garrison MX, like some of the nuclear-tipped missiles that I thought had outlived their usefulness—especially with the fall of the Russian empire—that we could make a savings in that particular area. So I take a back seat to no one with regard to making savings and cutting expenditures in the Defense budget.

Once again, this year, you will see there has been a significant reduction in the total dollars authorized for national defense, as should be properly the case.

Let me just make a few comments, if I might, about the B-2 bomber, that continues to come under attack. I heard one Senator on the floor tonight deplore the fact that the headlines indicated that the B-2 was not killed. Well, the B-2 was not killed outright. But the B-2 has been crippled, to the place where I call it a walking skeleton with very little meat on it. Unless we can have the backing and the support of the President of the United States, this program will die a very quick death in 1992.

What we have done with the B-2 in this particular budget is to make minimum recommendations for authorization to keep the production line alive. Why is that necessary? Because those of us who think into the future, those of us who recognize that the United States of America is going to have a dramatic need for the projection of force at the command of the Commander in Chief, all around this globe, from the United States, are simply saying: Look, listen, and be rational on the B-2.

The facts of the matter are that it will require another vote in both the House and the Senate sometime next year as to whether or not the program is going to be killed outright. Unless we have more active backing and support from the Commander in Chief than we have had thus far, I predict it will die.

There was reference made to the fact that here we are spending billions of dollars more, on top of the $33 billion that we have already wasted. The statement was made that it is a waste in toto. What sense does it make to pile additional waste on top of that? It is good rhetoric, but it lacks facts.

I am pleased to see that the substantial majority in the Armed Services Committee, which has major responsibilities to look to the future, took the stand that it did and at least kept the B-2 alive until we can look at ongoing tests that are going on right now with regard to its stealthiness.

Some of the rhetoric I have heard on the floor of the Senate tonight makes me wonder how far some people do look ahead. It makes me wonder why it is obvious, in the press today, that the B-2 is something that is attacked over and over again—sometimes by what I think are inappropriate statements that have been attributed to members of the Armed Forces.

There was a big hullabaloo just recently when a top Air Force officer had indicated that the B-2 bomber probably was visible on some Soviet radar screens today, or could be picked up by Soviet radar today. The facts of the matter are that the B-2 airplane was never intended, and was fully recognized from the beginning, as not to be an invisible aircraft. The point of the matter is that only half of the story was told in the reference made by a top Air Force official.

The B-2 bomber, as far as we know now, subject to the completion of its stealthiness tests now ongoing, is not invisible nor was it ever intended to be invisible. The basic thrust of the electronics and technology that went into the B-2 was not to make it totally undetectable, but to construct it in such a manner that it could not be tracked on radar, pinpointed on radar, its direction discovered by radar—all of which things are necessary if it is to be destroyed.

Simply stated, it is easy to kill a program, and I am sure the people of the United States today, because of all the information that has been fed to them, are for killing the program. It is a popular political thing to do, to be against the B-2, unless you fully understand, unless you recognize that the main bomber force we have today, the largest part of our bomber force, is B-2's, all of which are over 30 years old. How many people in the United States of America today would like to get into a 30-year-old aircraft and fly from point A to point B? Not very many, I suggest. All of the pilots that we have flying the B-52's today were not born when the aircraft was manufactured. It is still a great airplane, but it cannot go on forever.

In addition to that, we have 98 B-1 bombers. If the B-2 fails its tests, or if the B-2 fails because of the vote of the Congress, then the facts of the matter are we should recognize that we are not going to have a bomber available other than the 98 B-1's and the few production B-2's that would be as part of our bomber force, basically no more than 105 bombers to defend and carry forward the force projection that any knowledgeable Commander in Chief would recognize that he might need at sometime in the future.

So it is indeed popular, and it is indeed politically correct to say: Forget the $33 billion that we have in this aircraft; forget the fact that the B-2 technology was basically the forerunner of that stealthy fighter aircraft that performed so very, very well in the recent Persian Gulf conflict; forget about all of that, and kill the program.

And if we kill the program, we will cripple the need for a land-based bomber in the United States capable of striking all around the world. Or, Mr. President, kill the prospect that just two fully operating and penetrating B-2 bombers, just two of them, could have carried out the raid on Libya a few years ago from a base in the United States, and eliminate all of the necessity for the large number of bombers and fighter aircraft in battle carrier groups that were rushed to that part of the world with considerable but necessary expense.

I do not think that the B-2 bomber is something that should be killed out of hand, regardless of the fact that it might be the politically popular thing to do. Those of us charged with looking into the future as to maintaining a proper force for a Commander in Chief to have under his command are saying: At least be cautious enough; at least give the stealthy tests a chance to prove the plane's worthiness, which is continuing to be attacked.

There are legitimate differences of opinion. At least I am proud of the fact, Mr. President, that the B-2 program has not been killed outright. But I simply say, it is a walking skeleton and it is not very healthy, but at least there were a majority of us who felt it was wise, looking into the future, to give the B-2 another chance before it was killed outright.

Therefore, I hope that the rhetoric that we have heard over and over again on this floor against the B-2, for those who I suggest have not taken a careful, long-range look, it should be given a chance, a minor chance, as has been directed by the Senate itself, and out of the conference that we just finished with the House of Representatives.

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

Mr. COATS. Mr. President, I inquire how much time is remaining under the time allocated to Senator WARNER.

The PRESIDING OFFICER. The Senator has 22½ minutes.

Mr. COATS. Mr. President, I yield 10 minutes of that time to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTOR. Mr. President, I thank my distinguished colleague, Senator COATS, and the ranking member, for yielding me 10 minutes.

I cannot begin, however, until the distinguished chairman returns because I have been discussing with him informally, off the record, a colloquy. So I cannot begin until Senator NUNN returns. I ask unanimous consent that I have the 10 minutes at that time.

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

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. I think under the previous unanimous-consent request, the Senator from Pennsylvania is now recognized.

Mr. SPECTER. I thank the Chair.

Mr. President, I have sought recognition in order to be sure, really, as a precautionary matter, because I think it is fairly clear on the record which exists at the present time without this colloquy. But I have for the last few minutes been discussing with the distinguished chairman of the committee the language which appears on page 638 of the conference report which accompanies H.R. 2100, the defense authorization bill, and I refer now to the third full paragraph which begins:

> In recommending these amendments to the Base Closure and Realignment Act of 1990, the conferees reafirm the view expressed in the statement of the managers' (H. Rept. 101-923) accompanying the Defense Base Closure and Realignment Act of 1990, that actions taken under the act "would not be subject to the rulemaking and adjudication requirements (of the Administrative Procedures Act) and would not be subject to judicial review.

That is a shorthand reference to the conference report on the Base Closure and Realignment Act of 1990, which is set forth at page 706 of that report, in a more expanded paragraph, which begins: "The rulemaking (5 U.S.C. 553) and adjudication (5 U.S.C. 554)," and continuing for approximately a third of the page, end ending in the last line with "sections 2904 and 2905," that short provision which I read in full from page 638 is intended, really, to state the full lengthy paragraph, which is the last paragraph on page 706, which I have just described.

Mr. NUNN. Mr President, I say to the Senator from Pennsylvania that I followed that question very carefully, and I know this is an important matter to him and to other Senators, and also to the committee and to the people who handle this base closure legislation, including the Senator from Illinois [Mr. DIXON], the Senator from Virginia [Mr. WARNER], myself, and others.

The Senator is essentially correct. The language in this year's conference report, that is the fiscal year 1992 and 1993 conference report, on page 638, I believe it is the third paragraph, beginning with the words "in recommending" and ending up with the words "judicial review" is intended to capture the entire section on meaning that was set forth in the Defense Authorization Act for fiscal year 1991, page 706, the bottom of that page, last paragraph, beginning with the words "the rulemaking" and going through the words "commission under sections 2904 and 2905" at the bottom of page 706.

Mr. SPECTER. Mr. President, I thank Senator NUNN for that, because I wanted to make sure there was nothing intended by the current conference report, and I think that clarifies that point.

Mr. NUNN. On that specific point.

Mr. SPECTER. On that specific point.

Mr. NUNN. Right.

Mr. SPECTER. Mr. President, I have had a discussion with the distinguished chairman of the committee about some of the other matters, and these are subject to litigation which is currently in process in the case captioned "Arlen Specter versus Secretary Garrett."

In view of the lateness of the hour, I think the only other point worth making is the part of our discussion that within the Base Closure Act, that it is a fair statement that all the information which is used by the Secretary to make a decision ought to be available to Members of Congress.

Mr. NUNN. As a general proposition, I believe that to be the case. I believe that to be true. I have learned enough in this business to know that there are always unique and unusual circumstances, and I would not try to judge each case by my answer. I do know we have had a considerable amount of testimony in our committee relating to certain instances of withholding information. It just seems to me that even independent of any kind of act—and I know we reference the duty of the Secretary of Defense and others to make available to the GAO, which is an arm of Congress, informa-

tion on the Base Closure Act, but even independent of that, it seems to me that the Department of Defense owes to the Congress of the United States and individual Members the obligation of making available information pertaining to these matters of base closure to the individual Members who make a request.

Mr. SPECTER. I thank the chairman for that comment. I consider that to be a very important point for a number of reasons. I think that in our society, with the separation of powers, we simply cannot function if an executive branch agency does not make available—or let me not generalize. Let me be specific—the Secretary of Defense and Secretary of the Navy do not make available to Members of Congress the information relating to a base closure so we are in a position to argue our case where the statute provides for a hearing, as the Base Closure Act does. And I would reference the specific statute in the Base Closure Act, section 2903(c)(4) which says:

The Secretary shall make available to the Commission and the Comptroller General of the United States all information used by the Department in making its recommendations to the Commission for closures and alignments.

And as the Senator from Georgia, the distinguished chairman, has already noted, the Comptroller General of the United States, that is, the General Accounting Office, is an arm of the Congress so that whatever is made available there necessarily would be made available to the Members.

It is important under the statutory scheme when information is made available to the Comptroller General of the United States, all the information, as the statute provides, when it picks up on 2903(c)(5):

The Comptroller General of the United States shall, by no later than May 15th of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

So that the statutory scheme is plain that the General Accounting Office, or the Comptroller General of the United States was to have a review of what the Secretary had done and could make that review only after having all the information that the Secretary used, and then on the date specified, May 15, which is in advance of the hearing date where Members appeared, for example, this year, on May 22 in Washington, so that the Comptroller General of the United States, that is to say the General Accounting Office, would then transmit to the Congress as well as the Commission——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SPECTER. I ask unanimous consent for 2 additional minutes.

Mr. NUNN. I will be glad to yield that amount of time.

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

Mr. SPECTER. So the Comptroller General of the United States, that is to stay the GAO, would submit to the Congress a report containing a detailed analysis of the Secretary's recommendations and selection process, so that the Congress, having gotten the GAO report based on all the information used by the Secretary, would be in a position to evaluate what the Secretary had done and to make an argument based upon the facts which the Congressman should have, Members of the Senate and House, and the benefits of the GAO report which the statute flatly says is to be based upon all of the facts used by the Secretary making his determination.

That is the point I wanted to make, and I thank the distinguished chairman for engaging in the colloquy. I might note the presence of the distinguished ranking Republican on the committee, Senator WARNER, and I do not want the record to be incomplete, that he was present with any disagreement. I do not want to have any adoptive omissions.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield such time as I may require.

Mr. President, I want to say to my distinguished colleague from Pennsylvania therefore is not more diligent Member of this body as it relates to his own State and in particular those military installations in his State. He has taken a wide interest in those installations ever since I have been privileged to serve with him here now some 12 years in the Senate. In this instance he fought a brave battle.

Mr. SPECTER. Fight.

Mr. WARNER. I believe he views it as a fight still going on. But nevertheless his conduct to date has been tenacious.

Mr. SPECTER. I thank my distinguished colleague from Virginia. If I might briefly respond if for no more than a minute, I am pursuing the matter in my capacity as a Senator in Pennsylvania. That is what I do. But I also pursue it as a U.S. Senator and as a U.S. Senator am very concerned about national defense, and I think substantively I have a strong point there for the Philadelphia Navy Yard, but, even beyond the substance on the procedure, that there should be fairness, absolute fairness, which requires full disclosure by the Secretary, as the statute calls for, to the GAO and to the Commission and full disclosure to the Members of the Senate and House, and then, if full disclosure is made and the decision is made, let the chips fall where they may. But in the absence of that full disclosure and compliance with the procedures, then the law has not been followed.

I thank the Chair and yield the floor.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, in my earlier remarks, I referenced a study that has just been released on the Soviet nuclear proliferation problem and the control of Soviet nuclear weapons problem and the dangers that flow from that. I also made it clear that I think it is a serious omission in this bill, that this is the principal threat we face in the world today, in my view, and that is the breakup of an empire that is the heaviest armed empire in history. They are breaking up at the same time that their nuclear and chemical weapons are not under the kind of control that I would like to see in the sense of being able to quickly carry out the agreement by President Bush and President Gorbachev to destroy tactical nuclear weapons.

The Soviets have problems in terms of transportation of those weapons. They have problems in terms of storage of those weapons. They have problems in terms of the technology required to dismantle safely those weapons. At the same time tens of thousands of people who are engaged and have been engaged in producing weapons of mass destruction, including nuclear, including chemical, including missile technology are losing their jobs. With that kind of expertise and knowledge, if we are not careful and if we do not get off our hands in terms of taking some action in the next few days, we are going to find, I think, a very serious proliferation problem and wake up sometime by the time we get back next year and find that there are Third World countires not only shopping and purchasing some of this information but also weapons themselves or the know-how to make these weapons.

So I think we have not dealt with this threat in this bill. Congressman ASPIN, and, I and others, and Senator WARNER, helped on this, and others were of help. The Senator from Michigan was a tremendous help.

We tried to put a provision in this bill that gave the Secretary of Defense money to deal with this problem and cooperate with the Soviets because their leadership wants help now and is asking for help to destroy about 15,000 weapons that have been aimed at us; to destroy weapons that we have spent trillions of dollars defending against.

We have that opportunity. We are passing it by on this bill, and I hope we do not pass it by on other bills before this session concludes. I think if we do, it will be one of the most serious omissions and one of the most missed opportunities we have had in dealing with military affairs for a long time. We will regret it for years to come if we do not take prompt action.

Mr. WARNER. Mr. President, if I could interject and state that I have certainly endorsed that part of the program as it relates to the increasing

number of nations desiring to acquire these weapons. Given the backdrop now in the Soviet Union and the problems within the Armed Forces, they become the objects of offers of dollars, offers of all types, for those Soviet officers and enlisted men to perhaps take it upon themselves. That is the danger that the distinguished chairman has put his finger on and others.

Mr. NUNN. The Senator is entirely correct. He was very much in favor of this proposition. In fact, we had a meeting this morning with the authors of this report and, Mr. President, I ask unanimous consent that adjacent to my remarks there be printed in the RECORD a summary of the report and recommendations by the Harvard group which was made this morning. I ask unanimous consent that the Recommendations and Conclusion be part of the RECORD.

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

PART IV—RECOMMENDATIONS AND CONCLUSIONS

A. Encouraging and Assisting Prompt Implementation of the Bush-Gorbachev Reciprocal Unilateral Proposals Regarding Non-Strategic Nuclear Weapons

B. Extending the Bush-Gorbachev Proposals to Strategic Weapons

C. Assuring Safety and Security During a Transitional Period

D. Addressing Proliferation Outside the Soviet Union

E. Exposing the New Political Structures in the Former Soviet Union to Prevent Conceptions of Nuclear Safety and Security

F. Adjusting U.S. Military Policy to the New Nuclear Realities in the Soviet Union

The preceding Parts I–III have analyzed the dangers to nuclear safety and stability posed by the profound political changes taking place in the Soviet Union. We have noted that there are three types of danger. First, the process of devolution of political authority that is plainly taking place in the Soviet Union creates the danger that the ultimate disposition of nuclear weapons among the new political structures will not be conducive to their safety or to international stability. Second, there is a danger of seizure, theft, sale, or use of nuclear weapons or components during the period of transition, particularly if there should occur a social disintegration of the nuclear weapons operating and custodial system—apparently still intact at present—that has performed these tasks for the past forty-two years. Third, there is a danger that any weakening of control over weapons or components could result in transfers outside of the territory of the former Soviet Union, fueling nuclear proliferation worldwide.

These three dangers warrant immediate consideration of U.S. interests in the outcome of the portentous transformation in the former Soviet Union, and of the sources of U.S. influence over the course of events. Parts I–III analyzed the status of the nuclear weapons of the former Soviet Union, the political and economic changes that are overtaking them, and the existing safeguards against unauthorized or irresponsible actions. These actions also analyzed the alternative outcomes that may result, and assessed actions that could be taken to influence them in the direction of safety and stability.

In this Part IV we state the recommendations for action that, in our judgment, emerge from the preceding analysis. Most of the recommendations are addressed to the U.S. government, but others are addressed to authorities of the Soviet government, to authorities in the emerging republics, and to the world community. In order of urgency of attention, these are:

(a) encouraging and assisting prompt implementation of the Bush-Gorbachev reciprocal unilateral proposals regarding non-strategic nuclear weapons;

(b) extending the Bush-Gorbachev proposals to strategic nuclear weapons;

(c) assuring safety and security of Soviet nuclear weapons during a difficult transitional period;

(d) addressing proliferation outside the Soviet Union;

(e) exposing the new political structures in the former Soviet Union to prevailing conceptions of international stability and security;

(f) adjusting U.S. nuclear relationships and military policy to the new nuclear realities in the Soviet Union.

We emphasize that the pace and profundity of the events taking place in the former Soviet Union call for uncommon wisdom and agility by policymakers. Actions are needed now, as spelled out below. But we are also mindful that the policy will need to be adjusted constantly to accommodate a chaotically changing reality. Our recommendations will thus doubtless be adjusted in the months ahead. Whichever way events turn, the U.S. security policy community will need to remain engaged in the situation to protect the interests of the United States and the rest of the world.

A. ENCOURAGING AND ASSISTING PROMPT IMPLEMENTATION OF THE BUSH-GORBACHEV RECIPROCAL UNILATERAL PROPOSALS REGARDING NON-STRATEGIC NUCLEAR WEAPONS

The need: We have argued that non-strategic nuclear weapons are of concern because of their great number and variety and because they are more widely dispersed among the republics than strategic weapons. We have also pointed out that the system of procedural and technical safeguards that has prevented unauthorized seizure or use of these weapons for over forty years cannot be guaranteed as capable of providing a comparable future level of safety in the face of widespread social and economic disintegration of the kind that is distinctly possible in the Soviet Union. Thus removing these non-strategic weapons to central storage (perhaps passing through an interim process of disablement and multi-party custody, see below, this section) and ultimately destroying them is of critical importance.

Fortunately, political steps have already been taken to open the way for removal of many kinds of Soviet non-strategic nuclear weapons to Russia—and for their ultimate destruction—in the reciprocal unilateral proposals of Presidents Bush and Gorbachev in September 1991. Our first recommendations therefore concentrate on ensuring prompt and thorough implementation of these proposals.

Recommendations:

1. Match the boldness of the Bush-Gorbachev proposals with boldness and thoroughness of implementation. On the U.S. side, this means moving beyond "encouraging by example" to establishing a vigorous multi-agency program within the U.S. government to devise methods for movement, storage, and dismantlement of nuclear weapons jointly acceptable to the United States and the Soviet Union, and to be willing to provide Soviet authorities with direct technical cooperation in applying those methods.

2. Jointly declare the locations and types of weapons covered by these proposals. Seek the agreement of central and republic authorities that Soviet weapons covered by the agreement will be stood down from active posture immediately and withdrawn to deactivation sites in the Russian Republic and be prepared for eventual destruction.

3. Jointly declare a detailed timetable for implementation of the proposals, to complete implementation by March 1, 1992.

4. Where practical difficulties preclude relocation of all involved weapons to central deactivation sites by March 1, 1992, arrange for:

(a) disabling those weapons in place so they are unusable in their existing form; and

(b) the United States and authorities of the former Soviet Union to request the technical assistance of the International Atomic Energy Agency in providing extraordinary safeguards for these weapons and their nuclear materials. These safeguards would include a detailed accounting of the weapons and material being monitored and the presence of international observers outside the perimeter security fence of facilities where the weapons are deployed or stored.

These safeguards would enhance security against unauthorized seizures and allow newly independent republics of the former Union to accede without delay to the Nuclear Non-Proliferation Treaty as non-nuclear weapons states, even if weapons are still located on their territory.

5. Extend U.S technical cooperation with appropriate central and republic authorities to remove bottlenecks in the implementation of the Bush-Gorbachev initiatives, and to overcome problems in the transport of weapons, disabling or dismantling of weapons, or storage of special nuclear materials.

6. Declare that the United States expects the Bush-Gorbachev proposals to be implemented by the Union of Sovereign States and any successor states to the former Soviet Union.

7. Agree that efforts by parties to impede implementation of the agreement are a matter of joint concern, and that the United States will cooperate with the legitimate successor governments in defeating such efforts. Further agree that any nuclear weapons or sensitive weapon-related items that are seized or held hostage by outside parties are a matter of joint concern, and that the United States will cooperate with legitimate authorities to defeat them.

8. Extend technical cooperation to authorities charged with the recapture of nuclear weapons or sensitive weapon-related items seized by unauthorized parties.

9. Encourage Union naval authorities to follow the U.S. lead and henceforth not allow ships (other than submarines carrying SLBMs) to put to sea with nuclear weapons.

10. Invite NATO allies and other nations to join in providing the technical cooperation recommended in this and subsequent sections.

Additionally, cost-sharing agreements can be made with authorities in the former Union. Finally, work performed in the former Soviet Union pursuant to these recommendations can be conducted by U.S. firms operating in the former Soviet Union (e.g., building new storage and deactivation sites for nuclear weapons), which firms would be recipients of funds allocated for these purposes.

B. EXTENDING THE BUSH-GORBACHEV PROPOSALS TO STRATEGIC WEAPONS

The need: The Bush-Gorbachev initiatives deal mainly with non-strategic rather than strategic nuclear weapons. Strategic weapons are obviously a special concern to the United States since they are capable of striking targets in the United States directly. The fate of strategic weapons is more complicated than the fate of non-strategic weapons. If the Bush-Gorbachev agreement is implemented promptly as outlined above, strategic weapons will soon be the only weapons located outside the Russian republic. The fate of these strategic nuclear weapons may therefore determine the nuclear status of Ukraine, Byelorrussia, and Kazakhstan. These republics have greatly simplified these questions by stating their intention to be nuclear-weapons free.

We have argued that a single nuclear power should emerge from the political change occurring in the Soviet Union, that day-to-day control over the arsenal should remain undisturbed from established patterns, that republics that secede from the Union should be non-nuclear, and that removal of nuclear weapons from these newly independent states should take place as soon as possible in concert with a great nuclear builddown that would not simply transfer all the nuclear weapons of the former Soviet Union to the republic. We further pointed out the absence in any republic except Russia of the technical means for full-cycle operation and maintenance of a nuclear arsenal and the consequent practical necessity of the republics to work together to maintain responsible custody of the arsenal during the period of removal and builddown.

We believe that there are a number of near-term policy steps that the United States could take in an effort to increase the likelihood that nuclear outcomes in the former Soviet Union match U.S. interests and preferences.

Recommendations:

1. Reaffirm long-standing U.S. non-proliferation policy as opposing any increase in the number of nuclear weapons states.

2. Reaffirm U.S. policy which supports leaving the day-to-day operational structure of central control of nuclear weapons of the former Soviet Union undisturbed, even as the structures for political decisionmaking may change.

3. Affirm U.S. policy that successor states to the former Soviet Union should carry out the obligations of the Strategic Arms Reduction Talks (START) and Conventional Forces in Europe (CFE) treaties.

4. Immediately open discussions aimed at taking steps to implement weapon destruction and inspections called for in the START treaty on an accelerated timetable, including such steps as can be taken before ratification is complete. In parallel, take steps to hasten ratification. Minor modifications to the treaty should be entertained if they would hasten removal of nuclear weapons from non-Russian republics.

5. Accept the stated intentions of Ukrainian, Byelorussian, and Kazakh authorities to join the Nuclear Non-Proliferation Treaty as non-weapons states, and pledge U.S. technical cooperation to assist in the prompt removal of nuclear weapons from their territory. Emphasize that this step can be accomplished as part of the implementation of the START treaty. Encourage republican authorities to state their intention to work with the existing authorities that manage custody and movement of nuclear weapons to ensure continuing safety and security during the transitional period. Such a relationship can involve close consultation but need not involve shared custody or technical means of shared control over use of weapons. State the U.S. view that the legitimate security needs of new states emerging from the Soviet Union can be assured by the international community, that nuclear weapons will not address those legitimate needs, that the cost and complexity of proliferation would be very great in view of the near total absence of relevant facilities on their territories for operating or maintaining a nuclear arsenal, and that any emerging state that did not live up to its obligations under existing international treaties and regimes would lose the political and financial support of the international community.

6. State U.S. willingness to support the same kind of extraordinary safeguards of strategic weapons proposed above for non-strategic weapons, if such safeguards prove desirable.

7. State the U.S. intention to destroy weapons as well as delivery vehicles as part of the implementation of the Bush-Gorbachev agreements and START. Encourage Soviet authorities to follow suit, and offer U.S. technical cooperation in this process.

8. The United States will continue to have grounds for engagement with nuclear issues in Soviet Eurasia and should continue its attempts to exert positive influence no matter what path events take in the former Soviet Union. The U.S. could, for example, help devise arrangements for multi-party participation in nuclear decisionmaking, involving voting and vetoing procedures, that widen participation without loosening control. It could encourage the emergence of an arms control process among the former Soviet republics to minimize frictions and arms competitions that might arise among them. But the U.S. should also be prepared to adjust policies rapidly in reaction to outcomes that are disappointing from the U.S. point of view. It is distinctly possible that the United States will need to cope with outcomes it does not prefer but cannot prevent. Nuclear weapons may remain distributed across a number of the republics. Centralized control of the Soviet nuclear arsenal may erode or collapse. Successor state proliferation may occur. These outcomes would result in a more complex nuclear order and would pose more difficult challenges for U.S. policy. But the U.S. (as well as the broader international community) would continue to have a large interest in seeing that such arrangements are as benign as possible and that the adverse consequences of such outcomes are minimized. The preceding Parts I–III provide the basis for such adjustments to these recommendations if they prove necessary.

C. ASSURING SAFETY AND SECURITY DURING A TRANSITIONAL PERIOD

The need: While the procedures described above leading to the destruction of many types of Soviet non-strategic and strategic nuclear weapons are occurring, there will be a continuing need to assure the safety and security of weapons and components from seizure, theft, sale, and other unauthorized actions. The custodial system that has maintained safety and security of Soviet nuclear weapons for forty-two years is apparently intact at this writing. But we have argued that nuclear command and control is a social as well as a technical system, that the key safeguards against unauthorized actions built into this system are procedural rather than technical, and that not all Soviet nuclear weapons have the newest and most sophisticated coded locks and other technical safeguards. The nuclear command, control, and custodial system therefore cannot be safely presumed to be immune from systemic disintegration of the military and social systems in which it is embedded. Thus special attention must be given to the integrity of the custodial system, and to the morale of its personnel in this time of social upheaval.

Recommendations:

1. Carry out the steps outlined in (A) and (B) above.

2. Send U.S. technical teams to Moscow to explore mutually agreeable steps to improve safety and security, including U.S. technical cooperation in transport, storage, disablement, and dismantling of nuclear weapons and sensitive weapons-related components.

3. Provide technical cooperation to carry out the contraction and conversion to civil activities of the Soviet nuclear weapons complex.

4. Do not emphasize the retrofitting of technical devices such as Permissive Action Links or post-launch missile destruct devices onto Soviet nuclear weapons, as these steps cannot be carried out with the speed appropriate to the situation and might distract from more useful actions. Likewise, installation of cooperative warning systems is of secondary importance.

D. ADDRESSING PROLIFERATION OUTSIDE THE SOVIET UNION

The need: Economic disorder within the Soviet nuclear weapons complex—comprising facilities and trained personnel for producing and storing special nuclear materials, and for designing and fabricating nuclear weapons and components—creates a potential source of nuclear proliferation outside the Soviet Union unlike any ever faced by the non-proliferation regime. Nuclear materials, sensitive non-nuclear components of nuclear weapons, the talents of skilled bomb-builders, and even entire nuclear weapons might find their way onto world markets. These world markets have been demonstrated to be lavish in the prices that some nations are willing to pay for nuclear weapons technology. Hard-currency strapped Soviet enterprises and individuals will therefore be tempted by smuggling and sale. If systemic disintegration of the nuclear weapons production and custodial systems begins to take place, the world could see a diaspora of military technology not seen since the Nazi rocket scientists emigrated from Germany after World War II.

Recommendations:

1. Take steps (A)–(C) above.

2. Establish an intelligence liaison with appropriate authorities in the Soviet Union to share information about potential export of nuclear-weapons related materials outside of the Soviet Union.

3. Encourage legislatures in the republics to enact promptly strict export control legislation covering nuclear-weapons related technology in the republics, and encourage the establishment of strong enforcement mechanisms. Invite republics to become members of existing international control regimes as soon as they have put the necessary control mechanisms in place.

E. EXPOSING THE NEW POLITICAL STRUCTURES IN THE FORMER SOVIET UNION TO PREVAILING CONCEPTIONS OF NUCLEAR SAFETY AND SECURITY

The need: Entirely new political figures and structures are clearly taking power in the territory of the former Soviet Union in the course of the ongoing process of liberalization and democratization. Many have no prior experience in managing security af-

fairs, let alone in managing full-cycle production, maintenance, custodial, and command and control systems for nuclear weapons. Many will have had little exposure to prevailing conceptions of nuclear stability and nuclear safety as these have developed over half a century of superpower custodianship of nuclear weapons. It is important that these new participants in the ongoing security dialogue with other nations be exposed to the best thinking about how to solve their security dilemmas peacefully, about norms of behavior that prevail in the international community, and in particular about the limitations of nuclear weapons as guarantors of military security. It is also important that these new actors on the world stage have the experience of being dealt with fairly and respectfully by the world diplomatic community.

Recommendations:

1. Engage emerging security policymakers in the republics in a broad security dialogue not confined to nuclear weapons-related matters, and expose them to the best international thinking about how their legitimate security needs can be met with international cooperation.

2. Encourage contact between emerging security policymakers in the republics and their counterparts in the West—both inside government and outside of government. The extra-governmental community that was instrumental in promoting understanding of security dilemmas and in devising innovative approaches to solving them during the Cold War has an obligation to turn its understanding and operating methods to the problem of Soviet nuclear devolution.

3. Continue and extend U.S.-Soviet military-to-military contacts. Be prepared to extend these to new military organizations in the republics if and when they emerge.

F. ADJUSTING U.S. MILITARY POLICY TO THE NEW NUCLEAR REALITIES IN THE SOVIET UNION

The need: The United States is accustomed to conducting its nuclear policy in the cold war context, that is, assuming a hostile and uncooperative but internally coherent Soviet Union. This context for strategic policymaking is now clearly called into question. The United States should recognize that the new situation raises opportunities as well as dangers. We believe that the United States should be prepared to think and act boldly in making adjustments to the dramatic change in the nuclear threat. Though we have not analyzed the full spectrum of adjustments to U.S. nuclear posture, deployments, and doctrine that might be warranted in view of the changes occurring in the Soviet Union, we make the following general recommendations.

Recommendations:

1. Offensive Nuclear Forces. The United States should be prepared to make more dramatic adjustments in its nuclear posture with the objective of promoting desirable nuclear outcomes in the former Soviet Union. This requires that unilateral moves and arms control proposals and agreements be evaluated not only in the context of traditional strategic concerns with stability, but in the light of the new and continuously changing political situation in the former Soviet Union and with an emphasis on their possible effects on the custody and control of the Soviet nuclear arsenal. We believe that a number of further steps beyond START, such as elimination of land-based ballistic missiles, de-MIRVing, and prompt movement toward deeper cuts, merit careful consideration because they might both reduce worries about nuclear spread in Soviet Eurasia and contribute to a desirable strategic nuclear relationship with the nuclear successor state.

2. Strategic Defense. The prospect of small-scale accidental or unauthorized launch by elements of the nuclear forces of the former Soviet Union has caused heightened U.S. interest in ballistic missile defenses. Our analysis bears on this point in two respects. First, unauthorized launch of ICBMs or SLBMs is only a small part of the overall problem of command and control of the Soviet nuclear arsenal during this period of political turmoil. Second, a purely unilateral initiative by the United States to develop and deploy robust strategic defenses at this time might affect the willingness of authorities of the former Soviet Union to ratify and implement the draft START agreement, which, as emphasized above, is an important policy tool for influencing the destiny of strategic weapons in the republics. Any U.S. initiative on strategic defenses should therefore be made through thorough consultation, and in the context of the START process.

3. The Alert Status of U.S. Nuclear Forces. In Presidents Bush and Gorbachev's reciprocal unilateral proposals of late September and early October, which dealt mainly with non-strategic nuclear weapons, steps were also proposed and subsequently taken to relax the alert postures of strategic bombers and ICBM's. Underlying these moves was the apparent judgment, which we share, that the traditional uses of high alert rates—for enhancing force survivability and for political signalling in crisis—were no longer justified in the new political setting. In particular, benefits of high alert rates were outweighed by the risks that high alert postures would contribute to the risk of accidental or unauthorized actions with nuclear weapons, and that changing alert rates in response to changing political fortunes could trigger anxiety and thus increase the chances of nuclear war. In this connection, we recommend that U.S. nuclear force commanders seek additional relaxations of operational practices, where consistent with stability, and encourage their Soviet counterparts to reciprocate.

Mr. NUNN. Mr. President, it would be my hope that working together with the Senator from Virginia, the Senator from Michigan, the Senator from Oklahoma [Mr. BOREN], who has been very active in this, the Senator from Indiana [Mr. LUGAR], who is taking a real leadership interest in this matter—working with these individuals on both sides of the aisle, I hope somehow we can strike the interest of the White House in this proposition; not only the interest, because I think they are interested. But they are not leading. They are not leading in this respect.

Without the President's involvement and without White House leadership, it is going to be very, very difficult to overcome opposition to what some perceive to be a foreign aid request. This is not foreign aid. This is in the national defense of the United States.

People say to me, well, we think you are right, but our constituents want us to protect America now in the sense of turning our attention to domestic matters. Mr. President, I cannot think of anything more important in protecting Americans than reducing the military threat that we face when we have an opportunity to do so. And I cannot think of anything more important to the American people than trying to avoid proliferation of weapons around the world, to the Saddam Hussein's of the world, that will come back to haunt us in the future.

To those who are saying how can we afford to spend $1 billion out of the defense budget or $500 million out of the defense budget for this purpose, my answer is how can we afford not to when we may very well spend literally hundreds of billions if not trillions of dollars in the years to come to protect against and to deter and defend against a proliferated threat around the world that has come from the arsenal breakup in the Soviet Union while we sat by and did nothing about it.

I think it would be a very serious error. I regret very much that this is not part of this bill. I will be working with my colleagues as diligently as possible until we adjourn to try to correct this omission, and to try to take affirmative action giving the Secretary of Defense discretion, giving him discretion and funding, to take the kind of action needed in the immediate future.

Mr. WARNER. Mr. President, could I say to my good friend, the chairman, that following the breakfast meeting this morning, Senator BOREN and I had the opportunity to meet privately with the Director of the Central Intelligence Agency, Mr. Gates, at which time we shared with him much of the discussions that we had with our group this morning.

He absolutely, indeed, expressed an interest in this subject. He was quite knowledgeable on it and conveyed to us I think some helpful guidance. That in turn was relayed to the national security adviser, and to the President. So, as the Senator mentioned, as we speak, the President and his staff are considering this matter once again.

Mr. NUNN. Mr. President, I thank the Senator from Virginia. I am delighted to hear that. I also would say I talked at length with Deputy Secretary of Defense Atwood, who just returned from the Soviet Union, who also believes—and I do not think he minds me quoting him since he was quoted in the Associated Press and other places—I think he believes this is one of the great threats we face. And I think it is safe to say he believes we ought to do something about it.

What we have is a lot of key individual people in the administration that believe we ought to do something about this, but we do not have the kind of leadership we need right now. I hope we will have it in the next 24 hours or so from the White House itself.

I yield to Senator from Michigan.

Mr. LEVIN. Mr. President, if the Senator will yield for one moment, then I will sit down so the Senator from Florida can make a brief statement. I will

get back on the floor and spend a few more moments relative to the bill.

But first of all, I want to thank the Senator from Georgia. He has labored just ceaselessly to try to get into this bill a provision which is manifestly in the security interests of the United States, a provision which could lead to the direct dismantlement of nuclear weapons in what was once the Soviet Union.

As he has said, I cannot think of any provision which would more directly reduce the threat to our security than the provision which reluctantly was dropped from this bill. The proliferation which is threatened by the disintegration of the Soviet Union with tens of thousands of nuclear weapons is a threat, a manifest threat to American security. I have been gravely troubled by the fact that that provision was dropped.

Later on, I will explain why I have decided to vote against this bill, principally for that reason. I am that troubled by our unwillingness to see that it is clearly in our interest to dismantle Soviet nuclear weapons before they get into the hands of the crazies in this world.

I am very reluctant to vote against this bill because of the work which the Senator from Georgia, the Senator from Virginia, and so many others have put into this bill. I participated in this bill. I am proud of most of it. But again I am so troubled by the decision to drop this, which I know the Senator from Georgia had no alternative to do; that I have decided to express that feeling on my part by voting against this bill.

I want, before the Senator from Georgia leaves—I know he has to leave—to look him in the eye and tell him how proud I am of the work that he last done, how much I support it, how much I will continue to work with him to try to get this kind of an American security provision into this bill. I just wanted him to hear from me how much this country is in his debt for leadership which he continues to show in this effort.

I want to also thank our friend from Virginia for his joining now in trying to put together this provision in another vehicle.

Mr. NUNN. Mr. President, I thank my friend from Michigan. I cannot think of anyone who works more diligently, and is more effective on our committee than he is. He chairs the Conventional Forces Subcommittee. He does a tremendous amount of work. He is diligent, he is attentive, he is always there, he is always reading carefully every provision, and he is always contributing constructively.

A perfect example is this provision here. The Senator from Michigan has been a leader in getting this before the Senate. He has been a leader in our committee in trying to get it passed. I think his leadership, hopefully, will pay off before this session is over.

Mr. President, I find it very strange that anyone could take the position that when you are trying to put up some money that the Secretary of Defense would have discretion over to cooperate in the storage, safe storage and the destruction and dismantlement of nuclear weapons that have been pointing towards this country and our allies for the last 30 years, that someone would stand up on the floor of the Senate and behave as if this is a foreign aid provision, the equivalent of providing money to build a dam in some country in Africa, Asia or some other foreign aid provision.

I find it incredible that some of our colleagues believe that the American people cannot make this distinction. I have so much more confidence in the American people, in their ability to distinguish between dealing with a military threat and reducing that threat and avoiding the Saddam Husseins of the future attempting to gain nuclear control and knowledge. I have great confidence that the American people can make this distinction. Yet, some of our colleagues are saying, you are right, I do not believe our constituents will understand.

Mr. President, I think it is time for us to have leadership here in the Senate, leadership in the House, and leadership from the White House; without that, we will not make it. But we will be trying, and I am hoping we will have that leadership develop in the next few hours.

Mr. President, I know the Senator from Florida wants to be recognized. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 16 minutes 33 seconds.

Mr. NUNN. How much time remains on the other side?

The PRESIDING OFFICER. Ten minutes 9 seconds.

Mr. NUNN. I yield the remainder of my time under the control of the Senator from Michigan.

Mr. WARNER. Mr. President, parliamentary inquiry. Do we now return to the pending DOD authorization?

The PRESIDING OFFICER. The Senator is correct.

Mr. GLENN. Mr. President, I rise in support of the conference report on the National Defense Authorization Act for fiscal years 1992 and 1993.

Both the House and the Senate went through very trying times this year in producing this piece of legislation, and after the longest Defense authorization conference in my memory, we finally got a product, and I think it is a good one.

As a member of the Senate Armed Services Committee and chairman of the Manpower and Personnel Subcommittee, I want to recognize the extraordinary and successful efforts of Chairman NUNN, and ranking member Senator WARNER in leading the committee in this particularly fractious year for defense. Also, my appreciation to Senator MCCAIN for his work as the ranking member of the Manpower Subcommittee; we work very closely together on all issues before the subcommittee.

Mr. President, today I will offer some rather detailed comments and assessments on manpower issues. Following these manpower comments I will discuss, in brief terms, some procurement and management issues that I feel are particularly worthy of note.

Mr. President, as chairman of the Subcommittee on Manpower and Personnel, I can say that the conference report contains military personnel provisions that provide for the combat readiness of our men and women in uniform, and for their quality of life.

Last year, we put the military services on a gradual glidepath that would result in a 22-percent reduction in active duty strength over 5 years—a reduction driven by the substantial easing of tensions in Europe. At the same time the Congress approved this plan, it provided a generous safety net of benefits for military personnel who might be involuntarily separated as a result of the strength reduction plan.

Since then, we have engaged in, and successfully concluded, the Persian Gulf conflict. In spite of the tremendous amount of personnel turbulence that this operation has had on the military services, they have shown great resilience in getting back on the strength reduction glidepath we set out before the conflict. I would note that in hearings we had on this matter, each service personnel chief testified that the strength levels in the President's budget request, which do place each service back on the glidepath we set out last year, were achievable and prudent.

MANPOWER STRENGTH LEVELS

So the conferees approved the active duty end-strength levels requested by DOD for each of the services for fiscal years 1992 and 1993. The levels reduce the active duty force by 106,358 from current levels in fiscal year 1992 and another 91,900 in fiscal year 1993.

At the same time, the conferees were increasingly concerned that these, and even greater strength reductions in the future, could require the involuntary separation of a substantial number of career military personnel. Therefore, the conferees authorized a program to encourage voluntary separations to avoid involuntary separations as the military services builddown.

Under this program, certain categories of military personnel who face the possibility of selection for involuntary separation would be offered the choice of two incentive packages to voluntarily separate.

Under the first option, such a volunteer could receive a lump sum payment

of 15 percent of basic pay multiplied by the number of years of service of the volunteer. For example, in the case of an E-6 with 10 years of service, the lump sum payment would be $27,000. Such a volunteer would also be eligible for certain transition assistance, such as temporary military medical coverage, employment assistance, commissary and exchange shopping, temporary military housing, relocation assistance, and leave and travel benefits.

Under the second option, such a volunteer could receive an annuity of 2.5 percent of basic pay, multiplied by the number of years of service of the volunteer, to be paid out over twice the number of years of service of the volunteer. For example, in the case of an E-6 with 10 years of service, the annuity would be $4,500 per year for the next 20 years, or $90,000 in current dollars.

In addition to these incentives, the conferees provided the Secretary of Defense with the authority to waive the active duty strengths prescribed for fiscal year 1992, and to transfer funds to the manpower account to fund higher strength levels to avoid involuntary separations.

Mr. President, I believe that the Department of Defense should be able to avoid involuntary separations by prudently exercising these authorities.

MILITARY PAY AND COMPENSATION

Mr. President, with regard to military pay and compensation, the conferees approved a 4.2-percent pay raise for military personnel, effective January 1, 1992. This will give our men and women in uniform a pay raise that matches the average civilian wage and salary increase expected in the private sector.

The conferees also approved a number of other targeted compensation initiatives that provide certain benefits for military personnel and their families, including permanent increases in imminent danger pay, death gratuity pay, and family separation pay; a program to reimburse military families for adoption expenses; and reimbursements for certain travel expenses.

I think it is fair to say that we have provided a very decent compensation package, given the pressures on the Defense budget.

MEDICAL PROGRAMS

Mr. President, the conferees also approved a number of provisions to improve certain medical benefits for the families of military personnel, and to contain the cost of medical care in the Department of Defense.

Some examples include the authority to expand the existing dental insurance program for military dependents, to include a supplemental option offering broader dental care coverage; the provision of hospice care; the restoration of certain CHAMPUS benefits to beneficiaries who lose the benefits because of disability; the simplification and enhancement of CHAMPUS payment procedures; and the flexibility to manage, more efficiently, alternative forms of contracted medical care.

The conference also approved, with minor modifications, Senate-passed language relating to the current CHAMPUS reform initiative contract for California and Hawaii. The language adopted is designed to ensure that the Department may rebid this contract, which by its terms expires on January 31, 1993, without regard to any limitation on the availability of funds for that purpose, regardless of whether that limitation is enacted before, on, or after the date of enactment of this legislation.

Moreover, the language provides that any such limitation may not be treated as constituting or requiring the extension of that contract beyond the expiration date of the contract. In other words, if any appropriations measure enacted by the Congress prohibits or limits expenditure of funds for the purpose of rebidding the contract, that limitation will not constitute a justification for extending the contract thereby avoiding the normal competitive bidding procedures required by applicable procurement laws and regulations.

MILITARY PERSONNEL MANAGEMENT

With regard to improvements in military personnel management, the conferees approved provisions that provide for more effective management of the officer corps in terms of providing more equitable procedures for the appointment of regular officers, strengthening committee oversight on the utilization and retirement of senior officers, prescribing uniform rules for the management of warrant officers, and strengthening officer promotion procedures. These recommendations are consistent with our policy of providing a healthy, competitive environment in the military services that encourages professional excellence.

PERMANENT BENEFITS FOR PERSONNEL SERVING IN SUPPORT OF FUTURE OPERATIONAL CONTINGENCIES

Mr. President, as Senators will recall, we passed a number of provisions in the National Defense Authorization Act for fiscal year 1991, and in the Persian Gulf Authorization and Personnel Benefits Act of 1991 that updated and enhanced certain benefits, and corrected certain inequities in the way activated reservists were compensated. The conferees approved, as part of its Persian Gulf lessons learned provisions, making permanent these authorities which we had previously enacted as temporary authorities for Desert Shield/Desert Storm for certain active duty and activated reservists engaged in future contingencies.

Mr. President, there were two manpower issues that we spent a lot of time on this year, and I want to make sure that the rationale for the action taken by the conferees on them is clear. The two issues deal with the personnel strength levels for the National Guard and Reserve components, and on the establishment of a commission to study and report on the assignment of women in our military services.

SELECTED RESERVE STRENGTH

With regard to the first issue—selected reserve strength levels—the conferees approved substantially smaller reductions than requested by DOD.

For fiscal year 1992, DOD requested a reduction in Selected Reserve end-strength of 105,076, and a further reduction in fiscal year 1993 of 79,800, a cumulative reduction of 16 percent over 2 years. The conferees approved 36 percent of the requested reduction in fiscal year 1992—a reduction of 37,580 instead of the 105,076 requested—and 40 percent of the requested reduction in fiscal year 1993—a reduction of 33,505 instead of the 79,800 requested. The committee's action would still reduce Selected Reserve end-strength by 6 percent over 2 years, reflecting the Reserve support tail associated with the reductions in the Active component.

Quite frankly, the conferees found that the large 16-percent cut proposed by DOD lacked any sound force-structure basis. Instead, Defense witnesses testified that the cut was basically budget driven. The National Guard and Reserve components were given numbers to hit and given the job of pulling out units.

Mr. President, this approach led to incomprehensible results. For example, the Navy proposed to deactivate two Navy Reserve minesweeping squadrons to get down to its budget-driven Selected Reserve end-strength. This is completely at odds with the serious problems the Navy had with mines in the Persian Gulf. Two ships were damaged, one extensively, by mines. It took the Navy nearly 2 weeks to clear the mines so that one of the battleships could get close enough to Iraq to use its 16-inch guns. Further, General Schwarzkopf testified that he could not risk an amphibious landing by the Marine Corps because of lack of minesweeping capabilities in the Navy. Yet, because of having to achieve an end-strength that is almost purely budget driven, the Navy wants to cut its minesweeping capability. This does not make any sense, and the conferees have prohibited this cut in the conference report.

Another example is DOD's planned 21 percent reduction in Marine Corps Selected Reserve end-strength. How can this make sense when 55 percent of the Marine Corps Reserve had to be activated for the Persian Gulf conflict? Specifically, in order to implement the proposed reduction, the Marine Corps plans to deactivate a tank unit that fought with distinction in the Persian Gulf war. With regard to this unit, DOD's interim report on lessons learned stated:

Postmobilization training was, for the most part, well supported by the Active Component, and was effective. Perhaps the best example of the effectiveness of this training is found in Company B of the 4th Tank Battalion, 4th Marine Division. This unit had been equipped with M60A1 tanks, a system that is much different than the more modern M1 and M1A1. When this unit was activated in November, it completed a 23 day M1A1 training program in 18 days. The unit arrived in Saudi Arabia on 19 February and went into battle on 24 February. In four engagements during the course of the war, Company B destroyed 59 enemy tanks, about half of which were T-72s, without losing one of its tanks.

How can pulling this unit out make sense?

The Navy and Marine Corps examples are but two of the many chaotic actions that the Reserve components would have to take if the Selected Reserve end-strengths proposed by the Department of Defense were to be approved.

So the conferees took the responsible action of recommending Selected Reserve end-strengths that preserve the combat readiness of the National Guard and Reserve components.

COMMISSION ON THE UTILIZATION OF WOMEN IN THE MILITARY

Mr. President, with regard to the issue of the assignment of women in the military, I believe we all acknowledge the outstanding contributions women serving in our Armed Forces have made to the national defense, despite laws and DOD policies that restrict their assignment from certain combat skills and positions. Today, women in the military serve in many extremely demanding roles. Some of these roles expose women to the risk of death in combat. Most recently, women have performed under such conditions in the Persian Gulf conflict.

Mr. President, we debated, on the floor of the Senate, the issue of what we should do about the so-called combat exclusion laws that prohibit women from being assigned to combat aircraft and combat ships in the Air Force and the Navy. It was the will of the Senate that we should repeal the combat exclusion laws with regard to assignment of women to combat aircraft, but retain the law with regard to the prohibition on the assignment of women to combat ships in the Navy. I spoke out against such action because I thought we should have a Commission conduct a comprehensive study of all aspects of this issue and make recommendations to us on the basis of its findings before we acted to change any laws. I still believe that my position is defensible on the merits; however, the majority of my colleagues thought otherwise. So the conference report contains a provision that repeals the statutory bars on the assignment of women to combat aircraft.

At the same time, the conferees approved a provision that would require the President to appoint a Commission to study and report on the assignment of women in the military. The Commission would consist of 15 members who have distinguished themselves in the public sector and in the private sector, and who have had significant experience in matters: such as social and cultural matters affecting the workplace; constitutional and other law; the effects of medical and physiological factors on job performance; military personnel management; and service in the Armed Forces in land, air, and sea combat.

The Commission could request, and the Secretary of Defense could waive all other laws or policies that restrict the assignment of women during the conduct of the study so that appropriate tests of assignment of women to combat skills and positions can be conducted.

The Commission would be required to submit its report to the President by November 15, 1992, and the President would be required to submit his comments and recommendations on the report to the Congress by December 15, 1992.

The Commission would be required to make specific recommendations with regard to whether existing law and policies governing the assignment of women in the military should be retained, modified, or repealed; what roles women should have in the military, including what, if any, roles women should have in combat; what transition process is appropriate if women are to be given the opportunity to be assigned to combat positions in the military; and whether special conditions, and different standards, should apply to women than apply to men performing similar roles in the military.

Mr. President, I think that establishing this Commission addreses many of the concerns I had raised on the floor of the Senate when I opposed the partial repeal of the combat exclusion laws. At this point, I think this is a very responsible approach for us to take on this very complicated, sensitive issue. I believe that, when we receive the results of the Commission's work, we will be able to act more positively by spelling out what we believe the role of women should be in each of our military services.

Mr. President, overall the conference report provides the personnel management tools that the military services need in these difficult times. It also recognizes the sacrifices that our men and women in uniform make every day to provide for our national security. As pressures grow to reduce the Defense budget, we cannot forget the vital human element, and I for one intend to continue to keep this as a high priority in the future.

Mr. President, I now move to some comment on some other defense authorization issues.

It is no secret that the B-2 stealth bomber was a major bone of contention in the conference. Given the strongly held views on both sides of the issue, I feel that the conference outcome on the B-2 was reasonable; namely, to authorize only one new production B-2 aircraft in 1992, but making release of the production money contingent on a further affirmative vote by both Houses of Congress next spring. Quite frankly, my personal view is that B-2 procurement should terminate at the 15 aircraft already funded—and I would hope that the Congress does not release the money for the 16th aircraft. It just makes no sense to beggar the Air Force budget, indeed the whole defense budget, to buy aircraft that at an absolute minimum will cost $865 million per copy.

That leads me to the B-1 aircraft. We have put over $28 billion into this heavy bomber; of the 100 aircraft produced we still have 97 in the inventory, but they have been languishing because of the refusal to address realistically some avionics deficiencies, and because of the delay by the Air Force in qualifying weaponry on this aircraft that it is perfectly capable of carrying. This country needs a heavy conventional bomber, the B-1 is capable of operating in sizeable numbers, and it is high time the Air Force gets on with implementing a B-1 conventional modernization program that takes full advantage of the aircraft's potential. Accordingly, the conference bill directs that such a B-1B bomber improved conventional capabilities plan be drawn up.

Another very important program, the V-22 Osprey tiltrotor aircraft, was funded this year to provide for development, manufacture, and operational testing of three production representative aircraft. This is an important breakthrough for this program that I contend will revolutionize low speed aviation not only in the military, but also in the longer term in commercial aviation. It is important that DOD, the Congress, and the manufacturer keep this program on track in order to ensure that tiltroter technology is not delayed in being incorporated into the operational inventory.

Mr. President, regarding the strategic defense initiative, I am in strong disagreement with the provision in this Conference agreement authorizing $4.15 billion for SDI in fiscal year 1992 and directing deployment of an ABM Treaty compliant system. I strongly disagree with this provision and the unnecessarily high funding level authorized for SDI. I opposed the deployment provisions and supported lower funding levels for SDI both in the committee markup and on the Senate floor.

While I have always supported a solid strategic defense research program, I am unconvinced that deployment of a strategic defense system is necessary, desirable, or even technically feasible. Clearly, with the failed coup attempt in the Soviet Union, the strategic rela-

tionship between the United States and the Soviet Union is more stable now than it has ever been since the end of World War II. Furthermore, I believe that the direct threat to the United States posed by accidental or unauthorized launches is extremely remote.

In addition, the proliferation of ballistic missiles in the Third World is also cited as a major justification for deployment of a strategic defense system. While no one should downplay the dangers posed by the proliferation of ballistic missiles, it is important to remember that ballistic missile proliferation raises more concerns about regional stability than about any direct threat to the United States. I do not share the view that the United States needs to rush out and spend billions of dollars to deploy even a limited SDI system to protect against the possible future threat of some Third World country lobbing a nuclear-equipped ICBM at the United States.

In short Mr. President, the Conference's action on SDI is a needless waste of increasingly scarce resources and threatens to be destabilizing.

I am pleased that the conferees agreed to include my language authorizing the Secretary of Energy to award up to $10 million in training grants to train and educate workers who are, or who may be, engaged in hazardous substances response activities, and to assess civil penalties up to $5,000 a day for each day contractors fail to certify to DOE that they have provided adequate hazardous waste training to workers.

This provision does no more than require the DOE to assure that hazardous waste workers are trained as they are in the private superfund program. This language is a mirror image of what is already in the current superfund law for private sites, which has been working successfully for 5 years now.

With three DOE facilities in my home State, I have become increasingly concerned over the lack of adequate training that DOE workers are receiving. This problem was also underscored in great detail by the recent review of worker safety at DOE by the Occupational Safety and Health Administration. At one site, workers were found to be machining hazardous wastes without proper protection and training. If this had happened at a private superfund site the contractor would be fined. However, although DOE can fine contractors for nuclear safety violations, under the Price-Anderson Act, contractors are not held accountable for nonnuclear worker-safety violations that may pose an equal or even more severe danger.

Without adequate training, many current DOE workers may not be able to keep their jobs because of the lack of proper skills. At the Fernald Facility in my home State this is not an abstract issue. Since 1988 some 500 people have lost their jobs. In its report to Congress this year, regarding the end of Fernald's production mission, DOE was unable to verify if Fernald workers had been adequately trained for hazardous waste work.

Work with hazardous substances will be a major component of DOE activities during the coming decades. DOE has estimated that during the next 5 years the most hazardous environmental restoration work will occur. This will involve efforts to prevent the spread of contamination and prevent unfortunate near-term public health impacts. This work presents immediate hazards to workers at sites not currently in environmental or health and safety regulatory compliance.

In the recent OSHA review of the DOE's worker health and safety program, a major reason why the DOE cannot guarantee its workers a safety working environment stems from a significant lack of controls over contractors. There currently exists no real leverage that the DOE can exercise over contractors to protect workers. This provision gives the DOE authority to regulate contractors in the area of worker training in a manner that makes it clear that the contractors are held accountable. I believe that is an excellent step at a critical juncture in our efforts to clean up DOE sites.

Regarding a different program, I wish to commend the House and Senate conferees for retaining the Senate language for a provision designed to establish priorities for the Department of the Army's activities in the development of medical countermeasures against biowarfare agents. The need for this provision is clear. In December 1990, the General Accounting Office [GAO] released a report on the Biological Defense Research Program [BDRP] that concluded that, because of lax controls, the Army "unnecessarily expended funds on research and development efforts that did not address validated threats, and may have duplicated research efforts of other Federal agencies." The GAO determined that the BDRP was spending an inordinate portion of its research funds on biological agents that had not been identified as validated threats by the Armed Forces Medical Intelligence Center [AFMIC]

The GAO's findings were dramatically underscored during Operation Desert Shield/Desert Storm when the Army was found to be unprepared to deal with Iraq's confirmed biological warfare capabilities. Lacking appropriate vaccines to protect our soldiers against anthrax and botulinum toxin, the Army was forced to make emergency requisitions for these materials from civilian and foreign sources. This bill contains a provision, section 251, that prohibits the obligation or expenditure of any DOD funds for product development or for research development, testing, or evaluation of medical countermeasures against a biowarfare threat agent that is not contained in the biological warfare threat list published jointly by the AFMIC and the Defense Intelligence Agency [DIA]. To ensure that the vast majority of the medical component of the BDRP research is concentrated on validated threats that could be confronted by the U.S. Armed Forces within the next 10 years, this provision requires that no less than 80 percent of the medical component of BDRP funding be targeted on such threats.

This bill also contains a provision, that I sponsored, that protects our industrial base for machine tools by supporting the extension of the purchase restriction which prohibits the Department of Defense from buying foreign machine tools. The U.S. machine tool industry is critical to maintaining this country's readiness, since machine tools are the foundation of virtually all of our manufacturing processes. I am pleased that Congress is working to foster the further development of that industry through the extension of the procurement restriction.

Last, I note that the bill resolves an issue involving another critical national security resource: the national defense stockpile. Some in Congress wanted to change the current system, by which Congress directly oversees the development and attainment of stockpile requirements, by allowing the President to unilaterally change stockpile requirements 30 days after notifying Congress of proposed changes. I could not support that position and successfully worked to have it eliminated from the conference bill. However, without the fullest possible examination of how this proposal would affect this Nation's readiness, I feel strongly that the Congress should not relinquish its oversight responsibility built into the current system. Consequently, I am pleased that this provision was eliminated from the conference bill.

Mr. President, these are but a few of the hundreds of issues in this very complex bill. As I said at the outset of my statement, I feel that it is a good bill and I urge my colleagues to vote for it.

Mr. DIXON. Mr. President, I am generally satisfied with the national Defense authorization bill for fiscal years 1992 and 1993. This bill is the result of many long hours of hard work by the Members and the staffs of both the House and the Senate. It is a good Defense bill. It downsizes our forces in an intelligent manner so as not to create an ineffective fighting force as we have done in previous force reduction programs. It balances force readiness, sustainability, and support in the face of a shrinking Defense budget.

Mr. President, I am glad to see that this bill removes the prohibition against women flying combat aircraft.

Based upon our recent experiences in Desert Storm, I agree that the Defense Department needs to reexamine its artificial restrictions on the role of women in combat.

We owe much to our service men and women. Even with these Defense budget cuts, I am happy that the bill has not ignored the fact that the quality of the service member's home and workplace is vital to morale and efficiency. With the dollars authorized in this bill for military construction, the quality of life for service members and their families will continue to be heightened.

Mr. President, even though I am generally happy with this bill, I still have some concerns. I am worried about our ability to move out troops and materiel in a crisis on short notice over long distances. I believe there is a lack of sufficient support in the bill for the C-17, airlifters. One lesson we learned from the Persian Gulf war was that we need more airlift capacity. Buying only four C-17's next year is far short of what we need. I am afraid if we cannot buy adequate numbers this next year, dire consequences may result in this program.

Mr. President, the lack of adequate numbers of C-17 airlifters is not by itself reason to vote down the bill, but it is a major concern of mine.

Mr. President, the Senate Armed Services Committee began working on this bill in April and as all my colleagues know, it is the hard followup work done by the staff that brings us here today to vote on a final product. Mr. Arnold Punaro of the majority and Mr. Patrick Tucker of the minority have done an outstanding job in working with the respective staffs in creating this product. I would like to take this opportunity to thank David Lyles, Bob Bayer, and Mary Kampo of the majority staff of the Readiness Subcommittee for their diligence and insight. It is impossible to accomplish worthwhile legislation without bipartisan cooperation. Ron Kelly and Ken Johnson of the minority staff have worked closely with their majority counterparts, and I thank them for their professionalism. And finally, Mr. President, I would be remiss if I did not also recognize the invaluable assistance that my personal staff provides me. My long-time chief Defense aids, Charles Smith, and two congressional fellows on my staff, Charles Mudd and Jim Rohacik, have all played vital roles in helping me shape this legislation. I want to thank them for their contributions and I wish continued success to Jim now that his fellowship with us has ended.

Mr. ROTH. Mr. President, I intend to vote against this conference report for the simple reason that it spends too much money and misses opportunities to save money.

But, before I get into the details of my concerns, I think it is important to recognize and applaud the conferees' support for removing the congressionally imposed restrictions against female pilots.

The conferees have recognized the value of women aviators for our Nation's defense. In July, the Senate strongly approved the amendment that Senator KENNEDY and I offered to end this artificial restriction. The Pentagon must have the authority to decide who is best qualified to serve in any position, including who flies in combat aircraft. The conference report gives DOD this authority and ends Congress' unequal treatment of men and women aviators.

Mr. President, 1 week before this conference report was filed, I came to the Senate floor to criticize the action of the House and Senate conferees on the fiscal year 1991 Defense authorization bill.

Specifically, I was disturbed by the Conferees' decision to make $1 billion available to the Secretary of Defense for aid to the Soviet Union. It made no sense to me to take $1 billion out of the United States defense budget, while the Soviet Union continues to spend many times that number on its defense.

If this proposal had prevailed, we literally would have taken $1 billion out of our defense budget so that the Soviets could spend $1 billion of their own money on their defense. The greatest source of funds for the Soviets is still their own defense budget.

Mr. President, we may need to provide humanitarian assistance to the republics that comprise the Soviet Union. It is my firm opinion that any assistance to the Soviet Union must have clear near-term benefit for the United States, as well as being in our long-term strategic interest.

The conferees' proposal did not meet that criteria, and I am happy to see that aid provision has now been removed from the conference report. But I wonder where the $1 billion went.

Finding potential savings is good, but we need to take the next step and that is to save the billion dollars by reducing the overall level of the Defense budget. I also note that the conferees deleted three B-2 bombers from the procurement budget.

I support this initiative, but, again, I think it is essential that this economy be reflected in greater savings in the defense budget. There was a 75 percent reduction from the President's request for B-2 bombers, but where are the $2.5 billion that should have been saved?

Mr. President, in October, I came to the floor to introduce my proposal for restoring jobs, opportunity, and growth to America—which I refer to as the job America plan. I proposed a similar plan last year when the Warsaw Pact threat disintegrated and the economy began to slow.

These plans would stimulate the economy by returning the peace dividend to the American taxpayer.

In short, the Defense conference report should call for $3.5 billion less spending than it does. That money ought to be put to use now to jump start this economy by implementing a plan such as my jog America proposal.

At a minimum, if Congress were to act as I suggest, then it would send an important message to Americans that institutional inertia will not prevent the Congress from responding to the current economic situation.

Accordingly, I urge that the report be rejected and the $3.5 billion be made part of a larger plan to stimulate our economy.

Mr. BROWN. Mr. President, the National Test Facility is our Nation's premier testing facility for the Strategic Defense Initiative. The work that is done there is invaluable in developing our Nation's strategic defenses.

I rise today to address a concern I have about a portion of the conference report for the National Defense Authorization Act for fiscal years 1992 and 1993. Page 495 of that report urges the upgrade of computer facilities at the Advanced Research Center, Huntsville, AL. My concern, Mr. President, is that the language contained in the report may be misunderstood by some as calling for a reprioritization of resources within the Strategic Defense Initiative Organization.

The report may be misunderstood by some to suggest that upgrades to the advanced research center computer facilities should come at the expense of the National Test Facility. I would like to ask my friend from Virginia, the distinguished ranking member of the Senate Armed Service Committee and a member of the conference committee, if that is his understanding of the language.

Mr. WARNER. Mr. President, in answer to the Senator from Colorado's question, it is not my understanding, nor do I believe it was the intent of the conference committee to suggest that upgrades to the research center facilities should restrict the work being done at the test facility. On the contrary, the conference report clearly states it is the committee's belief that the work being done at the research center is complementary to the work done at the test facility.

Mr. BROWN. I thank the distinguished Senator from Virginia for his insight and leadership on the important issue of strategic defense.

Mr. President, I would also like to ask the distinguished chairman of the Senate Armed Services Committee for his understanding of the intent of the conference committee.

Mr. NUNN. Mr. President, the National Test Facility provides critical work in the area of strategic defense research. It was the intention of the conference committee that upgrades to the advanced research center computer hardware and software would not con-

flict with the ongoing work at the National Test Facility in Colorado Springs.

Mr. BROWN. Mr. President, I thank my good friend from Georgia for clarifying this issue for the Senate. The National Test Facility has provided unmatched research for the Strategic Defense Initiative Organization. It is clearly in our interests to continue to support and fund the work that is being done there.

I yield the floor.

Mr. WARNER. Mr. President, I yield the remainder of the time under my control.

Mr. LEVIN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator is recognized for 10 minutes.

Mr. WARNER. Will the Senator yield for a moment?

Mr. LEVIN. Yes.

Mr. WARNER. Mr. President, I express my appreciation for the long hard work of the Senator from Michigan. We came to the Senate together some 13 years ago and served on this committee side by side. While we may have differed from time to time, I join with our chairman in saluting him for his hard work. There is not a line of work that goes through that committee, all during the course of the year, that the Senator from Michigan has not read. Sometimes he has the courage to say, "I am not sure that I understand it." But he reads it carefully, and before he departs that particular meeting, he understands it. I look forward to working with him.

Mr. LEVIN. Mr. President, I thank my dear friend from Virginia. We did indeed come here together. We have had a lot of good times together and, a few differences along the way, but they are very minor compared to the efforts we have been able to achieve.

As I said a little earlier, it is with reluctance that I have decided to vote against the bill that has such a tremendous positive input from Senators such as Senator NUNN and Senator WARNER. I know of no two Senators who operate better together in running a committee than do our good friends Senator NUNN and Senator WARNER.

Mr. WARNER. I thank my good friend from Michigan. I am anxious now to hear what he has to say.

Mr. LEVIN. Mr. President, this bill contains a great deal of good. It does, because it has had a great deal of effort put into it, under our chairman and ranking member, under the work of all of the members of the committee. This bill does indeed take some important strides forward in the defense of this country, in terms of our priorities, as well.

I have worked well with Senator WALLOP on the Conventional Forces Subcommittee, and we have been able to achieve a great deal in the area of conventional forces. This bill is responsive to many of the realities of a changing world.

It contains initiatives to address some of the shortcomings which we learned about in Operation Desert Storm.

For instance, we are investing in this bill in a program to reduce the likelihood of future American losses to friendly fire, and that is an important initiative.

There is a strong package to assure that our National Guard and Reserves are well-trained and ready with the equipment that they need. We protect our industrial base in some key areas so that we can preserve our ability to meet new emerging threats even as we scale back on our overall force structure.

We are also providing a substantial authorization, over $400 million, in 1989 for environmental cleanup at military bases that are being closed around the country, and that is the full amount which is needed for this purpose.

It is vital that we redress contamination on these bases so that local communities can reuse these sites for other purposes once they are closed.

On the nuclear side, we are finally shelving the rail garrison MX and SKAM missile and are not going to build any more nuclear Tomahawk sea-launched cruise missiles. There are important issues initiatives in this bill that do try to meet changing security threats. Some parts of this bill do not. We continue to authorize MX missiles even though Air Force wanted the program terminated. The price tag for that is over $450 million for six missiles. We are long past the time of buying more MX missiles which will add anything to the safety of this country.

We are continuing to try to force the Pentagon to develop a mobile Midgetman missile even after President Bush's announcement that we will not pursue land-based mobile missiles. The price tag in this year alone, just the year's portion, is $548 million.

Our deterrent force is more than sufficient without these additions, and our budget cannot sustain this kind of approach. We have to invest defense dollars wisely in programs that truly increase our security.

Those mistakes alone would not have caused me to vote against this bill because there is again so much good in this bill that I think on balance makes it a good bill.

But we made a grave mistake last week which, as I indicated before, troubles me greatly. We dropped from the conference report a forward-looking responsible major investment in our own security, and I am referring to the threat reduction provision which was authorized by chairman NUNN and chairman ASPIN of the House Armed Services Committee. That provision would have, as Senator NUNN said, provided completely discretionary authority to the Secretary of Defense to initiative programs that could have directly reduced the military threat facing us in what remains of the Soviet Union. It would have done that through the dismantlement of Soviet nuclear weapons.

We should have said "yes" to that innovative approach. We should have said "yes" to investigating a mere fraction, a small fraction of the cost of SDI, and we should have said "yes" to stopping cold the proliferation of weapons technology from a disintegrating Soviet Union to Third World dictators. But opponents mislabeled the plan a giveaway. Supporters in the administration were suddenly silent, and a few of us were left alone on this floor to defend the plan led by Senator NUNN.

The case is manifestly clear, if it will take more than a 30-second sound bite to look at, it is manifestly clear that we have invested billions of dollars year after year to match or defeat every Soviet weapon. We have spent billions to support an alliance that finally broke down the Berlin Wall, that broke the Warsaw Pact, that broke up the U.S.S.R. But last week it was decided that we could not make a small investment for the direct reduction in the numbers of Soviet nuclear weapons, a small investment against the reemergence of totalitarian dictatorships in the Soviet Union and against Soviet militarism.

For decades, Mr. President, we have spent billions to monitor their every move. We invented spy planes to fly over Soviet territory. Then we launched satellites that could detect the smallest changes in Soviet defenses. We then obtained intrusive on-site verification through arms control treaties. But when we might have a chance to send our own technicians with their own tool boxes into the Soviet Union to actually corral Soviet warheads and dismantle them, we refused because of the fear created by the label "Soviet aid."

It was a false label. It is a false label. What was proposed was a true American security measure. But because it took a few sentences to explain, the fear of voting for something that was falsely labeled as a Soviet assistance program killed an American security program.

And as Senator NUNN said, we underestimate the American people. Of course, we have to get our economic house in order and put our energies in the health and well-being of our citizens. But our people understand that renewal at home will be more difficult if we have to counter an aggressive military adversary again abroad. They understand that it is in our interest here in America for democracy to survive in the Soviet Republics which have thousands of nuclear warheads which would proliferate around this world.

Senator NUNN and others are making a new effort to try to restore this language to some bill. I am part of that effort. It is a bipartisan effort. It must succeed. I hope it succeeds.

In the coming months, many of us will be working to articulate changes that we need to make in our Armed Forces to meet the overall security needs of the United States. But we also need the Pentagon to look at the world with fresh eyes, reevaluate the true threats and to make tougher choices.

There is a great deal ahead of us, Mr. President, for reshaping our military forces to meet the changing needs. We need to focus on maintaining modern and ready conventional defenses, smaller forces that are well-trained, well-supplied, highly mobile, highly capable and with great morale. That means we are going to have to use our resources carefully. We cannot afford to continue to spend defense dollars on cold war relics such as more and more MX missiles, which the Defense Department does not want and a mobile Midgetman system, which the Defense Department does not want and which will not contribute to American security.

As I said, I think more of the agenda that we have to pursue could have been pursued in this bill. But the bill is basically a good bill, except for the bad and grave error that we made when the Nunn-Aspin initiative was dropped from this bill.

Principally because of that, I have decided to vote against this conference report. I want to highlight our failure to grasp an important security opportunity to make our people safer.

I hope, I pray that Senator NUNN and the rest of us are successful in getting this provision passed another way. I pledge to do everything in my power to see to it that that happens.

Again, we are all in the chairman's debt for his initiative. It is sometimes difficult to be out here alone, as he has been, defending a provision, but he is so right in this case that he deserves the support of all of us, and more than anybody, his talent and his energies have been invested in that provision, and I hope they will still be rewarded. I only wish they could have been incorporated in this bill.

Mr. President, I yield back the remainder of my time, and I believe that the Senator from Virginia has yielded back the remainder of his time.

The PRESIDING OFFICER. All time has been yielded back.

Under the previous order the vote will occur tomorrow at 9:30 a.m.

MORNING BUSINESS

Mr. LEVIN. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak therein.

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

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,441st day that Terry Anderson has been held captive in Lebanon.

KUWAIT EVACUEES PROVIDED IMMIGRATION RELIEF

Mr. CRANSTON. Mr. President, on Friday, November 15, President Bush issued a directive that provides temporary immigration relief and work authorization for approximately 2,000 former Kuwait residents who were airlifted from Kuwait shortly after the Iraqi invasion and brought to the United States. I want to take this opportunity to commend President Bush for this humanitarian gesture to families who would have faced the real tragedy that they would be separated from each other and possibly not allowed to return to Kuwait.

In August, the plight of the evacuees was brought to my attention by Dr. Iyad Al-Shurafa, a Kuwaiti evacuee who now lives in California. Subsequently, I and 20 of my colleagues sent a letter to President Bush urging him to issue an order allowing approximately 2,000 former Kuwaiti residents who were airlifted from Kuwait after the Iraqi invasion to remain in the United States for 4 years.

Shortly after the invasion of Kuwait, a number of families were airlifted and brought to the United States. While these flights were promoted as returning American hostages to the United States, many of the adult passengers were permanent residents of Kuwait and not United States citizens. Members of these repatriated families were conferred parolee status and allowed to reside and work in the United States. That status was extended until December 31, 1991, at which time they would have been required to return to their country of nationality.

Unfortunately, most of these repatriated persons do not have a country to which they can return. Many of the families evacuated from Kuwait are stateless—Palestinians having only travel documents, not passports reflecting citizenship. Most were born, worked, and lived their lives for many years in Kuwait but were not granted citizenship because of the strict Kuwaiti citizenship laws. The Kuwaiti Government will not guarantee that these persons will be permitted to return to Kuwait and indeed has expressed Kuwaiti hostility toward Palestinians. Furthermore, Israel will not allow them to go to Israel or the Occupied Territories.

Many of the repatriated persons are children and their parents are professionals—physicians, engineers, accountants, and businesspersons. They eagerly desire to earn a living in the United States. They were repatriated because they have children who are U.S. citizens. Without any protection for the parents of these evacuated U.S. citizen children, these families would become tragically separated. These families wanted to remain together in the United States until they are able to return to Kuwait with assurances that they will be treated fairly.

The Presidential directive allows the families to remain in the United States until January 1, 1996. As we took responsibility to bring these families to safety, I am pleased that we will continue our commitment to provide them protection until it is safe for them to return to Kuwait. Again, I commend President Bush for responding in a compassionate and humanitarian fashion to this matter.

Mr. President, I ask unanimous consent that a letter signed by 21 Members of the Senate be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, November 14, 1991.

President GEORGE BUSH,
The White House, Washington, DC.

DEAR PRESIDENT BUSH: We are writing to urge you to issue an Executive Order that will provide temporary immigration relief for several hundred families currently living in the United States who were airlifted from Kuwait during the Gulf crisis.

Shortly after the invasion of Kuwait, a number of families were airlifted and brought to the United States under the Persian Gulf Evacuation Program. While these flights were promoted as returning American hostages to the United States, many of the adult passengers were permanent residents of Kuwait and not United States citizens. Members of these repatriated families were conferred parolee status for a few months. This parole, which authorizes them to reside and work in the United States, was extended until December 31, 1991, at which time they will be required to return to their country of nationality.

Unfortunately, most of these repatriated persons do not have a country to which they can return. Many of the families evacuated from Kuwait are stateless—Palestinians having only travel documents, not passports reflecting citizenship. Most were born, worked and lived their lives for many years in Kuwait but were not granted citizenship because of the strict Kuwaiti citizenship laws. The Kuwaiti government will not guarantee that these persons will be permitted to return to Kuwait and indeed has expressed Kuwaiti hostility towards Palestinians. Furthermore, Israel will not allow them to go to Israel or the Occupied Territories.

Many of the repatriated persons are children and their parents are professional—physicians, engineers, accountants, and businesspersons. They eagerly desire to earn a living in the United States. They are repatriated because they have children who are United States citizens. Without any protection for the parents of these evacuated United States citizen children, these families would become tragically separated. These families would like to remain together in the Unites States until they are able to return to Kuwait with assurance that they will be treated fairly.

Unless these families are accorded immigration relief, they face the real tragedy

that they will be separated from each other and that they may not be allowed to return to Kuwait. As the country that took responsibility to bring these families to safety, the United States government has the ongoing responsibility to allow them to remain temporarily in the United States until the situation in Kuwait improves.

We urge you to issue an Executive Order which would provide these repatriated families four years temporary status and work authorization until it is safe for Palestinians to return to Kuwait. This order is in the same vein as the order issued for Chinese Nationals following the Tiananmen Square crisis.

Mr. President, we commend your efforts in coming to the aid of these families by airlifting them out of Kuwait after the invasion and bringing them to safety in the United States. We ask that you continue your leadership by allowing them to remain temporarily in the United States until the conditions improve for Palestinians in Kuwait.

Sincerely,

Terry Sanford, Edward Kennedy, Al Gore, John Chafee, Mark Hatfield, Alan Cranston, James Jeffords, Paul Simon, Barbara Mikulski, Daniel Inouye.

J. Bennett Johnston, Claiborne Pell, Charles Robb, John Terry, Harris Wofford, Herb Kohl, Brock Adams, John Warner, Paul Sarbanes, Paul Wellstone, John Breaux.

TRIBUTE TO FRANKLIN A. POLK

Mr. GLENN. Mr. President, recently, I was saddened to learn of the passing, at age 80, of one of Cleveland's more well known and involved citizens, Franklin A. Polk. Mr. Polk, who was the father of Minority Chief Counsel Franklin G. Polk of the Governmental Affairs Committee, had a distinguished career for more than half a century as a lawyer, public servant, and politician. He served for 8 years on the Cleveland School Board from 1943–51, and was the Republican candidate for mayor of Cleveland in 1949. Mr. Polk was active in many religious and fraternal organizations, and served for many years as a delegate to the American Bar Association House of Delegates and the Ohio Bar House of Delegates.

His career, and in particular, his dedication to meeting the legal needs of generations of Cleveland families were chronicled in an article last August in the Alumni Journal of John Carroll University.

I ask unanimous consent that the article, entitled, "The Neighborhood Counselor," be printed in the RECORD.

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

THE NEIGHBORHOOD COUNSELOR

For 51 years they climbed his steps. Many spoke little or no English. Most had problems large and small in adjusting to life in a new country.

In the late 1940s, these so-called displaced persons—refugees from a Europe prostrated by war and shaken by the recent Communist takeover of Czechoslovakia and other Central European countries—flooded Cleveland, looking for work, which at the time was plentiful and family counselors who spoke their language, which were not. As they had for decades before, many settled in the neighborhood around Broadway and E. 55th, once called Little Bohemia for its dense concentration of transplants. And at 5725 Broadway on the second floor above a bank, Franklin Polk 35 was always available to dispense family legal services or simple guidance.

While he and his assistants juggled the details of hundreds of small cases—from the minutia of probate work to the arcane muddle of immigration law—he nevertheless managed always to remain an exceedingly public man. He founded a trial attorneys' group, served as president of the county bar association just eight years after becoming a lawyer, and agitated at every chance he could against abortion. He even made a credible run for mayor of Cleveland once.

And still he found time for prodigious professional mentoring. He remembers how difficult it was to establish a practice in 1940, when he first raised his shingle. "There were more guys running street cars than practicing law," he says. And so, over the years he sent a mass mailing to newly minted attorneys, offering them free overhead if they would come to his office and take up some of the bounteous casework he generated. One hundred and sixteen young attorneys took him up on the offer over the years. His alumni group, as he calls it, forms a network of admirers. One even chauffeurs him around town today.

But in April, coinciding with his 80th birthday; Franklin Polk reluctantly closed the office whose 24 steps he could no longer negotiate with his swollen legs, brought on by a heart condition. And with that, a final chapter was written in the career of one of Cleveland's pioneering family lawyers.

If you're Franklin Polk you got used to a life full of jaring contrast. As a national delegate to the American Bar Association, he once accompanied powerhouse lawyers from huge international firms to London, where they had an audience with the royal family. Then he would return to his dingy walk-up office with the minimalist formica paneling to minister to people from the old neighborhood, who came seeking his help on a range of family matters—legal and otherwise. "You never knew what was going to come up the steps," says his former secretary.

"I hear (about) a lot of lawyers having trouble getting business," says his son, Franklin, Jr., now the minority chief counsel and minority staff director of the U.S. Senate Governmental Affairs Committee. "But he always had a certain magic for that." His son remembers dinners in his childhood routinely interrupted by the interminable phone calls from clients. They were even waiting on hold when he would walk through the door at night.

"It was natural for these people to seek advice from a fellow ethnic," says James Masek, the editor of the *Neighborhood News*, which has chronicled the Old Broadway area since the paper's founding in 1920. "They're kind of suspicious of other people. And Frank was patient with people. He had the natural ability to get along with people."

And he knew their languages, at least portions of four. In addition to Czech, he spoke some Polish, Moravian and Slovak. (Czechoslovakia, a creation of the Versailles Treaty following World War I, represents a geographical marriage of three Slavic peoples—Czechs, Slovaks and Ruthenians).

Polk's brand of loyalty seems torn from the pages of a romance novel: extraordinarily appealing—rousing, even. Just hard to believe. In 1928, intent on helping his father, a clothes presser, find new work after he was partially disabled in an accident on the job. Polk approached the councilman of Ward 33, asking for help in securing a card from the city that would entitle the elder Polk to clip grass at city parks for $3 a day. The Republican councilman agreed. And 63 years later, Frank Polk remains a Republican out of an insistence on honoring a debt of gratitude to a man who has been dead for decades.

Like most ethnic, Catholic neighborhoods in the early and middle parts of this century, the Old Broadway area was dominated by a strong pastor. In this case, though, Monsignor Oldrich Zlamal was actually an international figure. Chosen by the National Catholic War Council in 1919 to travel to the newly established country of Czechoslovakia to lecture on American democracy. Fr. Zlamal kept his hands in foreign affairs even as he ran his neighborhood for forty years, until his death in 1955. On the verge of World War II, he raised money in the U.S. for a Czechoslovakian defense fund, and after the war, he organized relief efforts. He was therefore courted by a succession of Czech presidents, eager to keep the foreign aid flowing. The personal ties he formed translated into a stream of Czech immigrants for his neighborhood back in Cleveland.

In fact, through the trans-Atlantic human pipeline he helped erect, so many Czechs would land in Cleveland that it eventually became the world's fourth largest center of Czech population, trailing only Prague, Vienna and Chicago. "There is no truth to the rumor," one journalist joked during World War I, "that the capital of the Czechoslovak Republic will be removed from Prague to the neighborhood of Broadway and East 55th Street." This flood of immigrants and their families would form the core of Franklin Polk's client base.

Three boys—friends to this day—grew up in that neighborhood, attended South High and worshipped at Our Lady of Lourdes: Charlie Vanik, later a 13-term U.S. Congressman from Ohio; Ralph Perk, Republican mayor of Cleveland in the 1970s; and Franklin Polk.

Like his boyhood friends, Polk had his shot at high public office. But his one major plunge into elective politics should have been enough to convince him that his penchant for speaking his mind perhaps better suited him for the courtroom than political office.

In 1949, Polk ran for mayor of Cleveland as something of an unlikely combination: a Republican populist. From the outset, his chances of winning in a heavily Democratic city weren't good. But neither was Polk, who had once polled more than 120,000 votes to win a seat on the Cleveland school board, a political novice. He launched his mayoral campaign from his neighborhood by speaking briefly in Czech (drawing the wrath of local newspaper editorialists, who didn't take kindly to the sound of Slavic languages while the Iron Curtain was descending on Europe), and promptly went on a rhetorical offensive against the political status quo and Cleveland's downtown establishment.

But most of all, he launched a frontal assault on the incumbent mayor, Tom Burke, "Who has done less actual work than Mayor Tom?" Polk asked in a speech to the Lion's Club a few weeks before the election. "When he's not on the Great Lakes, he's in Tucson. When he's not in Tucson, he's in Nassau."

Just days before voters went to the polls, he charged that his opponent's policies were

driving people from the city, which had recently slid from the sixth to seventh most populous in the country. "People are moving from the traffic-choked arteries, the polluted lakes and rivers, the smoke and the dirt," he said. He likened Cleveland's potential to the situation in Pittsburgh a healthy city that was beginning to scrub itself up under a young, vigorous new mayor. If Cleveland voters saw a parallel in there somewhere, the 38-year-old Polk offered no objections.

More than 40 year later, the history books record only the lopsided vote total, and that he was on the wrong side of the count. As a result, his opponent's name lives on through a namesake airport on Cleveland's lakefront, and Frank Polk returned to his legal practice, a footnote in the annals of Cleveland political history. There was, however, a forgotten story arising from that race, though it's not one that Polk tells himself.

But his campaign manager, Ralph Perk, recounts it in detail. He recalls how the race was tight heading into the final weeks. And then self-inflicted disaster struck when Polk ventured to a ward meeting for a routine campaign talk.

During a question-and-answer session, he was asked about his plans for a cabinet in the event that he won. And with his answer—coming just one year after Jackie Robinson braved tomatoes from the stands to play Major League baseball, five years before the Supreme Court outlawed segregation in Brown vs. the Board—Franklin Polk committed political suicide by candidly observing that he thought it was time a black be appointed to the cabinet.

His campaign workers scattered and his voter support evaporated almost overnight. He lost decisively.

"I gotta tell you," says Perk, "I never saw so many people leave a campaign in my life. It backfired more than anything I've ever seen in politics."

"He was too far ahead of his time," he adds.

Franklin Polk isn't sailing into retirement amiably like some placid model in a Norman Rockwell print. His pale, blue eyes grow stormy when the subject arises. He equates the end of his legal career with the end of life itself (he will refer to this story as "my obituary").

But if being a trailblazer provides any comfort, he's earned that many times over.

"One of the great things about Franklin Polk is that he pioneered the family practitioner," says Charles Vanik, who left Congress in 1981 and now practices law in Washington. "They're just starting to recognize the importance of family practices, like in medicine. Someone who stays with you all your life," he says.

"I always thought the people came to him almost as a priest," says his daughter, Loretta. "They came to him and said, my son's in trouble. And he'd talk to them. And ten years later, the family would give him their legal business." He could have climbed higher up the ladder of success, she says, but the neighborhood he loved always drew him back. "He liked the people. They were real people with real problems."

And Franklin Polk, the man who mails 2,000 Christmas Cards, ought to be proud of that.

CAPITAL RESEARCH CENTER

Mr. WALLOP. Mr. President, I would like to bring to the attention of my colleagues an organization which has proved to be an invaluable resource.

The Capital Research Center, located here in Washington, DC, publishes materials which are indispensable to keeping track of the myriad political action committees, special interest groups, tax-exempt foundations, and other related political organizations which crop up in this town every day. The center describes itself as "a nonprofit tax-exempt, educational organization" that "provides documented information and reliable assessments that donors, public officials, and other individuals can use to make informed decisions on these new and influential organizations."

The center's publications have become an oft-utilized resource for both myself and my staff in performing the day-to-day operation of my office. Let me briefly describe some of the services and products available from the Capital Research Center.

Perhaps the most useful item the Capital Research Center publishes is its report entitled "Patterns of Corporate Philanthropy." This book documents, on an annual basis, the donation practices of major American corporations. Mr. President, the details are truly astounding. Major American corporations give hundreds of thousands—if not millions—of dollars to liberal political groups which advocate policies diametrically opposed to the interests of American business. The liberal groups benefiting from this philanthropy also support, work with, and give financial backing to policial candidates who are ardent foes of American business.

The problem, Mr. President, is that most of us would not have this kind of information at our fingertips. It is impossible to keep track of all the groups which lobby Members of Congress and send them information. Like most Members, my office receives numerous inquiries from constituents requesting information about groups which have contacted them about issues or sought contributions. It is very helpful to have this type of information readily available.

The Capital Research Center publishes "Studies in Organization Trends," a series which analyzes "the role of interest groups; their activities, leadership, and funding sources; and their influence on the policy process." The first of these monographs, published in 1986, was "Second Front: Advancing Latin American Revolution in Washington." It documented the extensive network of leftist groups in the United States operating on behalf of Marxist governments in Central and Latin America—like Castro in Cuba or the Sandinistas in Nicaragua—and Communist insurgency movements such as the FMLN in El Salvador. Last year Capital Research Center published the fifth in this series, "Protecting the Environment: Old Rhetoric, New Imperatives," which took an in-depth look into the activities, personnel, and funding of environmental groups.

Finally, Capital Research Center also puts out a monthly newsletter, Organization Trends, which "reports on and analyzes the activities and aims of advocacy and grant-making organizations." A recent issue entitled "Targeted Voter registration: Nonpartisan Rhetoric, Partisan Reality" discussed the forces behind the vote registration movement in this country. Since another cloture vote on the "motor voter" bill is looming over the Senate, awaiting the call of the majority leader, this Senator felt it would be helpful for Senators to have information on the current activities of several supposedly "nonpartisan" voter registration groups.

According to the center, one of these organizations, called Project VOTE, was designed "to pioneer the strategy of registering citizens to vote as they waited in long lines to collect unemployment, food stamps, and social services." Although Project VOTE has claimed not to be working on behalf of any party of individual candidates, its literature leaves little doubt as to whom it would like to see win elections.

During the 1990 Senate elections, Project VOTE issued reports describing polling results in a number of close races. In North Carolina, Project VOTE pointed to polls indicating a lead of 4 percent held by our colleague, Senator HELMS. Not surprisingly, Project VOTE then chose as its registration goal 5 percent of the expected turnout. In describing the Kentucky Senate election of that year, Project VOTE characterized our colleague, Senator MCCONNELL, as being vulnerable because of his "weak record on the environment, strong antichoice position and promilitary stance." Since my friend from Kentucky won rather handily, considering the demographics of his State, this Senator wonders if maybe it is Project VOTE that is seriously out of touch with the electorate.

Project VOTE's pervasive bias should not come as any surprise, Mr. President, because the membership of Project VOTE's advisory board is heavily tilted to the left. It is comprised of numerous representatives of big labor and those from ultraliberal political groups such as NOW, the nuclear freeze group SANE, the Sierra Club, and Americans for Democratic Action. Similarly, much of the funding for Project VOTE comes from the organized left, including many unions and liberal foundations.

Mr. President, so that my colleagues can learn more about Project VOTE and other voter registration groups, I ask unanimous consent that articles contained in the November 1991 issue of Organization Trends be printed in the RECORD at the conclusion of my remarks.

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

[From the Organization Trends, November 1991]

TARGETED VOTER REGISTRATION: NONPARTISAN RHETORIC, PARTISAN REALITY

In 1984, major segments of America's political left collaborated in a large-scale effort to register and mobilize vast new numbers of typically apathetic poor and minority voters.

Aided by nearly $7,000,000 in foundation grants to voter registration drives, many so-called "progressives" believed that with a huge influx of newly politicized voters who would vote according to their "class interests," a fundamental change in the character of political parties would occur and government policy would move decidedly to the left.

But the ability of the Republican Party effectively to mobilize equal numbers of new voters largely quashed such hopes. By 1988, if not earlier, as David Moberg reported in the September 21–27, 1988, issue of the socialist newspaper In These Times, many of the left had become apathetic about the extent to which broadbased voter registration among minorities and the poor might effect a radical transformation of American politics. Resources that year were concentrated in only 20 "key states" instead of being "spread over 40 [states] as in 1983–1984."

This observation seems to underscore a reluctant but practical move by "progressives" away from a grander vision of radically transforming politics toward an emphasis on targeting voter registration in specific states or localities (as Moberg says, "key battlegrounds") where important elections are expected to be close, and thus where a small percentage of "swing votes" can effect the outcomes favorably.

The efforts of at least two leading "nonpartisan" voter registration groups lend support to this thesis.

PROJECT VOTE!

A self-described "non-partisan, charitable organization working to increase minority and low-income voter participation," Project VOTE! was created in 1982 "to pioneer the strategy of registering citizens to vote as they waited in long lines to collect unemployment, food stamps, and social services."

As explained in an article by Richard A. Cloward and Frances Fox Piven in The Organizer, published by a training affiliate of the Association of Community Organizations for Reform Now (ACORN), the time was "ripe for issue-oriented drives among the millions of unregistered clients of the welfare state" against "the corporate-Republican alliance" and "militarization."

This would be accomplished by "taking advantage of the way the welfare state concentrates non-voters" who "congregate on its lines and in its waiting rooms. One example of an organization which is already experimenting with this technique is called Project VOTE. Volunteer registrars are assembled in a particular city on the day that food stamp recipients receive their vouchers in the mail. As lines begin to form at the banks and check cashing centers where the vouchers are exchanged for food stamps, Project VOTE volunteers distribute fliers dramatizing past and pending cuts in the food stamp program, pass out registration forms, and warn that food stamp benefits will be lost unless people register and vote. (The registration forms are collected after being filled out, names and addresses are copied for follow-up, and then the forms are turned over to local boards of election.) These tactics make it possible for small groups of volunteers to register thousands of people in a day."

Based in Washington, D.C., Project VOTE! and its roughly 100 local affiliates have registered over 1,200,000 voters, often in collaboration with "local coalitions of civil rights, labor, women's religious, poor people's advocacy, peace, citizen action, environmental, and other groups" like the United Auto Workers, Operation Big Vote, the A. Philip Randolph Institute (which led the drive in 1989 to elect Democratic Virginia governor and Presidential hopeful L. Douglas Wilder), the National Coalition on Black Voter Participation, and the National Association for the Advancement of Colored People.

Project VOTE! claims that it does not "help any candidate or party" and that its mission is solely to "make democracy work for all Americans." Its registration and education efforts, however, evince a decidedly pro-welfare stance, and its literature indicates that it has specific political and electoral outcomes in mind.

One "educational" flyer advises new registrants to "Vote For" "day care," "Head Start," and "health care." Another says that "[e]vents in Eastern Europe have created a new reality and a critical window of opportunity to dramatically cut military spending and the threat of nuclear war" and that "The 1990 elections could decide whether we permit that opportunity to pass us by" or "reap a peace dividend to save our environment, our educational system, and our cities."

Through new voter registration, "we'll no longer see a vast range of social programs sacrificed to pay for wasteful and unending military buildups. We can take the immense natural wealth of America back from the exploiters, developers and polluters."

Project VOTE!'s pronouncements indicate an interest in election outcomes that is more than incidental:

"Decisive results in key [1990] Senate and Governors races [could] mark the death knell—or the rebirth—of attempts to restrict abortions."

"With three Supreme Court justices passing age 90, and two others passing 77 by the time Senators elected this year stand for reelection, the 1990 elections will play a key role in deciding the makeup of the Supreme Court for decades to come."

"Governors chosen in '90 will draw the new election district lines—deciding the outcome of hundreds of elections until the year 2002."

"These elections will decide which party controls the Senate. That means deciding whether Jesse Helms or Claiborne Pell chairs the Foreign Relations Committee—and whether Strom Thurmond or Joe Biden chairs the hearings on future Supreme Court nominees."

TRANSLATING CONCERNS INTO ACTION

In translating these concerns into action, Project VOTE! carefully targets its registration and education campaigns in states where slight shifts in votes or influxes of new voters are likely to put Democratic candidates in office.

A report outlining Project VOTE!'s 1990 registration strategy, released four months before the November elections, notes that pre-election polls in North Carolina showed Democratic Senatorial candidate Harvey Gantt trailing "vulnerable Republican incumbent" Jesse Helms by only 4 percent. Project VOTE! therefore sought to register 80,000 new voters, "approximately 5% of expected turnout [emphasis in original].

Again, in Kentucky, where Democratic Senatorial candidate Harvey Sloane challenged incumbent Republican Mitch McConnell, whose "weak record on the environment, strong anti-choice position and pro-military stance [made] him vulnerable," Project VOTE! sought to register 19,000 voters, or 2.9 percent of the expected turnout.

Similar strategies were followed in the "priority states" of Michigan, Rhode Island, Texas, Florida, South Dakota, and Colorado. Project VOTE! claims these efforts merely describe the "political contests" of its 1990 "non-partisan voter registration and education drives. . . ."

As with most voter registration groups, Project VOTE! combines registration with "persistent" and "intensive education." Follow-up letters and telephone calls "emphasize how decisions made by elected officials affect the registrants' lives" and are "carefully framed to be persuasive."

Given the dependency of Project VOTE!'s registrants on welfare programs, one may surmise that persuading them to vote in the desired direction is not particularly difficult. Project VOTE! estimates that such efforts have resulted to 82–87 percent turnout rates.

"THE WINNING MARGIN"

Project VOTE! also claims registrants have exceeded the winning margin" in four U.S. Senate races, five U.S. House of Representatives races, 23 state and local races, and the 1989 Virginia governor's race.

Paul Simon (D–IL), a leader in the recent fight against confirmation of Judge Clarence Thomas as an Associate Justice of the U.S. Supreme Court, says he "won election to the U.S. Senate [in 1984] by just 89,000 votes. Project VOTE! registered 131,000 new voters in Illinois. If it hadn't, I probably wouldn't be in the Senate."

Representative Peter Hoagland (D–NE) likewise remarks, "I won the election by 2,981 votes" and effuses that "if not for the voters you registered in my district, the outcome might well have been different."

Project VOTE!'s board of advisors includes several representatives of organized labor, among them Morton Bahr, Communication Workers of America; Owen Bieber, United Auto Workers; Mary Hatwood Futrell, National Education Association; Gerald McEntee, American Federation of State, County and Municipal Employees; Jack F. Moore, International Brotherhood of Electrical Workers; Vincent Sombrotto, National Association of Letter Carriers; John Sweeney, Service Employees International Union; Lynn Williams, United Steel Workers of America; and William A. Winpisinger, International Association of Machinists.

Other board members represent some of the nation's principal activist left groups:

Ira Arlook, Citizen Action.

Asia Bennett, American Friends Service Committee.

Kenyon C. Burke, National Council of Churches.

David Cortright, SANE/FREEZE.

Linda Davidoff, Human SERVE Fund.

Marian Wright Edelman, Children's Defense Fund.

Pablo S. Eisenberg, Center for Community Change.

Robert Greenstein, Center on Budget and Policy Priorities.

John E. Jacob, National Urban League.

Steve Kest, ACORN.

Michael McCloskey, Sierra Club.

Marc A. Pearl, Americans for Democratic Action.

Faye Wattleton, Planned Parenthood Federation of America.

Molly Yard, National Organization for Women.

Barry Zigas, National Low Income Housing Coalition.

With 1989 total revenue of $703,000 (of which only $458,000 was expended), Project VOTE! and its parent organization, Americans for Civic Participation, received support from such sources as the American Express Foundation (at least $5,000), Patrick and Anna M. Cudahy Fund ($5,000), General Mills Foundation ($5,000), Joyce Foundation ($50,000), Public Welfare Foundation ($40,000), and Rockefeller Family Fund ($25,000).

Similar 1988 donors included the Cudahy Fund ($5,000), Joyce Foundation ($40,000), Max Kade Foundation ($35,000), J. M. Kaplan Fund ($35,000), Rockfeller Family Fund ($15,000), and Z. Smith Reynolds Foundation ($50,000).

Project VOTE! and the Institute for Effective Action, a nonprofit which provides technical assistance to "people's organizations" and which helped design Project VOTE!s volunteer training materials, have received recent support in unspecified amounts from such other sources as the Campaign for Human Development, Center for Community Change, International Association of Machinists, International Brotherhood of Electrical Workers, International Union of Bricklayers, National Education Association, Service Employees International Union, United Steelworkers, Vanguard Public Foundation, Winthrop Rockfeller Foundation, and Youth Project.

OPERATION BIG VOTE

Another leading voter registration group is Operation Big Vote, created in 1976 to conduct "intensive voter education, registration and Get-Out-The-Vote (GOTV) activities in black communities" around the country.

OBV is a project of the National Coalition on Black Voter Participation, a Washington, D.C.-based "nonprofit, nonpartisan, tax-exempt membership organization committed to enhancing and protecting the right of full political participation by African-Americans and other minorities."

As part of its effort to develop "autonomous nonpartisan voter coalitions in local communities," NCBVP in 1990 provided training and technical assistance to such organizations as the Center for Policy Alternatives, Joint Center for Political and Economic Studies, NAACP Legal Defense and Educational Fund, American Federation of State, County and Municipal Employees, and League of Women Voters. Forty-five local OBV coalitions also received financial assistance and training through lectures, seminars, and voter registration and education workshops.

NCBVP emphasizes states where OBV coalitions are active according to five criteria: a large black population, large numbers of unregistered blacks, a record of low or uneven black voter turnout, the existence of local registration organizations, and "elections having a particular impact on the black community during a given year at the federal, state or local level."

This last criterion strongly resembles Project VOTE!'s concern with particular election outcomes, a concern seemingly reflected in NCBVP's funding of local OBV coalitions. NCBVP's annual report for 1990 says that of "45 OBV coalitions active in 27 states" that year, only 20 coalitions in 15 states received NCBVP funding.

IRS records further show that of $23,000 disbursed to local coalitions in 1990, funding was concentrated in four states, which received nearly 50 percent of all voter registration and education funds: California ($3,000 to 2 coalitions); North Carolina ($2,000 to 2 coalitions); Ohio ($4,000 to 3 coalitions); and Texas ($2,000 to 2 coalitions). The other 11, all in different states, each received grants of $1,000 or less.

Major electoral contests—all predicted to be especially close or to have important political ramifications—occurred in at least four of these states in 1990:

In California, where the governor's race between former San Francisco Democratic mayor Dianne Feinstein and Republican Senator Pete Wilson was expected to be (and was) very close and where the state was expected to pick up from six to eight new seats in the U.S. House of Representatives through reapportionment.

In North Carolina, where former Charlotte Mayor Harvey Gantt was trying to unseat incumbent Republican Senator Jesse Helms.

In Ohio, where Republican gubernatorial candidate George Voinivich, whose campaign platform included a commitment to reform and streamline state-administered welfare agencies, was running against incumbent Democrat Richard Celeste.

In Texas, where pro-abortion state treasurer and Democratic gubernatorial candidate Ann Richards opposed anti-abortion Republican Clayton Williams. Texas also was expected to gain several new Congressional seats in post-Census redistricting, a process which affects the contexts of political campaigns and which also requires final approval by the governor.

NATIONAL VOTER REGISTRATION ACT

NCBVP regards the National Voter Registration Act, which would mandate automatic voter registration in all state drivers' license bureaus and welfare agencies, as "a step in the right direction" that "would allow registration groups to focus more . . . scarce resources on those members of our community that [would still be] unregistered as well as on get-out-the-vote activities." (See related article, pages 4–5.)

NCBVP's 44-member board of directors, strikingly similar in composition to Project VOTE!'s advisory board, includes such individuals as Clifford Collins of the National Association for the Advancement of Colored People, Coretta Scott King of the Martin Luther King, Jr. Center for Nonviolent Social Change, and Robert McAlpine of the National Urban League, in addition to Richard Womack of the AFL–CIO and such union figures as:

Leonard Ball, Coalition of Black Trade Unionists.

William Burris, American Postal Workers Union.

Louis Brady, International Union of Operating Engineers.

Mary Mays-Carroll, Communications Workers of America.

Douglas Couttee, United Food and Commercial Workers International Union.

Don Jackson, United Auto Workers.

William Lucy, American Federation of State, County and Municipal Employees.

Leon Lynch, United Steel Workers of America.

James M. McGee, National Alliance of Postal Workers and Federal Employees.

Phil McLaurin, National Education Association.

Earl Robinson, International Association of Machinists and Aerospace Workers.

William Stodghill, Service Employees International Union.

Foster Stringer, Jr., American Federation of Teachers.

This pattern is also reflected in NCBVP's 88 member organizations, among which are the AFL–CIO, American Federation of Teachers, Joint Center for Political Studies, Leadership Conference on Civil Rights, Martin Luther King, Jr. Center for Nonviolent Social Change, National Association for the Advancement of Colored People, National Urban Coalition, National Urban League, Operation PUSH, Southern Christian Leadership Conference, and United Auto Workers.

NCBVP's total 1990 support of $259,261, of which almost 50 percent was allocated to Operation Big Vote, was derived (in unspecified amounts) from such donors as the AFL–CIO, American Federation of State, County and Municipal Employees, United Food and Commercial Workers Union, and United Steel Workers of America; Anheuser-Busch; the American Express, Cummins Engine, Ford, Joyce, Meyerhoff, and Rockefeller foundations; and the U.S. Bureau of the Census.

(For additional background, see the following articles in previous issues of Organization Trends: "Voter Registration and Ideological Politics," December 1984; "Ideological PACs and the 1988 Elections," August 1988; "Nonprofits and the Presidential Campaign of 1988," July 1988; and "Foundation-Supported Voter Registration: How Nonpartisan?," November 1987.)

NATIONAL VOTER REGISTRATION: A BOON TO THE LEFT?

For several years, federal legislation has been pending to require all states automatically to register voters in drivers' license bureaus and state human services agencies, such as welfare, unemployment, and vocational rehabilitation offices.

Proponents argue that such "agencybased" registration would increase voter turnout significantly as "an important expansion of democratic rights." Last year, the National Voter Registration Act overwhelmingly passed the U.S. House of Representatives, but it has yet to be considered by the Senate.

One group spearheading the drive for enactment Service Employees Registration and Voter Education (Human SERVE) Fund, a "national, nonpartisan voter registration reform organization which has been working for 10 years to establish voter registration services in all state offices serving the public."

Founded in 1983 by Frances Fox Piven and Richard A. Cloward, two "activist-scholars" who "have spent two decades working on welfare rights movements and similar efforts to increase the political organization and participation of the poor." Human SERVE has lobbied successfully for state-level "motor voter" registration. Fifteen states and the District of Columbia now register voters in motor vehicle departments, and several other states register welfare and unemployment claimants.

Human SERVE estimates that voter registration in all drivers' license bureaus would raise national registration from the present 60 percent to 91 percent. Most of the newly registered would be poorer and minority persons with historically lower registration and voting rates. While fewer poor and minorities own cars, many still register to drive or acquire photo identification. As one observer says, "This nicely takes the pro-welfare sting out of the project."

Yet Human SERVE says registration in all motor vehicle departments still would leave "residual inequalities" in registration rates, since rural and white persons are more likely to drive than urban and minority persons; in states with lower overall percentages of drivers, like New York, such disparities are potentially great.

Human SERVE therefore believes registration in all state human service agencies would capture another 4 percent of the voting age population and raise the national registration rate to 95 percent, the highest attainable level.

The group warns that "if the federal bill does not pass," and if racial and income disparities persist, "the voting rights community will be compelled to initiate a whole new series of costly and time-consuming law suits in states with lower drivers' license rates." The "prudent approach" is "to support passage of the federal bill, and then to litigate if states fail to implement human service registration as widely and uniformly as in driver agencies."

Not surprisingly, the National Voter Registration Act is supported by "a broad range of good government, public interest, civil rights, and labor groups" which, by automatically registering nearly all adult Americans, could focus primarily on "education" and get-out-the-vote efforts among select classes of voters.

The same would hold for both major political parties, however; and genuinely nonpartisan voter registration and education groups could refocus their efforts primarily toward disseminating useful, unbiased information. Those who believe the Act is a panacea to benefit preferred candidates could find their hopes short-lived, as did many on the left during the massive 1984 registration campaign.

In 1989, Human SERVE received $20,000 from the J. Roderick MacArthur Foundation and $15,000 from the Rockefeller Family Fund. Liberal Senators Bill Bradley (D-NJ) and Alan Cranston (D-CA) have commended Human SERVE'S work, as have such organizations as the Indiana Civil Liberties Union, Jobs With Peace Campaign, Lawyers' Committee for Civil Rights Under Law, People for the American Way, Project VOTE!, and Ralph Nader's Public Interest Research Group.

A NONPARTISAN ALTERNATIVE: VOTE AMERICA

Created in 1982, the Washington, D.C.-based Vote America Foundation, by registering young voters and encouraging traveling Americans to vote absentee, seeks to "safeguard that most precious freedom: the right to vote."

With support from foundations, individuals, and corporations, Vote America committed nearly half its $783,000 budget in 1990 to "educating and motivating young Americans, aged 18 to 24, to register and vote."

Chairman Joe M. Rogers says, "We should once again expect our educational system to produce adults who can read the newspaper, understand the relative context of an issue presented on the evening news and even recount the struggles of those who have fought and died for the right to vote here and around the world."

Vote America maintains a diversity of programs:

At the high school level, it distributes a curriculum packet with information on "the history and mechanics of voting," statewide elections, and registration deadlines.

At the college level, student groups and/or administrators receive comprehensive registration materials with information on organizing campus registration drives, statewide elections, and registration and voting requirements in all 50 states.

Travel industry companies each year place "reminders" to vote absentee "in hotel rooms, rental car agencies, airport, clubrooms, airplanes, cruise ships, travel publications, bus stations and travel agent ticket envelopes."

Hundreds of other companies receive materials for company-wide registration programs. Participating firms provide absentee ballot forms for traveling employees, conduct on-site voter registration in cafeterias and reception areas, pass out absentee ballot applications to customers, give employees time off to vote on election day, and otherwise remind employees about registration and voting deadlines through memos, newsletters, and bulletin board announcements.

There also is a nationwide campaign of public service advertisements in both the broadcast and print media. "During the three months prior to [last year's] Election Day, Vote America television spots were aired more than 86,000 times, generating an estimated three billion viewer 'impressions.'" Radio announcements created an additional 492,000,000, listener impressions.

Vote America's efforts show that voter registration and education need not be calculated or partisan. Among the organization's major donors in 1990 were American Airlines, AT&T, Bell Atlantic Charitable Foundation, Grey Advertising, Merrill Lynch, Philip Morris, Phillips Petroleum and Ryder.

THE CONSTITUTION DOES NOT REQUIRE CONGRESS TO EXEMPT ITSELF FROM THE LAWS

Mr. NICKLES. Mr. President, 3 weeks ago the Senate defeated two amendments of mine that would have made the Congress of the United States subject to many of the same laws that apply to everyone else in this country. The first amendment would have made Congress subject to the same civil rights laws and enforcement practices and to the same labor laws and enforcement practices that Congress requires the rest of the country to live under. The second amendment would have made the Senate subject to jury trials and punitive damages in employment discrimination cases under the same terms and conditions as the Senate was then—in the very bill before it—applying to other employers throughout the country.

During debate on those amendments, a few Senators said they believed my amendments were unconstitutional because they violated separation of powers principles. I said then that the Constitution raised no bar to my amendments. I repeat that position today and am pleased to be joined in that opinion by one of America's outstanding legal scholars, Bruce Fein. Mr. Fein asks in a recent article the same question I put to the Senate, "How can it be seriously argued that a congressional decision voluntarily to apply ordinary principles of law to its own Members would violate the Constitution?" In answer, Mr. Fein quotes the Supreme Court: "Our system of jurisprudence rests on the assumption that all individuals, whatever their position in Government, are subject to Federal law."

The American people are not willing to be governed by an elite corps of lawmakers who put burdens on the people that they (the lawmakers) are not willing to bear themselves. That is why this issue is not behind us; that is why the Senate's recent half-hearted efforts will not suffice. When this issue returns to the floor, I am confident that more and more Senators and Representatives will agree that the Constitution does not demand hypocrisy from nor privilege for the Congress of the United States. The Constitution of the United States does not bar Congress from abiding by the same rules and procedures that govern all other Americans. Mr. Fein's recent article makes this point effectively, and I ask that his article be placed in the RECORD at the conclusion of my remarks.

Mr. President, I am reminded often of the wisdom of this Nation's founders. On this subject, for example, I doubt that the advice of James Madison, our great patriot and scholar, can be improved upon. Madison is the greatest lawmaker the United States has known. He may be the greatest lawmaker in history, for he is the father of the Constitution of the United States and the principal author of the Bill of Rights. Madison wrote:

> [The House of Representatives is] restrain[ed] from oppressive measures [because] they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? I answer, the genius of the whole system, the nature of just and constitutional laws, and above all the vigilant and manly spirit which actuates the people of America, a spirit which nourishes freedom, and in return is nourished by it.
>
> If this spirit shall ever be so far debased as to tolerate a law not obligatory on the Legislature as well as on the people, the people will be prepared to tolerate anything but liberty. *The Federalist* no. 57 (J. Madison).

Making Congress subject to the same laws that govern all Americans is not the kind of harm the Constitution sought to protect Congress against. Indeed, in Madison's view, the Constitution and the spirit of liberty combine to make congressional coverage under the laws obligatory. There is no constitutional obstacle to removing the artificial barriers that now insulate us from the real world. The Congress has thrown up those barriers and the Congress can take them down, and it is time—and past time—that we did so.

I thank the Chair.

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

[From the Washington Times, Nov. 19, 1991]

CONGRESSIONAL FLIMFLAMMERY

(By Bruce Fein)

Why are so many Members of Congress held in low esteem? A major reason is their recurring insouciant intellectual dishonesty. Most will brandish any argument that furthers their personal or political welfare, no matter how preposterous.

Take the 1991 Civil Rights Act and numerous other laws that hold Members of Congress to a lesser legal obligation or provide more lenient enforcement procedures than obtain for the ordinary citizen. Senate Majority Leader George Mitchell, Maine Democrat, and House Speaker Thomas Foley, Washington Democrat, ardently defend the aristocratic legal privileges of Congress, a descendant of the First Estate in pre-revolutionary France. They and a majority of other members brainlessly bray that constitutional separation of powers principles require their regal treatment. They would think it lese-majeste to question whether either a syllable of constitutional text or history supports their legal elevation above those citizens who pay their handsome salaries. The notion that an assertion should be defensible by facts or reason is alien to their congressional existence.

It is thus characteristic that the Mitchell-Foley separation of powers argument is intellectual fraud, no more respectable than cold fusion.

Article I, section 6, of the Constitution provides that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other place." The initial formulations of the Speech or Debate clause simply stated: "Freedom of Speech and Debate in the Legislature shall not be impeached or questioned in any Court or Place out of the Legislature," and that wording was changed only for style and brevity. The purpose of the clause is to ensure uninhibited legislative debate and argument in congressional fora. Holding members legally accountable for such remarks and votes in judicial proceedings initiated by private parties or the executive would make the former vulnerable to intimidation through costly or harassing lawsuits. Congressional action would lose desired independence.

The narrowness of the Speech or Debate clause is fortified by the rejection at the Constitutional Convention of a proposal to make "each House, . . . [the] judge of the privilege of its own members." As Charles Pinckney, a convention delegate, later lectured: "[The Constitution] never was intended to give Congress . . . any but specified, and those very limited, privileges indeed. They well knew how oppressively the power of undefined privilege had been exercised in Great Britain, and were determined that no such authority should be exercised here. They knew that in free countries very few privileges were necessary to the undisturbed exercise of legislative duties. . . . they never meant that the body that ought to be the purest, and the least in want of shelter from the operation of laws equally affecting their fellow citizens, should be able to avoid them." Pinckney's views echoed those of the Father of the Constitution, James Madison, voiced in Federalist 57.

In sum, the Speech or Debate clause implements the Constitution's separation of powers by protecting freedom of deliberation and voting on the floor of Congress and in congressional committees. Would applying federal minimum wage and overtime provisions to Members of Congress threaten their freedom of debate and voting? Would the application of federal health, safety, or environmental statutes do so? Would authorizing private suits directly in federal district courts against members allegedly guilty of employment discrimination by on race, religion, gender, or disability undermine their independence in congressional floor or committee deliberations? Would requiring members to pay surcharges bank overdrafts?

These questions answer themselves to ordinary minds, unlike those of Messrs. Mitchell and Foley, and Supreme Court decisions confirm the obvious. They restrict the Speech or Debate clause to conduct within the "sphere of legislative activity," such as the deliberative and communicative processes by which Members participate in committee and floor proceedings with respect to the consideration and passage or rejection of proposed legislation. The cause does not reach countless acts by members, such as constituent communications, or the receipt of bribes to influence a vote.

How can it be seriously argued that a congressional decision voluntarily to apply ordinary principles of law to its own members would violate the constitution? That document fulsomely applauds legal evenhandedness. As the Supreme Court emphasized in Butz versus Economou (1978): "Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law." The Speech or Debate clause is amply vindicated by prohibiting use of a member's vote or legislative statements as evidence of a legal violation.

Subjecting Members of Congress to the same laws that govern the great mass of society, James Madison observed, "has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments . . . without which every government degenerates into tyranny." To interpret the Constitution to deny Congress the power to adopt laws needed to prevent government degeneration into tyranny, as would Mr. Mitchell and Mr. Foley, is perverse

The 1991 Civil Rights Act recognizes the imbecility of the Mitchell-Foley constitutional worries. It prohibits senators from practicing employment discrimination on the basis of gender, religion, age, or disability, coupled with enforcement procedures involving the federal courts. But Congress should do more. Each chamber should require a recorded floor vote to retain or to create any member immunities from federal law and adopt resolutions renouncing the Mitchell-Foley embrace of a constitutionally privileged caste.

RECOGNITION OF RETIRED ADM. JOHN G. WILLIAMS, JR.

Mr. GORTON. Mr. President, I have recently learned of the death of a man who exemplified what one concerned and dedicated person can achieve in a lifetime. Retired Adm. Jack Williams succeeded in his career, as an active member of his community, and as a man devoted to family.

Jack Williams graduated from the U.S. Naval Academy in 1946, and from there proceeded to enjoy a long and distinguished military career, including teaching Naval Science at Oregon State College, serving as Executive Officer of the submarine U.S.S. *Stickleback*, and as Commander of the submarines U.S.S. *Sterlet*, U.S.S. *Haddo* and U.S.S. *Daniel Webster*. He later commanded a submarine squadron in Rota, Spain. In 1980, he was promoted to vice admiral, oversaw the Pacific fleet and became Deputy Chief of Naval Operations for submarine warfare. The last of an illustrious list of achievements was his appointment as Chief of Naval Materiel.

After retirement and cessation of the global travel that accompanies a military career, Jack and his wife Dorothy returned to the Pacific Northwest, to Long Beach, where they had met. In community as in career, Jack was generous with his energies, his time, and his talents, serving as president of the Columbia River Maritime Museum in Astoria, a member of the board for the Ilwaco Heritage Museum, and as vice president of the Keyport Undersea Museum. He helped found the Northwest Submarine League, which he served as president, was active with the boy scouts, and served as president of the local school board. Because of his stature in the community, I had planned to ask Jack to serve as a member of my Pacific County Advisory Committee, but the onset of his illness precluded my doing so. I have no doubt that his contribution would have been significant.

Finally, Mr. President, Jack Williams was a family man, not just in the narrower sense of having raised, provided for, and nurtured, with Dorothy, his own nuclear family, but in a larger, more joyous way. Jack and Dorothy Williams raised five children—Jack, Trond, Curt, Barbara, and Bronk—who, by the time of his death, had brought four spouses—Barbara, Cathy, Sheila, and Roger—and nine grandchildren—John, Carl, Trond, Matthew, Alex, Tara, Kate, Katie, and Hannah—to the immediate family. This growing clan gathered frequently at Jack and Dorothy's home and enjoyed each other as it seems fewer and fewer families find time to do these days.

But this was not the full extent of Jack's devotion to family. Each Labor Day is the occasion for an ever larger reunion of the extended Williams family, who celebrate in a uniquely American fashion their common Welsh lineage, and their sheer enjoyment of each other. Many families hold such reunions every ten years or so, but few do so on a yearly basis. Last year's gathering drew nearly 150 relatives. Next year's meeting will surely be more somber with the loss of this man who was a family leader, as he was a leader in all things. But they will meet, nonetheless, and in meeting will honor his memory.

Mr. President, I extend my sincere condolences to the family and many friends of Adm. John G. Williams, Jr., a man whose numerous personal suc-

cesses contributed to the success of all he touched. In mourning his death, we also celebrate his life.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar items 432, 435, 436, 437, 438, 439, 440, 441, 442, and 443, and the following nominations reported today by the Committee on the Judiciary: William Ho-Gonzales, to be Special Counsel for Immigration-Related Unfair Employment Practices; David C. Bramlette, to be U.S. district judge; Joe B. McDade, to be U.S. district judge; Anne C. Conway, to be U.S. district judge; Sam Sparks, to be U.S. district judge; Edith Brown Clement, to be U.S. district judge; David A. Faber, to be U.S. district judge; and Monti L. Belot, to be U.S. district judge.

Mr. President, I note for the record that all four nominees for the Department of Veterans Affairs, Calendar Orders 439, 440, 441, and 442, have given a commitment to respond to requests to appear and testify before any duly-constituted committee of the Senate.

I further ask unanimous consent that the Senate proceed to their immediate consideration; that the nominees he confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid on the table en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. We concur.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF COMMERCE

Alan M. Dunn, of Virginia, to be an assistant Secretary of Commerce.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

William Stewart Johnson, of New Mexico, to be a Member of the Board of trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term expiring May 19, 1996 (reappointment).

A. David Lester, of Colorado, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for the remainder of the term expiring May 19, 1994.

Piestwa Robert Harold Ames, of California, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term expiring October 18, 1996

Wiley T. Buchanan, of the District of Columbia, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term expiring May 19, 1996.

DEPARTMENT OF VETERANS AFFAIRS

Sylvia Chavez Long, of New Mexico, to be an Assistant Secretary of Veterans Affairs (Congressional Affairs).

Allen B. Clark, Jr., of Texas, to be Director of the National Cemetery System. Department of Veterans Affairs.

Jo Ann Krukar Webb, of Virginia, to be an Assistant Secretary of Veterans Affairs (Policy and Planning).

James Ashley Endicott, Jr., of Texas, to be General Counsel Department of Veterans Affairs

U.S. INTERNATIONAL TRADE COMMISSION

Peter S. Watson, of California, to be a Member of the United States International Trade Commission for the term expiring December 16, 2000.

William Ho-Gonzalez, of Virginia, to be Special Counsel for Immigration-Related Unfair Employment Practices for a term of 4 years.

David C. Bramlette, of Mississippi, to be U.S. District Judge for the Southern District of Mississippi.

Joe B. McDade, of Illinois, to be U.S. District Judge for the Central District of Illinois.

Anne C. Conway, of Florida, to be U.S. District Judge for the Middle District of Florida.

Sam Sparks, of Texas, to be U.S. District Judge for the Western District of Texas.

Edith Brown Clement, of Louisiana, to be U.S. District Judge for the Eastern District of Louisiana.

David A. Faber, of West Virginia, to be U.S. District Judge for the Southern District of West Virginia.

Monti L. Belot, of Kansas, to be U.S. District Judge for the District of Kansas.

STATEMENT ON THE NOMINATION OF WILEY T. BUCHANAN

Mr. WARNER. Mr. President, addressing the most recent action by the Senate relating to the Executive Calender No. 438, referencing Wiley T. Buchanan to be a member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development, I have had the privilege of knowing that distinguished citizen for some many years and, indeed, his father. I wish to congratulate him for having taken on this important responsibility and having been so nominated by the President of the United States. I am confident he will discharge his responsibilities in a very commendable manner in the best interests of our Nation.

I admired greatly Wiley T. Buchanan, Sr., former U.S. Ambassador to Austria. He is survived by his equally distinguished wife, Ruth, mother of the President's nominee.

STATEMENT ON NOMINATIONS OF JO ANN K. WEBB, SYLVIA CHAVEZ LONG, ALLEN B. CLARK, AND JAMES A. ENDICOTT TO POSITIONS AT THE DEPARTMENT OF VETERAN AFFAIRS

Mr. SPECTER. Mr. President, as ranking minority member of the Committee on Veterans' Affairs, I am pleased to support the confirmation of the nominations of four remarkable individuals to key positions at the Department of Veterans Affairs [VA]. Each nominee is highly qualified for the post to be assumed.

I am proud to say that the President's nominee to be the VA's Assistant Secretary for Policy and Planning, Jo Ann K. Webb, is a Pennsylvania native and is a graduate of the Pennsylvania State University, which she attended under the U.S. Army's Nurse Scholarship Program. Until recently, Mrs. Webb served as the Director of VA's National Cemetery System. Prior to that appointment, she had been a practicing registered nurse, a career employee at VA, and an adviser to VA on women's issues. As a registered nurse in the U.S. Army, she served as an operating nurse in, among other places, the Republic of Vietnam.

Ms. Sylvia Chavez Long, who is nominated to serve as VA's Assistant Secretary for Congressional Affairs, began her career at VA in 1989 as Deputy Assistant Secretary for Program Coordination and Evaluation. Prior to assuming this position, Ms. Chavez Long served for more than 16 years on the staff of former Representative—and currently Interior Secretary—Manuel Lujan of New Mexico as his veterans' and military liaison. She now moves to a VA position for which she is uniquely suited.

The congressional affairs activity at VA has made great strides since the arrival of Secretary Ed Derwinski and Deputy Secretary Tony Principi. Under Dennis Duffy, Deputy Assistant Secretary for Congressional Liaison, and Jo Sherman, Deputy Assistant Secretary for Legislative Affairs, the Office of Congressional Affairs has served the Congress well. I am pleased that Ms. Chavez Long, a person with a depth of congressional experience, will be overseeing this important program.

Allen B. Clark, nominated to be Director of the National Cemetery System, has most recently served the VA and Assistant Secretary for Veterans Liaison and Program Coordination. Mr. Clark served as a captain in the Special Forces in Vietnam during 1966 and 1967, where he received, among other decorations, the Silver Star for Gallantry, the Bronze Star, and the Purple Heart. Sadly, both of Mr. Clark's legs were amputated due to combat wounds in Vietnam. Clearly, however, none of his spirit was left behind in Vietnam. Since his retirement from service, Mr. Clark has received an M.B.A. from Southern Methodist University, and has been a banker and businessman as well as a spokesman for Vietnam veterans. I anticipate that he will apply that same dynamic spirit to the management of our national cemeteries.

Mr. James A. Endicott, the general counsel-designate, has resided and practiced law in Texas, and served as a domestic court master there, since his retirement from the U.S. Army in 1982. Like Mrs. Webb and Mr. Clark, Mr. Endicott is a veteran of Vietnam service. Mr. Endicott went to the George Washington University Law School while he

was a young officer stationed here in Washington and, subsequently, amassed a distinguished career in Army law before retiring in 1982 as a colonel. I believe his legal and military experience will provide a special focus and sensitivity to his duties as the Secretary's chief legal adviser and manager of the attorneys and staff in VA's Office of the General Counsel.

Mr. President, each of these nominees is a highly distinguished and qualified individual. I urge my colleagues to approve their nominations.

STATEMENT ON NOMINATIONS TO POSITIONS IN THE DEPARTMENT OF VETERANS AFFAIRS

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge confirmation of the four pending nominations to Department of Veterans Affairs positions—Allen B. Clark, Jr., who is nominated to be Director of the National Cemetery System; James A. Endicott, Jr., nominated to be general counsel; Sylvia Ann Chavez Long, nominated to be Assistant Secretary for Congressional Affairs; and Jo Ann K. Webb, nominated to be Assistant Secretary for Policy and Planning. On October 25, 1991, I chaired a hearing to consider these four nominations and yesterday, November 20, the committee voted by voice vote and and without dissent to report these nominations favorably to the Senate.

BACKGROUND

Mr. President, I would like to discuss briefly the qualifications of each of the four nominees, all of whom are well qualified to serve in the positions to which they have been nominated.

ALLEN B. CLARK, JR.

Mr. President, Allen Clark is a 1963 graduate of West Point and a highly decorated Vietnam veteran. As a Green Beret in Vietnam, he lost both legs as a result of wounds received in combat. He was awarded the Silver Star for gallantry in action, the Bronze Star, the Air Medal, the Purple Heart, two Vietnam Service Battle Stars, the Combat Infantryman's Badge, and Airborne Wings. He retired medically as a captain in 1968.

Mr. Clark earned a master's degree in business administration at Southern Methodist University in 1970. His professional career has included nearly two decades in the private sector, where he held positions in banking and industry. From 1978 to 1981 he served as a special assistant to Texas Governor, Bill Clements.

He has devoted significant time and energy to many civic organizations, including the United Way, the Dallas American Heart Association, and the Austin Vietnam Veterans Leadership Program. He also is a member of numerous veterans' service organizations.

In October 1989, Mr. Clark was confirmed by the Senate to be the Assistant Secretary for Veterans Liaison and Program Coordination. In that capacity, he served as the Secretary's principal advisor regarding the interests and concerns of veterans and veterans' service organizations and was responsible for conducting program evaluations under section 527—formerly section 219—of title 38, United States Code. While Assistant Secretary, he also served as the chairman of the Native American Coordinating Council.

If confirmed as Director of the National Cemetery System, Allen Clark will assume responsibility for the management of 113 cemeteries, approximately 1200 employees, and a fiscal year 1992 operating budget of $67 million.

JAMES A. ENDICOTT, JR.

Mr. President, Jim Endicott received his bachelor's degree in 1960 from the Citadel, where he was a distinguished military student and dean's list scholar. After graduation, he began his military service in 1960 as an Army 2nd Lieutenant with the 101st Airborne Division and then served for 3 years with the 24th Mechanized Infantry Division in Germany. He returned stateside to Ft. Myer, VA, where he served in the 3d Infantry. From 1965 to 1968, he attended law school at George Washington University while serving on active duty in the office of the Army's Judge Advocate General. After receiving his J.D. degree with honors in 1968, he served a year tour in Vietnam as a Deputy Staff Judge Advocate with the 4th Infantry Division.

From 1969, when he returned from Vietnam, to 1982, when he retired as a Colonel, he served in progressively more responsible positions in the Army's Judge Advocate General Corps. His last active-duty assignment was as special assistant to the chief judge of the Army Court of Military Review.

After retiring from the Army, he worked as an attorney in private practice for 7 years and then, in 1989, he began serving as a Family Law Court Master in Bolton, Texas, a position in which he served until his nomination.

Jim Endicott is admitted to the bar of the U.S. Supreme Court, as well as the Courts of Appeals for the Fifth and Federal Circuits, the Court of Veterans Appeals, the U.S. Claims Court, and the U.S. District Court for the western district of Texas, and to the Virginia and Texas bars.

He served for 2 years on the Texas Veterans Commission, an executive body that oversees a statewide staff of veteran service officers.

If confirmed as general counsel, Mr. Endicott will assume management responsibility for approximately 650 employees and a budget of $37 million. It is the responsibility of the Office of General Counsel to provide legal and policy advice to the Secretary as well as to all VA offices.

Mr. President, at Jim Endicott's confirmation hearing, I raised with him my concern that the current level of funding for the Office of General Counsel does not address properly the increased staffing demands related to the Court of Veterans Appeals. His responses assured me that he is aware of the staffing needs of the office and of the importance of the major new judicial review responsibilities before the court.

I was pleased that Mr. Endicott, in response to questions posed by both Senator THURMOND and me, acknowledged that the general counsel, in addition to representing the Department before the court, has a responsibility to ensure that veterans receive fair treatment and all benefits and service to which they are entitled.

In response to requests for his views on the relationship between the general counsel and the chairman of the Board of Veterans Appeals with respect to board matters that come before the court, Mr. Endicott acknowledged that the respective roles of the general counsel and the chairman may, at times, result in conflicting views as to the proper course for the department to follow in cases appealed to the court. He stated that he would not be inclined to settle a case, which would effectively reverse the BVA decision, without first consulting the chairman of the Board of Veterans Appeals and that he would strive to resolve amicably any differences between BVA and the office of the general counsel.

SYLVIA ANN CHAVEZ LONG

Sylvia Chavez Long received a degree in business administration from the University of New Mexico in 1970 and pursued further education at the Albuquerque Technical-Vocational Institute and the University of New Mexico.

After graduating from college, she worked for 2 years in the private sector in New Mexico and then, in 1972, joined the staff of then-Representative, now Secretary of the Interior, Manuel Lujan, where she served for 16 years as the Veterans and Military Liaison.

In 1973, Sylvia Chavez Long joined the U.S. Navy Reserve as an enlisted member. She rose to the rank of chief petty officer and in 1989 received a commission as a chief warrant officer. She remains a member of the Navy Reserve, currently as an administrative officer in the Office of the Assistant Chief of Naval Operations for Surface Warfare.

In 1989, she became the deputy assistant secretary for Program Coordination and Evaluation at VA. In that capacity, she had primary responsibility for conducting evaluations of VA's PTSD treatment programs and homeless veterans programs, as well as for coordinating the Native American Home Loan Guaranty Study mandated by Public Law 101-237.

Ms. Long has been awarded numerous honors in connection with her service in the Naval Reserve and is active in several associations, including the

Council of Hispanic Women, the American G.I. Forum, the Association of the U.S. Army, and the National League of Families. She was also a member of the board of directors for the New Mexico Vietnam Veterans Leadership Program and editor of the New Mexico Veterans News.

If confirmed as assistant secretary for Congressional Affairs, Sylvia Chavez Long will serve as a principal advisor to the secretary and deputy secretary concerning all legislative matters. She will be the direct liaison between VA and congressional Members and their staffs and, thus, will be responsible for facilitating and encouraging a positive working relationship between VA and Congress.

At the committee's October 25 hearing, I requested that Ms. Long work with the Secretary to inform VA employees of the Department's policy regarding communications between congressional offices and VA. In prehearing responses, she stated that the policy did not require that all communications be processed through the Office of Congressional Affairs, yet committee members, and our staffs, have sensed confusion and in some cases serious apprehension among central office and field staff when making routine requests for information or assistance. I am very pleased that Ms. Long agreed to honor my request to clarify the policy, and I am confident that, as a former congressional staff person, she fully understands how important it is that congressional Members and their staffs receive timely and accurate responses to inquiries.

JO ANN K. WEBB

Mr. President, Jo Ann Webb received her bachelor of science degree from Pennsylvania State University in 1970 and then served in the Army Nurse Corps for 5 years as a lieutenant and then captain. This included a year as an operating room staff nurse in Vietnam during 1971–72. She served as a nurse at U.S. Army hospitals in West Germany and at the Walter Reed Army Medical Center, where she was the head nurse of the Ophthalmology Surgery Service. In May of 1978, she received a master's degree in health administration from George Washington University.

Mrs. Webb served 3 years as an original member of the VA Women's Advisory Committee, 3 years as a consultant to ACTION, the national domestic volunteer agency, and 4 years as a health systems specialist at VA. For the past 2½ years, she has served VA as special assistant to the secretary and, since October 1989, as Director of the National Cemetery System.

Mr. President, the position of Assistant Secretary for Policy and Planning is a new one. If confirmed, Mrs. Webb would be responsible for facilitating the Secretary's policy development and planning processes and integrating both into the Secretary's strategic management process. In this capacity, she would manage 76 employees and a budget of almost $7.5 million for fiscal year 1992. At the committee's confirmation hearing, I stressed that, given the scarcity of resources in the current budget climate, there is a need for strategic plans to include a priority for programs that address the needs of service-disabled veterans and the survivors of such veterans.

CONCLUSION

Mr. President, each nominee completed the committee's basic questionnaire for Presidential nominees and the committee received letters from the Office of Government ethics certifying that each is in compliance with applicable laws and regulations governing conflicts of interest. I reviewed the FBI reports on the nominees and found no bar to their confirmation.

Mr. President, I am pleased to recommend to the Senate the confirmation of Allen B. Clark, Jr., to serve as Director of the National Cemetery System; James A. Endicott, Jr., as general counsel; Sylvia Ann Chavez Long, as Assistant Secretary for Congressional Affairs; and Jo Ann K. Webb, as Assistant Secretary for Policy and Planning.

STATEMENT ON NOMINATION OF ANNE CONWAY

Mr. MACK. Mr. President, it is with great pleasure that I present to you Anne Conway, nominee for the U.S. District Court in the middle District of Florida.

Anne Conway was born in Ohio and graduated from John Carroll University in 1972 with a bachelor of arts degree. She attended the University of Florida Law School. Anne excelled in law school where she was executive editor of the Law Review. She received the Book Award in Estates and Trusts and was the recipient of the McIntosh Award from the Center for Governmental Responsibility. Anne graduated with honors from law school in 1975.

After law school, she clerked for the Honorable John A. Reed, Jr., at the U.S. district court in Orlando. Upon completing her clerkship, she went into private practice and is currently a partner in the Carlton, Fields Law Firm in Orlando. Her practice consists mainly of civil litigation, primarily in Federal Court.

Anne Conway has been very active in the Florida Bar and in the Orange County Bar Association where she served as past chairperson of the State and Federal Trial Practice Committee. Anne also is involved in the Southern Ballet Theatre, the Orlando Museum of Art and the Lakemont Elementary School PTA.

Anne enjoys widespread support in her community and has earned the respect of her colleagues. I have received numerous letters and phone calls in her behalf praising Anne, not only for being an outstanding attorney but also for her participation in her community and for her devotion to her family.

As I have stated previously before this body, I established a Judicial Advisory Commission to make recommendations to me for district court openings in my State. The Commission highly recommended Anne for my consideration. The Commission found her to be a very qualified candidate for the United States District Court and I wholeheartedly concur.

This morning, Anne was voted on favorably by the Senate Judiciary Committee and her nomination was reported to the full Senate for consideration. I trust each of you will examine Anne Conway's fine legal record. I believe her to be eminently qualified for the position of Federal District Court Judge and I urge the Senate to confirm her without further delay.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session.

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 Committee on Rules and Administration.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE DEPARTMENT OF TRANSPORTATION—MESSAGE FROM THE PRESIDENT PM–97

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

I am pleased to provide you the Twenty-third Annual Report of the Department of Transportation's activities. This report reviews the Department's activities during fiscal year 1989.

FY 1989 was a year of major events in transportation. Evidence mounted that the crash of Pan Am 103 over Scotland was the result of terrorism. The *Exxon Valdez* oil spill heightened concern about safety of the transportation of oil. The Department reacted to these events and also worked to outline a national transportation policy to move

America into the 21st century. It held nationwide outreach meetings to help draft such a comprehensive national transportation policy.

This report also outlines the gains the Department made in meeting the goals of regulatory reform, greater safety and security in all modes of transportation, elimination of drugs from the transportation workplace, privatization of mass transit, and increased reliance on user fees to pay for transportation services.

The Department continued to eliminate needless Federal regulations and shift many Federal controls to State and local governments where they would be more effectively managed. This was certainly true of motor carrier regulation.

The Department required drug testing and drug use prevention programs throughout most of the transportation industry and the Department work force. The Department issued regulations designed to identify drug use problems, prevent the threat of drug use by those employees holding safety- and security-related positions, and ensure a drug-free transportation environment.

The bombing of Pan Am Fight 103 stressed the need to increase civil aviation security around the world to protect the traveling public from criminal and terrorist acts. The Secretary worked with authorities on terrorism to identify vital areas for improvement and to strengthen the Department's activities to address them.

As we forge a national transportation policy that underscores safety, security, and market forces, we must do so with the full realization that transportation must play a central role in our investment in America's future. Our competitive success depends on it.

GEORGE BUSH.

THE WHITE HOUSE, *November 21, 1991.*

MESSAGES FROM THE HOUSE

At 12:22 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 159) for the relief of Maria Erica Bartski; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 1532) to revise and extend the programs under the Abandoned Infants Assistance Act of 1988, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 1284) to make certain technical corrections in the Judical Improvements Act of 1990; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2763. An act to enhance geological mapping of the United States, and for other purposes;

H.R. 2790. An act to withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes; and

H.R. 3807. An act to amend the Arms Export Control Act to authorize the President to transfer battle tanks, artillery pieces and armored combat vehicles to member countries of the North Atlantic Treaty Organization in conjunction with implementation of the Treaty on Conventional Armed Forces in Europe.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 238. Concurrent resolution concerning democratic changes and violations of human rights in Zaire; and

H. Con. Res. 242. Concurrent resolution emphasizing the vast extent of environmental damage in the Persian Gulf region and urging expeditious efforts by the United Nations to set aside funds to redress environmental and public health losses.

At 2:50 p.m. a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House insists upon its amendment to the amendment of the Senate to the bill (H.R. 1724) to provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary, disagreed to by the Senate; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. ROSTENKOWSKI, Mr. GIBBONS, and Mr. ARCHER as managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 355) to provide emergency drought relief to the reclamation States, and for other purposes; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Interior and Insular Affairs, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Mr. MILLER of California, Mr. MARKEY, Mr. RAHALL, Mr. VENTO, Mr. DE LUGO, Mr. GEJDENSON, Mr. KOSTMAYER, Mr. LEHMAN of Califronia, Mr. YOUNG of Alaska, Mr. HANSEN, Mrs. VUCANOVICH, Mr. RHODES, and Mr. THOMAS of Wyoming.

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of sections 102(d), 104(a), 203(a)(4), and 303(6) of the House bill, and sections 102(d), 203(a)(4), 203(c), and 302 of the Senate amendment, and modifications committed to conferences: Mr. JONES of North Carolina, Mr. STUDDS, and Mr. DAVIS.

The message further announced that the House has passed the following bill, in which it requires the concurrence of the Senate:

H.R. 3635. An act to amend the Public Health Service Act to revise and extend the program of block grants for preventive health and health services, and for other purposes.

ENROLLED BILLS SIGNED

At 6:48 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2038. An act to authorize appropriations for fiscal year 1992 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes;

H.R. 2270. An act amending certain provisions of title 5, United States Code, relating to the Senior Executive Service; and

H.R. 3624. An act to amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the United States International Trade Commission.

The enrolled bills were subsequently signed by the President pro tempore [Mr. BYRD].

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2763. An act to enhance geological mapping of the United States, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2790. An act to withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes; to the Committee on Energy and Natural Resources.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 238. A concurrent resolution concerning democratic changes and violations of human rights in Zaire; to the Committee on Foreign Relations.

H. Con. Res. 242. A concurrent resolution emphasizing the vast extent of environmental damage in the Persian Gulf region and urging expeditious efforts by the United Nations to set aside funds to redress environmental and public health losses; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill, received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3807. An act to amend the Arms Export Control Act to authorize the President to transfer battle tanks, artillery pieces, and armored combat vehicles to member countries of the North Atlantic Treaty Organization in conjunction with implementation of the Treaty on Conventional Armed Forces in Europe.

The Committee on Rules and Administration was discharged from the further consideration of the following resolution; which was placed on the calendar:

S. Res. 198. A resolution amending Senate resolution 62 of the One Hundred Second Congress to authorize the Committee on Foreign Relations to exercise certain investigatory powers in connection with its inquiry into the release of the United States hostages in Iran.

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3762. An act to amend the Metropolitan Washington Airport Act of 1986 to modify the composition of the Board of Review of the Metropolitan Washington Airports Authority, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, November 21, 1991, he had presented to the President of the United States the following enrolled bill:

S. 1475. An act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize programs under such Act, 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, with an amendment in the nature of a substitute:

S. 1330. A bill to enhance the productivity, quality, and competitiveness of United States industry through the accelerated development and deployment of advanced manufacturing technologies, and for other purposes (Rept. No. 102-226).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1933. A bill to amend titles VII and VIII of the Public Health Service Act to reauthorize and extend programs under such titles, and for other purposes (Rept. No. 102-227).

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute:

H.R. 3029. A bill entitled, "Food, Agriculture, Conservation, and Trade Act Amendments of 1991".

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 447. A bill to recognize the organization known as The Retired Enlisted Association, Incorporated.

S. 1776. A bill to amend the Immigration and Nationality Act with respect to the admission of O and P nonimmigrants.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

William Ho-Gonzalez, of Virginia, to be Special Counsel for Immigration-Related Unfair Employment Practices for a term of four years;

Ernest Wilson Williams, of Tennessee, to be United States Attorney for the Middle District of Tennessee for the term of four years;

Anne C. Conway, of Florida, to be United States District Judge for the Middle District of Florida;

Monti L. Belot, of Kansas, to be United States District Judge for the District of Kansas;

David C. Bramlette, of Mississippi, to be United States District Judge for the Southern District of Mississippi;

David A. Faber, of West Virginia, to be United States District Judge for the Southern District of West Virginia;

Joe B. McDade, of Illinois, to be United States District Judge for the Central District of Illinois;

John M. Roll, of Arizona, to be United States District Judge for the District of Arizona;

Edith Brown Clement, of Louisiana, to be United States District Judge for the Eastern District of Louisiana; and

Sam Sparks, of Texas, to be United States District Judge for the Western District of Texas.

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. PRYOR (for himself, Mr. COHEN, Mr. SASSER, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. EXON, Mr. METZENBAUM and Mr. WELLSTONE):

S. 2000. A bill to provide for the containment of prescription drug prices by reducing certain nonresearch related tax credits to pharmaceutical manufacturers, by establishing the Prescription Drug Policy Review Commission, by requiring a study of the feasibility of establishing a pharmaceutical products price review board, and by requiring a study of the value of Federal subsidies and tax credits given to pharmaceutical manufacturers, and for other purposes; to the Committee on Finance.

By Mr. REID:

S. 2001. A bill to provide for testing for the use, without lawful authorization, of alcohol or controlled substances by the operators of school buses; to the Committee on Commerce, Science, and Transportation.

By Mr. JOHNSTON:

S. 2002. A bill to amend the Internal Revenue Code of 1986 to provide that certain deductions of school bus drivers shall be allowable in computing adjusted gross income; to the Committee on Finance.

By Mr. JOHNSTON:

S. 2003. A bill to provide an exception to the coverage of State and local employees under Social Security; to the Committee on Finance.

By Mr. DECONCINI:

S. 2004. A bill to amend the Internal Revenue Code of 1986 to increase the State ceiling for private activity bonds; to the Committee on Finance.

By Mr. JOHNSTON (for himself and Mr. WALLOP) (by request):

S. 2005. A bill to amend section 2 of the Act of July 31, 1947 (61 Stat. 681); to the Committee on Energy and Natural Resources.

By Mr. KOHL (for himself and Mr. KASTEN):

S. 2006. A bill to establish the Fox River National Heritage Corridor in Wisconsin, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER:

S. 2007. A bill to extend the Appalachian Regional Development Act of 1965 and to provide authorizations for the Appalachian Highway and Appalachian Area Development Programs; to the Committee on Environment and Public Works.

By Mr. HATCH (for himself and Mr. BOREN):

S. 2008. A bill to amend the Public Health Service Act to establish Federal standards to ensure quality assurance in private sector drug testing programs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PACKWOOD (for himself, Mr. FOWLER, Mr. HATFIELD, Mr. NUNN, Mr. GORTON, Mr. BURNS, Mr. SHELBY, Mr. CRAIG, Mr. HEFLIN, Mr. SYMMS and Mr. BREAUX):

S. 2009. A bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities; to the Committee on Finance.

By Mr. HATFIELD:

S. 2010. A bill for the relief of Jessielito G. Infante; to the Committee on the Judiciary.

By Mr. CRANSTON (for himself and Mr. PELL):

S. 2011. A bill to provide agricultural and other essential commodities to the Soviet Union in exchange for Soviet fissile materials and to assist the development of lending institutions in the Soviet republics; to the Committee on Foreign Relations.

By Mr. SPECTER:

S. 2012. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for high speed rail and certain other mass transportation equipment; to the Committee on Finance.

By Mr. LEAHY:

S. 2013. A bill to amend chapter 1 of title 17, United States Code, to enable satellite distributors to sue satellite carriers for unlawful discrimination; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself, Mr. PACKWOOD, Mr. GRAHAM and Mr. JEFFORDS):

S. 2014. A bill to amend the Employee Retirement Income Security Act of 1974 and title 11, United States Code, to protect the single-employer plan termination insurance program by clarifying the status of claims of the Pension Benefit Guaranty Corporation and the treatment of pension plans in bankruptcy proceedings, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. D'AMATO, Mr. SIMON, Mr. HOLLINGS, Mr. NUNN, Mr. LUGAR, Mr. INOUYE, Mr. DURENBERGER, Mr. DECONCINI, Mr. STEVENS, Mr. METZENBAUM, Mr. GORTON, Mr. BUMPERS, Mr. DANFORTH, Mr. BOND, Mr. BURDICK, Mr. COHEN, Mr. CRAIG, Mr. REID, Mr. SIMPSON, Mr. THURMOND, Mr. MCCAIN, Mr. SHELBY, Mr. CONRAD, Mr. SASSER, Mr. FOWLER, Mr. BRYAN, Mr. SEYMOUR, Mr. HATCH, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. DIXON, Mr. FORD, Mr. HATFIELD, Mr. BURNS, Mr. SPECTER, Mr. LOTT, Mr. MACK and Mr. BOREN):

S. 2015. A bill to urge and request the award of the bronze star to Navy and Marine Corps personnel who served in the the defense of Corregidor Island, the Philippines, under General Wainwright; to the Committee on Armed Services.

By Mr. SEYMOUR:

S. 2016. A bill to protect, restore and enhance fish, and wildlife habitat within the Central Valley of California, mitigate Central Valley Project impacts in order to maintain the continued orderly operation of the Central Valley Project, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HATFIELD (for himself and Mr. BINGAMAN):

S. Res. 228. A resolution to amend the Albert Einstein Congressional Fellowship Program; considered and agreed to.

By Mr. LEVIN (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 229. A resolution to authorize testimony by and representation of a former Senate employee; considered and agreed to.

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

S. Con. Res. 78. A concurrent resolution regarding the unfair imprisonment and trial of Dr. Nguyen Dan Que by the Government of Vietnam; to the Committee on Foreign Relations.

By Mr. SIMON:

By S. Con. Res. 79. A concurrent resolution expressing support for Zambia's transition to democracy; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRYOR (for himself, Mr. COHEN, Mr. SASSER, Mr. BAUCUS, Mr. BURDICK, Mr. CONRAD, Mr. EXON, Mr. METZENBAUM, and Mr. WELLSTONE):

S. 2000. A bill to provide for the containment of prescription drug prices by reducing certain nonresearch-related tax credits to pharmaceutical manufacturers, by establishing the Prescription Drug Policy Review Commission, to requiring a study of the feasibility of establishing a pharmaceutical products price review board, and by requiring a study of the value of Federal subsidies and tax credits given to pharmaceutical manufacturers, and for other purposes; to the Committee on Finance.

(Statements on the introduction of this legislation and the text of the legislation appear earlier in today's RECORD.)

By Mr. REID:

S. 2001. A bill to provide for testing for the use, without lawful authorization, of alcohol or controlled substances by the operators of schoolbuses; to the Committee on Commerce, Science, and Transportation.

(The remarks of Mr. REID on the introduction of this legislation appear earlier in today's RECORD.)

By Mr. JOHNSTON:

S. 2002. A bill to amend the Internal Revenue Code of 1986 to provide that certain deductions of schoolbus drivers shall be allowable in computing adjusted gross income; to the Committee on Finance.

S. 2003. A bill to provide an exception to the coverage of State and local employees under Social Security; to the Committee on Finance.

ASSISTANCE FOR SCHOOLBUS DRIVERS

• Mr. JOHNSTON. Mr. President, today I am introducing legislation to help assist our Nation's schoolbus drivers who provide a very important role in the education of our children. Recently, several broad-based tax provisions have been enacted into law which adversely affect schoolbus drivers. The bills I am introducing today will provide some of our most dedicated school employees with relief which they need and deserve.

The first measure would permit bus drivers to deduct actual operating expenses, regardless of whether or not they itemize on their Federal tax returns. This was the law prior to enactment of the Tax Reform Act of 1986. Under current law, however, schoolbus drivers' actual expenses are treated as miscellaneous expenses, thus limiting the deduction to those who itemize and subjecting it to the 2-percent floor. This floor has prevented many schoolbus drivers from qualifying for any deduction for their actual operational expenses because they cannot meet the 2-percent floor applicable to miscellaneous itemized deductions. The result has been a substantial increase in schoolbus drivers' annual income tax liability. Moreover, even those bus drivers who itemize and qualify for deductions under the 2-percent floor have been penalized, especially those who file joint returns.

The second measure would exempt schoolbus drivers—and other State and local employees who work on a part-time, seasonal, or temporary basis—from paying Social Security taxes. Many of these individuals are already covered under State and local retirement systems; however, the law currently requires that they pay into Social Security as well. The result is increased costs to the employer and smaller take-home paychecks for the employees. Perversely, some States may even decide to remove these workers from their retirement systems, which could result in a reduction in, or loss of, retirement benefits for which the employees have worked for many years.

Our schoolbus drivers do a yeoman's job in transporting future generations to and from school. We all agree that education of our youth should be one of our highest priorities. Let's pass this legislation and provide some relief to those individuals who make it possible for our children to arrive at school in a safe and timely manner.

I ask unanimous consent that the text of the bills be printed in full immediately after this statement.

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

S. 2002

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

SECTION 1. DEDUCTIONS OF SCHOOL BUS DRIVERS ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.

(a) IN GENERAL.—Paragraph (2) of section 62(a) of the Internal Revenue Code of 1986 (relating to certain trade and business deductions of employees) is amended by adding at the end thereof the following new subparagraph:

"(C) CERTAIN EXPENSES OF SCHOOL BUS DRIVERS.—The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer in connection with the performance by the taxpayer of services as an employee while driving a school bus (as defined in section 4221(d)(7)(C)).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

S. 2003

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

SECTION 1. EXCEPTION TO COVERAGE OF STATE AND LOCAL EMPLOYEES UNDER SOCIAL SECURITY.

(a) EMPLOYMENT UNDER OASDI.—Subparagraph (F) of section 210(a)(7) of the Social Security Act (42 U.S.C. 410(a)(7)) is amended—

(1) by striking "or" at the end of clause (iv),

(2) by inserting "or" at the end of clause (v), and

(3) by inserting after clause (v) the following new clause:

(vi) by an individual who is characterized as a part-time, seasonal, or temporary employee by such retirement system;".

(b) EMPLOYMENT UNDER FICA.—Subparagraph (F) of section 3121(b)(7) of the Internal Revenue Code of 1986 is amended—

(1) by striking "or" at the end of clause (iv),

(2) by inserting "or" at the end of clause (v), and

(3) by inserting after clause (v) the following new clause:

"(vi) by an individual who is characterized as a part-time, seasonal, or temporary employee by such retirement system;".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 11332 of the Omnibus Budget Reconciliation Act of 1990.•

By Mr. DECONCINI:

S. 2004. A bill to amend the Internal Revenue Code of 1986 to increase the State ceiling for private activity bonds; to the Committee on Finance.

STATE CEILING FOR PRIVATE ACTIVITY BONDS

Mr. DECONCINI. Mr. President, the economy is getting worse not better. Most of our economic indicators point to a deepening recession. Consumer confidence is at an all-time-low. The trade deficit is up. The President seems to argue that if we think the recession

is over, it will be. Well, let me tell you this recession is not a figment of anyone's imagination. It is very real and we had better address it now before we sink into depression.

The news on the employment front in my State of Arizona is only getting worse. This is a story from yesterday's Arizona Daily Star reported by Jeff Herr, carries a headline "Burr-Brown Cutbacks May Affect 200 Jobs." The story states that the cutbacks are a result of "a major company restructuring triggered by the global recession."

Here I have a major employer in my State already in a recession and that is why they are cutting back over 200 jobs. Burr-Brown is a major Tucson, AZ, employer of nearly 1,200 workers in the semiconductor industry. It has been very successful. It has been above 1,200 before, and now we are seeing it start to shrink.

Today's news, from the same Arizona Daily Star is even worse. Reported again by Jeff Herr, the headline reads "Hughes to Cut 1,600 Jobs." This is Hughes aircraft, owned by General Motors, premier producer of missiles and other items. This is yet another sign of the weak economy and portends increasing unemployment and dislocation in Arizona.

We need leadership on the economy. Instead, we get platitudes. Yesterday, President Bush told NBC affiliates "I don't want to emphasize just the bad things, to talk us into a depression." Mr. President, it is not talk that is getting us into a depression, it is inaction. No action; no economic program from the White House.

Earlier this week the President told reporters, "I think I've got to do better in making clear what the message is." The administration has to spend less time worrying about what they say and worrying more about what they do. Or what they are not doing.

We need some action. And it is time for the President to put the politics aside and come help this country. How much time has he spent on domestic problems? Pretty soon, they are going to open up a White House in some foreign country for the President because that is where he is going to spend more time than he does here at the American White House.

There are a number of possible solutions to this economic crisis. Over the last 4 weeks, I have introduced a series of economic incentive tax bills. The legislation I have introduced targets different segments of the economy which are suffering in our current recession. My legislation seeks to create jobs. That is what we should be about if we want to get this economy moving again. I ask unanimous consent that a description of my entire four-part tax package and the full text of the bill I am introducing today be included in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. DECONCINI. There is no magic cure for our economic woes. I do not pretend to have some solution in my pocket. But at least I am doing some thinking about it and offering suggestions and directions for this country. I have sought a multifaceted approach to job creation and economic growth. In addition to my tax proposals, I am working on job creation through the appropriations process. Just last week, the Defense Appropriations Subcommittee, at my request, included funding for the procurement of 891 AMRAAM missiles, 2,400 TOW 2A missiles, and continued research and development of the AAAM missile. All of these projects are vital to our national defense, even in a period of time when we are building down that national defense. They will serve to preserve Arizona jobs which might otherwise be lost. In this case, both the workers of Arizona and our Nation's Armed Forces are winners.

We need more actions, Mr. President, not words. The Washington Post is quoted this morning as saying that the White House's Economic Policy Council has become a message machine. Council members are more concerned about communicating a message than curing the economy.

President Bush has come to sound like Hamlet who said "Nothing is either good or bad, but thinking makes it so."

Hamlet came to a tragic end Mr. President. I do not want to see our economy meet a similar fate. Let us move forward today. Let us act before inaction destroys the American economy and there is little left to talk about. It is not too late if we have some action.

I implore the President to move forward on economic grounds. And I hope when we return in January the Finance Committee and other committees that have jurisdiction will take up these tax incentive bills I have introduced, as well as other bills I will be introducing, including one involving a flat tax across the board with no deductions that I hope will spur the economic growth of this country.

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

[EXHIBIT 1.]

S. 2004

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

SECTION 1. STATE CEILING FOR PRIVATE ACTIVITY BONDS.

(a) IN GENERAL.—Section 146(d)(2) of the Internal Revenue Code of 1986 (relating to adjustments after 1987) is amended to read as follows:

"(2) ADJUSTMENTS.—

"(A) YEARS BEFORE 1992.—In the case of calendar years after 1987 and before 1992, paragraph (1) shall be applied by substituting—

"(i) '$50' for '$75', and

"(ii) '$150,000,000' for '$250,000,000'.

"(B) YEARS AFTER 1991.—In the case of calendar years after 1991, paragraph (1) shall be applied by substituting—

"(i) '$100' for '$75', and

"(ii) '$300,000,000' for '$250,000,000'."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after December 31, 1991.

DESCRIPTION OF DECONCINI TAX PACKAGE

Mr. President, to reiterate, today I am introducing the fourth and last bill in my package of economic growth tax incentives. I do not need to repeat for my colleagues the statistics on the dire economic straits facing this country. Suffice it to say, that the double dip recession is a reality—unemployment is not abating and the near term future is far from rosy. That is why I have introduced four bills aimed at helping different sectors of our economy toward recovery.

The first bill I introduced, S. 1905, would repeal last year's increase in the airplane ticket tax from 8 percent to 10 percent. This 25 percent increase, on the heels of the war and the recession which dramatically cut into the airline industry's profits, has been devastating. It just does not make any sense to raise taxes on an industry which has suffered losses of $3.7 billion and $1.37 billion in the last two quarters. Since I introduced this bill 3 weeks ago, yet another airline—Midway—has failed. We must wonder which airline will be next? My bill would provide a boost to the airline industry and all its hard-working employees.

President Bush has admonished Americans to go out and buy a car or a home to help the economy. This insulated view of the American public fails to recognize that Americans are not out buying because they do not have any savings. Net national savings in this country have plummeted 80 percent in the last 40 years. The Japanese save at a rate almost three times ours; the average American under 35 has less than $5,000 in savings. You can not buy a house with $5,000. Therefore, I introduced the Savings Incentive Act, S. 1929, which encourages Americans to save by providing that the first $2,500 of interest earned on savings accounts for a single filer—$5,000 for a couple filing jointly—will be exempt from taxes.

The automobile industry is experiencing some of its most difficult times. Motor vehicle manufacturers experienced a $1.7 billion loss in the most recent quarter. Sales in September were 15 percent below July. In my home State of Arizona, 10 major new car dealerships have closed in the past year and new car sales have declined 33 percent. Therefore, I introduced S. 1957 which seeks to provide a boost to the auto industry by allowing individuals who buy a new car during 1992 to deduct the first year's interest from their taxes. One in seven Americans depend on the auto industry for their livelihood; we need to do something to help this industry.

Today, Mr. President, I am introducing the fourth part of my package. Economic development is the lifeblood for local communities, especially those in rural areas. Small issue industrial development bonds have long been an important tool in bringing jobs into cities and towns. Not only are jobs directly created by new businesses, but indirect employment in fields like construction significantly increase. In 1984, in another example of governmental overreaction, the amount of these bonds that State's are allowed to use was severely restricted. Currently the allocation is $50 per capita. Per-

haps this is adequate for State's that are not growing, but for an active vibrant State like Arizona, it is just not sufficient and I suspect that other States have similar problems. Therefore, today I am introducing a bill to double the current limit on qualified small issue development bonds to $100 per capita. I hope that this provision will encourage growth and development at reduced cost to States and local governments.

Early next year, the Senate Finance and House Ways and Means Committees are expected to seriously consider a package of tax incentives to boost the economy. Any solution to our current economic crisis will have to be both comprehensive and diverse because this recession is deep and wide. I urge the chairmen to consider my proposals as part of their packages of recession solutions.

By Mr. JOHNSTON (for himself and Mr. WALLOP) (by request):

S. 2005. A bill to amend section 2 of the act of July 31, 1947 (61 Stat. 681); to the Committee on Energy and Natural Resources.

AMENDMENT OF THE ACT OF JULY 31, 1947

• Mr. JOHNSTON. Mr. President, Senator WALLOP and I are today introducing at the request of the Department of the Interior a bill to amend section 2 of the act of July 31, 1947 (61 Stat. 681).

I ask unanimous consent that the bill and the communication which accompanied the proposal be printed in the CONGRESSIONAL RECORD.

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

S. 2005

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(a)(1) of the Act of July 31, 1947 as amended, (30 U.S.C. 602(a)(1)), is hereby further amended to read as follows:

"(1) the contract is for the sale of less than five hundred thousand board-feet of timber; or, if".

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., October 7, 1991.

Hon. J. DANFORTH QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is a draft bill "To amend section 2 of the Act of July 31, 1947 (61 Stat. 681)."

We recommend that the draft bill be introduced, referred to the appropriate committee for consideration, and enacted.

The draft bill would permit the Secretary of the Interior to authorize negotiated contracts for the sale of less than five hundred thousand board-feet of timber by raising the volume of timber for which a contract could be negotiated from the present two hundred and fifty thousand board-feet (250 mbf) to five hundred thousand board-feet (500 mbf).

This amendment would facilitate the sale of insect and fire salvage timber primarily from scattered tracts of public lands which lack public access. Using California as an example, during fiscal year 1989, the Bureau of Land Management (BLM) negotiated over 70 timber sales under the provisions of the Act of July 31, 1947. In most instances, these sales were negotiated with adjacent private landowners and represented the only means by which salvage of the timber could reasonably take place.

Our experience indicates that competitive sales are possible only when access to the sale area is available to anyone who is qualified to bid. It is our policy to offer competitive sales only when such access is obtained. However, in the case of salvage timber, time is critical to prevent major timber volumes losses due to decay or insect damage. In these instances, negotiated sales offer BLM managers the flexibility to maximize economic return to the United States, to minimize insect infestations to adjoining lands, and to reduce risks of wildfire. Increasing the sale authority from 250 mbf to 500 mbf would provide broader application of the advantages of negotiated sales of timber.

The Office of Management and Budget has advised that there is no objection to this legislation from the standpoint of the Administration's program.

Sincerely,

DAVID O'NEAL
Assistant Secretary.•

By Mr. KOHL (for himself and Mr. KASTEN):

S. 2006. A bill to establish the Fox River National Heritage Corridor in Wisconsin; to the Committee on Energy and Natural Resources.

FOX RIVER NATIONAL HERITAGE CORRIDOR ACT

• Mr. KOHL. Mr. President, I am very pleased to reintroduce legislation to establish the Fox River National Heritage Corridor in Wisconsin. This bill is almost identical to legislation I introduced in the last Congress. The purpose of the bill is twofold: To federally recognize the Fox River corridor's role in our Nation's development; and to coordinate Federal, State, and local efforts aimed at preserving and enhancing the corridor's unique natural, historical, and cultural heritage.

The Fox River winds across Wisconsin, from Portage to Green Bay. Long before European explorers arrived, native Americans traveled the Fox River and lived along its shores. Later, history was made when explorers Marquette and Joliet followed the Fox and Wisconsin Rivers to reach the Mississippi River. Later, the Fox River played a critical role in the opening of the Northwest Territory, serving as a significant transportation corridor for settlers traveling into the Nation's vast interior.

Throughout the 19th and 20th centuries, the Fox River has played a significant role in the commercial and industrial development of this country. Besides serving as a transportation corridor, the Fox River's plentiful water supply attracted various industries to the region. In particular, the Fox River corridor quickly became famous for its concentration of paper mills, attracted by the region's vast forest reserves, access to major markets, and water supply. In fact, the lower Fox River has the Nation's highest concentration of paper mills along a single stretch of river.

Development in the region was further enhanced by construction of the world's first successful hydroelectric plant, powered by dams along the river. A local residence was the first to get electricity from a centrally located hydroelectric plant.

One of the most significant and historic features of the Fox River is the remarkable system of locks and dams. Although the locks along the upper Fox were abandoned in 1956 most of the locks along the lower Fox have been operational for the past 140 years. This lock system has the distinction of being one of only two hand-operated systems in the Nation, and the only one in continual operation since the time of its construction.

But this bill is not intended to focus on the individual parts that make up the Fox River corridor. Instead, the legislation attempts to tie together the many different aspects of the corridor. The Fox River, the locks and dams, the historic buildings and sites, the industrial and cultural heritage which has developed along the corridor—all these parts taken together represent a unique slice of American life which should be preserved for ourselves and future generations. That's why I'm introducing this bill today.

Now more than ever, Americans want to learn more about their history, their roots. We want to know how this great Nation came to be what it is today. Tourism is on the rise, with people looking for new and different educational experiences to share with their families. The Fox River National Heritage Corridor will provide the region with the identity it needs to maximize its tourism potential.

This legislation establishes a Fox River National Heritage Corridor Commission to integrate Federal, State, and local activities aimed at preserving and interpreting the corridor's diverse resources. The Commission will be composed of 21 members representing the State, local governments, and interested members of the general public. Commissioners will be appointed by the Secretary of the Interior, with input from the Governor of Wisconsin.

The Commission's chief duty will be the development of a cultural heritage and corridor management plan, which will coordinate and consolidate any Federal, State, and local plans in order to present a unified historic preservation and interpretation plan for the corridor. The Commission will hold public hearings and make every attempt to involve the public in development of the plan.

The plan will define the boundaries of the corridor, provide an inventory of all properties and structures of significance to the corridor, and outline an historic interpretation plan to illustrate the history of the corridor. The plan will also recommend policies for comprehensive resource management throughout the corridor, and contain a program for implementation of those policies.

After review and approval of the plan by the Secretary of the Interior, the

Commission will take steps to implement the plan. In so doing, the Commission will work closely with the State and with local governments in the region, as well as with the public. Interpretive materials, like guide brochures and historical markers, will be produced with the help of the Secretary of the Interior.

Finally, I should describe what this bill does not do. It does not involve any land acquisition, unless the land is offered as a donation, or money is donated for the acquisition of a property which has been offered for sale by a willing seller. In such cases, the land will be immediately transferred to whatever public agency is deemed appropriate by the Commission. There will be no condemnation of private lands for purposes of this legislation, and no land will be purchased with public funds.

Furthermore, this bill does not involve a significant expenditure of public funds. The bill authorizes Federal appropriations of up to $350,000 annually, but any Federal dollars spent must be matched by State, local or private dollars. In other words, this bill could accomplish a great deal with very modest resources.

In sum, I believe that this bill represents an impressive commitment on the part of many people living and working in the Fox River corridor. I have been impressed by the commitment and resolve among local residents who enthusiastically support this project. I will work with my colleague from Wisconsin, Senator KASTEN, to steer this legislation through Congress as quickly as possible. It is my strong hope that this legislation will be signed into law, and the Fox River National Heritage Corridor will become a reality.

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. 2006

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 "Fox River National Heritage Corridor Act of 1991".

SEC. 2. FINDINGS.

Congress finds that—

(1) the Fox-Wisconsin waterway is famous as the discovery route of Marquette and Joliet;

(2) connecting the Great Lakes to the Great River, the waterway was critical in the opening of the Northwest Territory, serving as a major artery in bringing commerce to the interior of the United States and providing a vital communication link for early explorers, missionaries, and fur traders;

(3) within the Fox River corridor are an abundance of historic and archeological sites and structures representing early Native Americans, European exploration, and 19th century transportation and settlement;

(4) on the date of enactment of this Act, there are over 50 jurisdictions and a population of more than half a million people within the corridor, which is located within 300 miles of 22,000,000 people;

(5) historically tied to the development of the paper industry, the Lower Fox River is noted for having the highest concentration of paper mills along a single stretch of river in the United States;

(6) power generated from the river's early dams was responsible for the first successful hydroelectric plant in the world and the first residence electrified from a centrally-located hydroelectric plant;

(7) the Lower Fox River lock and dam system is the dominant historical element in the corridor;

(8) the 140-year old system is one of only two hand operated systems in the United States and the only hand operated system continually functioning since its inception;

(9) the system represents a distinct era in water transportation technology, falling between the earlier tow-path oriented models and the modern automated systems;

(10) the system is under threat of abandonment by the Army Corps of Engineers;

(11) the system has been placed in caretaker status by the Corps and operated by the State since 1984;

(12) despite State and local efforts, there is concern that the system will meet the same fate as the locks and dams of the Upper Fox River, which were abandoned in 1956;

(13) on the Upper Fox River, only the Eureka lock still operates, with restoration underway on the Portage Canal, the linkage between the Fox and Wisconsin Rivers;

(14) the full potential of the diverse natural and cultural features of the waterway, extending from Green Bay to Portage, and connecting to the Lower Wisconsin Riverway, will best be realized with assistance from the Federal Government; and

(15) the unique aspects of the waterway, from heavily developed portions of the Lower Fox River to the pristine expanses of the Upper Fox River, offer an opportunity to establish a nationally significant corridor representative of the Nation's Midwest heritage.

SEC. 3. PURPOSE.

The purpose of this Act is to provide a management framework to assist the State and its political subdivisions in developing and implementing integrated cultural, historical, and natural resource policies and programs that will preserve and interpret for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, waterways, and structures within and surrounding the Fox River in Wisconsin.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) COMMISSION.—The term "Commission" means the Fox River National Heritage Corridor Commission established in section 6(a).

(2) CORRIDOR.—The term "corridor" means the Fox River National Heritage Corridor established in section 5(a).

(3) PLAN.—Except as otherwise provided, the term "plan" means the Cultural Heritage and Corridor Management Plan prepared by the Commission pursuant to section 9(a).

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) STATE.—The term "State" means the State of Wisconsin or a State-designated management agency.

SEC. 5. ESTABLISHMENT OF NATIONAL HERITAGE CORRIDOR.

(a) ESTABLISHMENT.—There is established in the State of Wisconsin the Fox River National Heritage Corridor.

(b) BOUNDARIES.—

(1) IN GENERAL.—The boundaries of the corridor shall consist of the lands generally depicted on an appropriately dated and referenced map.

(2) LEGAL DESCRIPTION.—As soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a legal description of the boundaries established under this subsection.

(3) PUBLIC ACCESS TO MAP.—The map shall be on file and available for public inspection in the offices of the Department of the Interior in Washington, District of Columbia, and the State Department of Natural Resources.

(c) ADMINISTRATION.—The corridor shall be administered in accordance with this Act.

SEC. 6. ESTABLISHMENT OF FOX RIVER NATIONAL HERITAGE CORRIDOR COMMISSION.

(a) ESTABLISHMENT.—There is established the Fox River National Heritage Corridor Commission to assist Federal, State, and local authorities in the development and implementation of an integrated resource management plan for the corridor.

(b) FEDERAL FUNDING.—The Federal share of the annual expenses of the Commission in carrying out its duties under this Act may not exceed 50 percent.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 21 members appointed not later than 180 days after the date of enactment of this Act, of whom—

(A) one member shall be the Director of the National Park Service (who shall be an ex officio member), or a delegate of the Director;

(B) 20 members shall be appointed by the Secretary, in consultation with the Governor of the State, of whom—

(i) one member shall represent the State Department of Natural Resources;

(ii) one member shall represent the State Historical Society;

(iii) one member shall represent the State Department of Development;

(iv) one member shall represent the State Department of Administration;

(v) six members shall represent local governments in the Lower Fox region of the State;

(vi) two members shall represent local governments in the Upper Fox region of the State; and

(vii) eight members shall be citizens of the State from the general public, and shall have knowledge and experience in appropriate fields of interest relating to the preservation, use, and interpretation of the corridor, of whom—

(I) six members shall be residents of the Lower Fox region; and

(II) two members shall be residents of the Upper Fox region.

(2) CHAIRPERSON.—The chairperson of the Commission shall be elected by the members of the Commission for a 2-year term.

(3) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) TERMS.—

(A) IN GENERAL.—Each member of the Commission shall be appointed for a term of 3 years and may be reappointed.

(B) MEMBERS FILLING VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the

member's predecessor was appointed shall be appointed only for the remainder of the term.

(C) EXTENDED SERVICE.—A member of the Commission may serve after the expiration of that member's term until a successor has taken office.

(d) COMPENSATION.—Members of the Commission shall receive no compensation on account of their service on the Commission.

(e) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(f) MEETINGS.—

(1) INITIAL MEETING.—The Commission shall hold its first meeting not later than 90 days after the date on which its last initial member is appointed.

(2) SUBSEQUENT MEETINGS.—After the initial meeting, the Commission shall meet at the call of the chairperson or six of its members, except that the Commission shall meet at least quarterly.

(3) PUBLIC MEETINGS.—Meetings of the Commission shall be subject to section 552b of title 5, United States Code.

(4) QUORUM.—

(A) IN GENERAL.—Eleven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(B) BUDGET.—The affirmative vote of six members of the Commission shall be required to approve the budget of the Commission.

SEC. 7. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) IN GENERAL.—The Commission shall have the power to appoint and fix the compensation of such staff as may be necessary to carry out its duties.

(2) APPOINTMENT AND COMPENSATION.—Staff appointed by the Commission—

(A) shall be appointed subject to title 5, United States Code, governing appointments in the competitive service; and

(B) shall be paid in accordance with chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the extent authorized by section 3109(b) of title 5, United States Code, and at rates determined by the Commission to be reasonable.

(c) STAFF OF OTHER AGENCIES.—

(1) FEDERAL.—On request of the Commission, the head of a Federal agency may detail, on a reimbursable basis, any of the personnel of the agency to the Commission to assist the Commission in carrying out the Commission's duties.

(2) STATE.—The Commission may accept the services of personnel detailed from the State or any political subdivision of the State and may reimburse the State or the political subdivision for the services.

SEC. 8. POWERS OF COMMISSION.

(a) HEARINGS.—

(1) IN GENERAL.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(2) SUBPOENA AUTHORITY.—The Commission may not issue subpoenas or exercise any subpoena authority.

(b) POWERS OF MEMBERS AND AGENTS.—A member or agent of the Commission, if authorized by the Commission, may take any action that the Commission is authorized to take under this Act.

(c) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) USE OF FUNDS TO OBTAIN MONEY.—The Commission may use its funds to obtain money from any source under any program or law requiring the recipient of the money to make a contribution in order to receive the money.

(f) GIFTS.—

(1) IN GENERAL.—Except as provided in subsection (g)(2)(B), the Commission may, for the purpose of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.

(2) CHARITABLE CONTRIBUTIONS.—For the purpose of section 170(c) of the Internal Revenue Code of 1986, a gift to the Commission shall be deemed to be a gift to the United States.

(g) ACQUISITION OF REAL PROPERTY.—

(1) IN GENERAL.—Except as provided in paragraph (2) and except with respect to any leasing of facilities under subsection (c), the Commission may not acquire any real property or interest in real property.

(2) EXCEPTION.—Subject to paragraph (3), the Commission may acquire real property, or an interest in real property, in the corridor—

(A) by gift or devise; or

(B) by purchase from a willing seller with money given or bequeathed to the Commission on the condition that the money be used to purchase real property, or interests in real property, in the corridor.

(3) CONVEYANCE TO PUBLIC AGENCIES.—Any real property or interest in real property acquired by the Commission under paragraph (2) shall be conveyed by the Commission to an appropriate public agency, as determined by the Commission. The conveyance shall be made—

(A) as soon as practicable after the acquisition;

(B) without consideration; and

(C) on the condition that the real property or interest in real property so conveyed is used for public purposes.

(h) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—For the purpose of carrying out the plan, the Commission may enter into cooperative agreements with the State, a political subdivision of the State, or a person.

(2) CONTENTS.—A cooperative agreement shall, at a minimum, establish procedures for providing notice to the Commission of any action proposed by the State, the political subdivision, or the person, that may affect the implementation of the plan.

(i) ADVISORY GROUPS.—The Commission may establish such advisory groups as it considers necessary to ensure open communication with, and assistance from, the State, political subdivisions of the State, and interested persons.

SEC. 9. DUTIES OF THE COMMISSION.

(a) PREPARATION OF PLAN.—

(1) IN GENERAL.—Not later than 1 year after the Commission conducts its first meeting, it shall submit to the Secretary a Cultural Heritage and Corridor Management Plan.

(2) SOURCES.—The plan shall be based on Federal, State, and local plans in existence on the date of enactment of this Act, and shall coordinate and consolidate those plans to present a unified historic preservation and interpretation plan for the corridor.

(3) CONTENTS.—The plan shall—

(A) define the specific boundaries of the corridor;

(B) provide an inventory that includes any property in the corridor that should be preserved, restored, managed, developed, maintained, or acquired because of its national, State, or local historic or cultural significance;

(C) develop a historic interpretation plan to illustrate the history of the Fox-Wisconsin waterway and its surrounding area;

(D) recommend policies for resource management that consider and detail the application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements, that will protect the corridor's historical, cultural, scenic, and natural resources in a manner consistent with supporting appropriate and compatible economic revitalization and expansion efforts;

(E) identify activities of mutual interest with the Fox River Management Commission;

(F) detail ways in which Federal, State, and local programs may best be coordinated to promote the purposes of this Act; and

(G) contain a program for implementation of the plan by the State and political subdivisions of the State.

(b) IMPLEMENTATION OF PLAN.—

(1) IN GENERAL.—After review and approval of the plan by the Secretary in accordance with section 11(a), the Commission shall implement the plan by taking steps to—

(A) preserve and interpret the historic resources of the Fox-Wisconsin waterway and its surrounding area; and

(B) support public and private efforts in economic revitalization and expansion consistent with the goals of the plan.

(2) APPROPRIATE STEPS.—The steps that the Secretary may take include—

(A) assisting the State in preserving and renovating the lock and waterway system;

(B) assisting the State and local governments in designing, establishing, and maintaining visitor centers and other interpretive areas and exhibits in the corridor;

(C) assisting the State, local governments, and nonprofit organizations in increasing public awareness of and appreciation of the historical, engineering, architectural, environmental, and geological resources and sites in the corridor;

(D) assisting the State, local governments, and nonprofit organizations in the restoration of historic buildings with national, State, or local significance in the corridor;

(E) encouraging enhanced economic and business development in the corridor consistent with the goals of the plan;

(F) encouraging local governments to—

(i) adopt land use policies consistent with the management of the corridor and the goals of the plan; and

(ii) take actions to implement the policies;

(G) ensuring that clear, consistent signs identifying access points and sites of interest are placed throughout the corridor; and

(H) establishing corridor recognition by actively promoting the cultural, historical, natural, and recreational resources of the corridor on a community, regional, statewide, national, and international basis.

SEC. 10. TERMINATION OF COMMISSION.

(a) TERMINATION.—Except as provided in subsection (b), the Commission shall termi-

nate 5 years after the date of enactment of this Act.

(b) EXTENSIONS.—The Commission may be extended for a period of not more than 5 years beginning on the date of termination specified in subsection (a) if, not later than 180 days before that date—

(1) the Commission determines that an extension is necessary in order to carry out this Act;

(2) the Commission submits a proposed extension to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate; and

(3) the Governor of the State and the Secretary approve the extension.

SEC. 11. DUTIES OF THE SECRETARY.

(a) REVIEW OF PLAN.—

(1) IN GENERAL.—The Secretary shall approve or disapprove a plan submitted by the Commission not later than 60 days after date of receipt.

(2) APPROVAL.—The Secretary shall approve a plan if the Secretary—

(A) finds that the plan would adequately protect the significant historical and cultural resources of the corridor while providing adequate and appropriate outdoor recreational opportunities and economic activities within the corridor;

(B) determines that the Commission held public hearings and provided adequate opportunity for public and governmental involvement in the preparation of the plan; and

(C) receives adequate assurances from appropriate State officials that—

(i) the implementation program recommended in the plan will be initiated within a reasonable time after the date of approval of the plan; and

(ii) the implementation program will ensure effective implementation of the State and local aspects of the plan.

(3) DISAPPROVAL.—

(A) IN GENERAL.—If the Secretary disapproves a plan submitted by the Commission, the Secretary shall advise the Commission in writing of the reasons for the disapproval and shall make recommendations for revisions in the plan.

(B) RESUBMISSION.—Not later than 90 days after receipt of a notice of disapproval, the Commission shall revise and resubmit the plan to the Secretary, who shall approve or disapprove a proposed revised plan in accordance with this subsection not later than 60 days after the date of receipt of the revised plan.

(b) INTERPRETIVE MATERIALS.—

(1) IN GENERAL.—Following approval of the plan under subsection (a), the Secretary shall assist the Commission in designing and producing interpretive materials based on the plan.

(2) TYPES OF MATERIALS.—Interpretive materials may include—

(A) guide brochures for exploring the corridor by automobile, train, bicycle, boat, or foot;

(B) indoor and outdoor visitor displays, which may include video presentations, at several locations along the corridor; and

(C) a mobile display describing the history of the corridor, to be used in the corridor, public buildings, libraries, and schools.

(c) TECHNICAL ASSISTANCE.—The Secretary shall, at the request of the Commission, provide technical assistance to the Commission in the preparation and implementation of the plan.

SEC. 12. DUTIES OF OTHER FEDERAL ENTITIES.

A Federal entity conducting or supporting activities directly affecting structures along the Fox River or the natural resources of the corridor shall—

(1) consult with the Secretary and the Commission with respect to the activities;

(2) cooperate with the Secretary and the Commission in carrying out the Secretary's and the Commission's duties under this Act, and, to the maximum extent practicable, coordinate the activities with the carrying out of the duties; and

(3) to the maximum extent practicable, conduct or support the activities in a manner consistent with the plan and with this Act.

SEC. 13. WISCONSIN RIVER STUDY.

(a) FINDING.—Congress finds that movement up the Fox River and subsequent travel along the Wisconsin River created one of the most important corridors opening the Upper Midwest.

(b) ASSESSMENT.—

(1) IN GENERAL.—The Secretary, in consultation with the Governor of the State, shall conduct an assessment of the historic linkage of the Fox River corridor and the Lower Wisconsin River.

(2) CONTENTS.—The assessment required by paragraph (1) shall identify the historic value of the Lower Wisconsin River, including points of special note and threats to the historic integrity of the corridor or the points of special note.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall report to Congress on the findings of the assessment.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—There are authorized to be appropriated to the Commission in each fiscal year $350,000 to carry out the Commission's duties under this Act.

(b) SECRETARY.—There are authorized to be appropriated to the Secretary in each fiscal year such sums as are necessary to carry out the Secretary's duties under this Act.•

• Mr. KASTEN. Mr. President: I rise to introduce legislation to create the Fox River National Heritage Corridor. The legislation that we are introducing today establishes a mechanism to protect and restore the historic Fox River System.

The Fox River has an important and varied history. Prior to Europeans coming to the region, it provided key points for settlement and served as an important transportation artery for Native Americans. Later the Fox played a key role in the settling of the Upper Midwest. Discovered by French Canadians, early explorers and fur trappers paddled their canoes into Green Bay and up the Fox River.

The Fox River was the lynchpin allowing the establishment of a trade route to develop commerce on our frontier. Not only did the Fox serve as an important corridor to Wisconsin's heartland, but it granted access to the entire Mississippi basin.

At Portage, WI, the Great Lakes, and the Mississippi basins are separated by a distance of only a couple of miles.

By portaging their canoes between the Fox and Wisconsin Rivers early travelers gained access to the entire Mississippi River system. A link was established to the South reaching to the Gulf of Mexico, and to the West reaching Montana via the Missouri River.

The Fox River link is the closest thing to a Northwest Passage ever established. It provided an easy means of transport for the movement of settlers and goods into the heart of America.

With the industrial revolution, the Fox River again played a key historic role. A system of locks and dams were established to allow the easy movement of goods.

The first hydroelectric dam in the Nation was built on the Fox. In fact, the first U.S. home to be wired for electricity is in the heart of the Fox River Valley, Appleton, WI.

Meanwhile, the Fox was becoming an industrial center.

The Fox River nurtured the establishment of the U.S. paper industry. Today, more paper is made in the Fox River Valley than anywhere else in the world. Much of our domestic technology was born there, and the Fox River Valley continues to lead the world in the development of paper products.

But the Fox River corridor is not just the home to the modern paper industry, or a monument to the early history of our Nation. It is truly a multiple use waterway.

Today the Fox River system attracts extensive recreational use. Some of the best fishing in the world is in this basin. There is a very high concentration of pleasure boats, as well as a center of diversified commerce.

This legislation will establish a mechanism to protect this valuable resource. The Fox River National Heritage Corridor Act will designate the Fox River as a National Heritage Corridor, and initiate an assessment of the suitability for designating the Lower Wisconsin River as such. Without this legislation, critical historical and natural resources will likely be lost.

We owe it to ourselves and future generations of Americans to protect this fabulous system.

This legislation has been years in preparation. Over the past 4 years I have worked closely with the people of the Fox River Valley to develop this bill.

This legislation is strongly supported in Wisconsin and by the entire delegation. In fact, the State legislature overwhelmingly passed a resolution in support of this legislation.

This bill brings together the need to protect historic features, promote tourism, and support the continued economic development of the Fox River Valley.

I hope that we can now act to enhance this living museum of America's environmental, cultural, and industrial heritage.•

By Mr. ROCKEFELLER (for himself and Mr. BYRD):

S. 2007. A bill to extend the Appalachian Regional Development Act of

1965 and to provide authorizations for the Appalachian Highway and Appalachian Area Development Programs; to the Committee on Environment and Public Works.

APPALACHIAN REGIONAL DEVELOPMENT ACT AMENDMENTS OF 1991

• Mr. ROCKEFELLER. Mr. President, today I am very pleased to introduce legislation, on behalf of myself and Senator BYRD, that is vital to my State of West Virginia and the Appalachian region.

In 1965, the Federal Government made a commitment to Appalachia to provide the assistance necessary to bring the region into economic parity with the rest of the Nation. This commitment has yet to be fulfilled. The gap has been narrowed in some of Appalachia, but we are by no means on a par with the rest of the country. The Appalachian Regional Commission is the instrument to continue to provide this extra assistance.

For many years, the ARC has been targeted for termination by federal officials who didn't understand the needs and potential of the people of Appalachia. Only because of support from Congress through the appropriations process has the ARC survived and continued its mission to help put Appalachia on an equal footing with the rest of the Nation. Crucial leadership from my distinguished, fellow Senator from West Virginia, ROBERT C. BYRD, has literally saved the day for the ARC year after year. And I have proudly joined him in fighting past efforts to extinguish this program. Time and time again, we have stood up to fight for the future of our State.

Quite recently, the tide has shifted some in our favor. The Bush administration finally recognized the benefit of the Commission, and this year actually requested funding for both the ARC highway and area development programs. This makes much more economic and practical sense. Investing now in the roads and infrastructure of our region is the key to building a strong economy in Appalachia. In the end, all Americans will benefit from a commitment of resources and leadership to Appalachia.

I feel that Senator BYRD and I were instrumental in helping the President realize the importance of the program. Just 11 days after President Bush took office, Senator BYRD and I went to the White House to meet with him precisely on this subject. We described to him the special needs of the region, explained the reasons for this economic distress, and detailed the progress the Commission has made over the last two decades.

We showed him the maps of the partially completed Appalachian Corridors, and the roads leading, as we pointed out, "halfway to nowhere." This made it clear to the President that failure to continue the program, and further refusal to finish the building of these crucial roads, would be a ludicrous waste of the State and Federal funds already invested.

This legislation I am introducing will reauthorize the Appalachian Regional Commission, and will enable both the highway and the area development programs to continue for a period of 5 years. The highway program will be authorized at $150,000,000 for 1992 through 1996. The area development program will be funded at $51,500,000 for the same time period.

The ARC is a partnership between the States and the Federal Government. Through this partnership it has been possible to reduce the region's school dropout rate, infant mortality, and illiteracy—widely recognized as basic deterrents to economic advancement. However, much remains to be done. According to a recent study, there were nearly 300 distressed counties in the Nation, and nearly one-third of these are in Apalachia.

Reducing, or even removing, the human obstacles to development will not be enough. We must also overcome the physical barriers to development that plague Appalachia, and the most obvious physical barrier is the Appalachian Mountains. To be convinced that these mountains inhibit development, all one must do is compare unemployment rates in counties that are insulated by mountains to those on the other side. In my State of West Virginia, there is a stark difference between the development in the three counties of the eastern panhandle and the interior counties just over the mountain.

Corridor H, which would connect Interstates 81 and 79, would virtually solve this problem for the central West Virginia. Completion of corridor G would connect the coalfields of West Virginia with three interstate highways and the capital of our State. Completion of the corridors would open the area to development. According to the ARC, a full 81 percent of the jobs created over the last decade are in counties that have a completed interstate or corridor.

We have an undeniably compelling case for reauthorizing the ARC and completing the corridors. As a result of the Commission, and the contribution of the Federal Government, life is better and opportunities are greater for the men, women and children that live in all 398 counties of the 13 States of Appalachia. The hopes and dreams, especially of the young, should not be left unrealized.

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. 2007

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 "Appalachian Regional Development Act Amendments of 1991".

SEC. 2. AMENDMENT OF STATEMENT OF PURPOSE.

Subsection (a) of section 2 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 2(a)) is amended by inserting before the period at the end of the sixth sentence the following: "and in severely distressed and underdeveloped counties or areas lacking resources for basic services".

SEC. 3 ADMINISTRATIVE EXPENSES OF THE COMMISSION.

Subsection (b) of section 105 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 105(b)) is amended to read as follows:

"(b) There are authorized to be appropriated to the Commission to carry out the provisions of this section an amount equal to $3,500,000 for each of the fiscal years 1993, 1994, 1995, 1996, and 1997. Not more than $1,200,000 of the amounts authorized to be appropriated pursuant to the preceding sentence for each fiscal year shall be available for expenses of the Federal co-chairman, alternate, and the Federal staff.".

SEC. 4. ADMINISTRATIVE POWERS OF THE COMMISSION.

Paragraph (7) of section 106 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 106(7)) is amended by striking out "1982" and inserting in lieu thereof "1997".

SEC. 5. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.

(a) AUTHORIZATION.—Subsection (g) of section 201 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 201(g)) is amended to read as follows:

"(g) There are authorized to be appropriated to carry out the provisions of this section an amount equal to $150,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, and 1997.".

(b) FEDERAL SHARE.—(1) Paragraph (1) of section 201(h) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 201(h)(1)) is amended by striking out "70 per centum" and inserting in lieu thereof "80 percent".

(2) The amendment made by paragraph (1) shall apply with respect to projects approved after March 31, 1979.

SEC. 6. DEFINITION OF FEDERAL GRANT-IN-AID PROGRAMS.

Subsection (c) of section 214 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) is amended—

(1) by striking out "December 31, 1980" in the first sentence and inserting in lieu thereof "September 30, 1997", and

(2) by inserting "authorized by title 23, United States Code," after "road construction" in the second sentence.

SEC. 7. PROGRAM DEVELOPMENT CRITERIA.

Paragraph (1) of section 224(a) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 224(a)(1)) is amended by inserting before the semicolon at the end thereof the following: "or in a severely distressed and underdeveloped county or area lacking resources for basic services".

SEC. 8. AUTHORIZATION.

Section 401 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 401) is amended to read as follows:

"SEC. 401. In addition to the appropriations authorized in section 105 for administrative expenses, and in section 201(g) for the Appalachian development highway system and local access roads, there are authorized to be appropriated, to remain available until expended, to carry out this Act, $51,500,000 for each of the fiscal years 1993, 1994, 1995, 1996, and 1997.".

SEC. 9. TERMINATION.

Section 405 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 405) is amended by striking out "1982" and inserting in lieu thereof "1997".●

By Mr. HATCH (for himself and Mr. BOREN):

S 2008. A bill to amend the Public Health Service Act to establish Federal standards to ensure quality assurance in private sector drug testing programs, and for other purposes; to the Committee on Labor and Human Resources.

QUALITY ASSURANCE IN THE PRIVATE SECTOR DRUG TESTING ACT

Mr. HATCH. Mr. President, today I am pleased to once join the senior Senator from Oklahoma in the reintroduction of the Quality Assurance in the Private Sector Drug Testing Act. This legislation is substantially identical to legislation that I introduced with Senator BOREN during the 101st Congress.

BACKGROUND

The facts about substance abuse in this Nation remain alarming. According to the National Institute on Drug Abuse and Alcoholism, 1 in every 10 people in this country currently has an alcohol problem. One in every 12 currently employed fulltime workers reports a current use of illegal drugs. In total, Federal estimates indicate that substance abuse in America now costs our economy an estimated $102 billion per year in lost productivity.

Because some 70 percent of all illegal drug users are currently employed, the linkage between the workplace and substance abuse is unavoidable. Employers can no longer afford to ignore these facts and write off this situation as an acceptable cost of doing business.

More than at any time before, the facts point to an acute understanding by employers that substance abuse in the workplace is needlessly draining productivity and imposing unreasonable costs on business that can, and must, be brought under control. Enlightened employers are now realizing that it is in their own best interest and in the best interest of their employees to bring this problem under control.

This is because the negative results of substance abuse in the workplace are blatantly coming into perspective. Substance abusive workers miss more work. They are tardy more often. They are more likely to injure themselves, their coworkers, and innocent individuals outside the workplace, generating additional workers' compensation costs or court actions. Generally, these businesses also pay more in sick leave, overtime pay, and other insurance costs because of substance abuse. In addition, product quality is put in jeopardy. I ask my colleagues: Would you want to buy a car with brakes installed by someone high on drugs? How about boarding an airplane whose mechanic was terribly hung over?

Understandably, companies are beginning to fight back with positive substance abuse strategies. Management's desire to provide a safe and healthful workplace, protect the integrity of their products and services, better protect the financial interests of their shareholders, and, most of all, lend a helping hand to the employees whose lives have been negatively affected, has led to the formulation of a range of tactics to deal with these problems. Obviously, an integral part of such a strategy is drug testing.

Let me note here that drug testing makes sense for employees as well as management. While the national leadership of organized labor seems regrettably opposed to drug testing, one after another of the local unions are agreeing to such tests. Often they have asked employers to initiate such programs independent of or through the collective bargaining process. Clearly, employees and their more enlightened representatives recognize that for reasons of personal safety, and to maintain the integrity of their health benefits fund, a truly drug-free workplace is an essential matter. While demanding fairness and reliability in these tests, employees have come to understand that drug testing is in their best interest also.

Mr. President, this area, drug testing, is the specific focus of this legislation. However, while it is obviously a necessary and important element of a workplace drug abuse program, we cannot afford to ignore the consequences that adverse employment decisions based on erroneous test results can have on an employee. While we recognize the merits of drug testing and should encourage employers to lend helping hands to employees to bring substance control under control, we must simultaneously ensure balanced protection for employees.

That is the purpose of this bill, Mr. President. The purpose is to ensure the accuracy and reliability of any drug test that is administered. This would be accomplished in this bill through the imposition of Federal standards that would guarantee uniformity and predictability with respect to drug testing programs.

The standards established under this bill would require that a federally certified laboratory be used to analyze all samples taken as part of a drug testing program. The standards require the confidentiality of drug test results. And, the standards provide a right for employees to explain why a test result may have been caused by factors other than drug abuse.

Specifically, the areas for which standards are required, such as chain of custody, quality assurance, and laboratory staff training, mirror the areas dealt with in the Federal National Institute on Drug Abuse [NIDA] guidelines. However, specific provisions as well as general administration ensures that the guidelines under this bill will be crafted specifically for the private sector, taking into account the positive features of the many fine business-run programs that currently exist.

Because of the strong safeguards that these standards would put into place, persons subject to drug tests will know they have the protection of Federal law against sloppily administered drug testing programs. They will have the comfort of knowing that, consistent with our scientific and technical capabilities, needless errors will be avoided.

SUMMARY OF PROVISIONS

The cornerstone of this bill is a requirement that no person may perform a drug test subject to the provisions of this act unless such person is sanctioned under a laboratory certification program established by the Secretary of Health and Human Services. Under this program, reliable standards would be promulgated to guide such certifications.

In establishing these standards, the Secretary is required to use scientific and technical criteria that will ensure that the testing scheme will yield accurate and reliable results. This certification process is designed to ensure that false positive or false negative test results will not occur.

Because modern science now offers the tools to meet this worthwhile objective, these requirements are designed to maximize the predictive value of tests. And, to further ensure the quality of this process, the Secretary is also required to review the criteria on an annual basis to see whether or not improvements can be made because of advances in science and technology.

In another important area, this proposal requires that an employer establish, as a condition of maintaining a drug testing program, a written anti-drug abuse policy. The policy must, at a minimum, contain an explanation of the circumstances under which a drug test will be administered, the procedures for notifying an employee of a sample that tests positive in a conforming test, and a statement that all tests will be conducted in a consistent and nondiscriminatory manner. Among other elements of these policies, an explanation of the safeguards for protecting the privacy of individuals, including chain of custody procedures, must be included in the policy.

Additionally, employers must make a reasonable effort to provide notice of the written anti-drug abuse policy to applicants and employees who would be subject to these tests. Again, as a con-

dition of implementing a testing program, an employer must establish a drug awareness program to inform employees of the dangers of drug abuse. Under these awareness programs, information as to the existence and availability of counseling, employee assistance, rehabilitation, other treatment programs, and the penalties that may be imposed by an employer would also be made available.

Another critical provision in this legislation establishes standards under which an employer may require a drug test. While there is no provision mandating an employer to test, an employer is authorized to require a drug test of any individual who applies for a job. This is, of course, subject to the requirement that such tests be applied consistently and not be administered with an intent to discriminate against any certain individual or group of individuals.

For current employees, an employer is authorized to test under several circumstances. First, drug testing would be permitted on a "for cause" basis or when an employer has reason to suspect that an employee is using or is under the influence of drugs. Second, employee testing would be authorized as part of any scheduled medical examination. Third, employee testing would be authorized in cases when an accident, or near accident, involving actual or potential loss of human life, bodily injury, or property damage is at issue. Fourth, employers would be authorized to test employees who are undergoing, or have completed, a drug treatment program. Testing under this fourth category could be administered at any time during a reasonable period after the completion of a drug treatment program or up to 5 years following. If the employee has tested negatively during this period, the slate is wiped clean.

A final circumstance under which employers are authorized to test is in certain, specified, random circumstances. Specifically, these circumstances include: First, situations in which the test is part of a universal testing program; second, in work units, locations, or facilities where drug abuse has been identified as a problem; or third, in cases concerning sensitive employee positions. A sensitive employee is defined as an individual employed in a position whose duties involve responsibilities affecting matters such as national security, health, or safety, the environment, or other responsibilities requiring a high degree of trust and confidence.

As I stressed at the outset, Mr. President, this bill contains specific employee protections designed to protect against the possible abuses that could arise out of a drug testing program. The bill specifically prevents an employer from taking retaliatory action against employees who exercise the rights bestowed under this legislation. And, an employer would be precluded from taking any adverse employment action unless a second test confirms a positive test result. That is a very significant safeguard that I hope each of my colleagues will note. They will also note that there is but one exception to this general prohibition.

The exception is as follows. In the case of employees in sensitive positions, if the initial drug test indicates a positive result, the bill permits an employer to transfer or reassign the employee from that sensitive position, with no loss of pay, until the test result has been confirmed. Confirmation generally takes at least a day, and it makes sense to temporarily reassign the employee to a nonsensitive activity pending a confirmation.

As I indicated earlier, an additional employee protection that the bill would establish is the confidentiality of drug test results. The results of a drug test could be released to third parties only in very specific and very limited circumstances. These circumstances include a release to the employee or to another individual designated by the employee in writing, a release to representatives of the employer with a need to know such as employee relations or medical personnel, a release to drug abuse treatment providers who are assisting the drug abusing employee, and releases as required by applicable law.

The enforcement provisions of this bill are divided into two parts. Enforcement of the laboratory certification standards is the responsibility of the Secretary of Health and Human Services. This enforcement effort would be guided by existing enforcement provisions in the Public Health Service Act. These provisions have, of course, a well-documented history of effectiveness.

Enforcement of the employee protection provisions would be conducted in accordance with administrative process in the Department of Labor. Under this process, the Secretary of Labor would receive complaints, conduct investigations and hearings, and issue orders to remedy violations. The remedies provided under the bill would be exclusive and would include make whole compensation and other forms of equitable relief. Orders for such relief by the Secretary of Labor would be reviewable in the Federal courts of appeals.

Mr. President, another critical part of this bill addresses its effect on other laws. Specifically, the provisions in this bill preempt any State or local law, rule, regulation, order, standard, or cause of action that applies to private sector drug testing. Additionally, nothing in this bill prohibits any Federal agency from issuing regulations with respect to drug and alcohol testing of private sector employees, subject to language in the bill requiring that such regulations are not inconsistent with the standards applicable to scientific and technical procedures for testing established under this act.

Finally, the bill provides for an effective date 1 year after enactment that should provide adequate time for the Secretary of HHS to promulgate the standards mandated under the act while permitting employers to prepare adequately for the act to take effect.

CONCLUSION

Mr. President, I sincerely believe that this legislation represents a balanced approach to dealing with the problem of drugs and alcohol in the workplace while specifically providing safeguards for employees.

I invite my colleagues to join Senator BOREN and me in cosponsoring this important legislation.

Mr. President, I ask that the text of the Quality Assurance in the Private Sector Drug Testing Act of 1991 be printed in the RECORD following my statement.

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

S. 2008

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 "Quality Assurance in the Private Sector Drug Testing Act of 1991".

SEC. 2. FINDINGS AND PURPOSE

(a) FINDINGS.—Congress finds that—

(1) drug abuse imposes an enormous toll upon society in terms of broken families and individual suffering, infants born with disabilities from their mother's drug abuse, lost productivity, increased treatment and health care costs, and the generation of criminal conduct which threatens the very social fabric of many communities;

(2) drug testing can be an effective deterrent to drug abuse when administered in a manner that provides for quality assurance;

(3) drug abuse in the workplace is a serious national drug problem;

(4) the private sector workplace is an appropriate arena in which to fight the war on drugs through the establishment of drug-free workplace programs that include drug testing;

(5) there are currently many good quality private sector drug testing programs, in which testing is performed in a variety of settings, such as: in testing facilities at the employment site, in clinics, hospitals and small independent testing laboratories, and in large, high-volume specialized testing laboratories. Under appropriately designed standards and procedures taking into account the experience of these programs, each of these options will have a place in a well-designed regulatory system; and

(6) the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by the Department of Health and Human Services on April 11, 1988 are generally responsive to Congressional concerns for quality testing in Federal Workplace drug testing programs, and on a solid footing. These Guidelines do not embody the only proper approach to the challenge of providing test

quality or employee protection in the Federal workplace, and key features of the Guidelines must undergo continuing scrutiny and rethinking. While a number of the current Guidelines' provisions are not suitable for incorporation into a drug testing regulatory system for the private sector workplace, many of the Guidelines' principles and standards are appropriate for that purpose.

(b) PURPOSE.—It is the purpose of this Act—

(1) to establish Federal standards applicable to private sector workplace drug testing programs that will assure the quality of such programs; and

(2) to ensure uniformity and consistency in the application of such Federal standards to preempt State and local laws and such other requirements that regulate private sector workplace drug testing programs.

SEC. 3. PUBLIC HEALTH SERVICE ACT

(a) DRUG TESTING.—The Public Health Service Act is amended—

(1) by redesignating title XXVI (42 U.S.C. 300cc et seq.) as title XXVII; and

(2) by inserting after title XXV (42 U.S.C. 300bb-1 et seq.) the following new title:

TITLE XXVI—QUALITY ASSURANCE IN PRIVATE SECTOR DRUG TESTING

SEC. 2601. LABORATORY CERTIFICATION STANDARDS

(a) PROHIBITION.—No person may perform a drug test in connection with any drug testing program that is subject to the provisions of this title unless such person is a laboratory certified pursuant to subsection (b).

(b) CERTIFICATION.—Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall establish a program for certifying laboratories that meet standards for performing—

(1) drug screening tests

(2) drug confirmatory tests; and

(3) both drug screening and confirmatory tests.

(c) SCIENTIFIC AND TECHNICAL CRITERIA.

(1) In establishing standards for certification under subsection (b), the Secretary shall use scientific and technical standards that:

(A) maximize the sensitivity and specificity of the testing scheme;

(B) give due regard to the experience and practices of drug testing in the private sector workplace; and

(C) take into consideration the practices, procedures, and experience of forensic toxicology laboratory certification programs conducted by private, non-profit accrediting entities. The Secretary is authorized to designate such entities or appropriate State agencies to administer the certification program established under this section. The Secretary shall oversee and review the performance of any such entity or State agency so designated to ensure its compliance with the certification program established under this section.

(2) In establishing the certification program required under subsection (b), the Secretary shall appoint and consult with an expert advisory panel not to exceed 15 members comprised equally of representatives of private sector employers and employees with experience in workplace drug testing, laboratories which conduct drug testing, and recognized scientific and professional disciplines within the drug testing community.

(3) The certification standards required under this section shall include:

(A) reasonable requirements for chain of custody procedures, for laboratory staff training and skills, for ensuring the identity and integrity of specimens, and for confidentiality of test results.

(B) laboratory quality assurance requirements, to include where appropriate minimum proficiency sampling, in order to assure the competence of the laboratory to conduct drug testing under this title. Responsibility for laboratory quality assurance, including where appropriate the provision of blind samples, shall rest on the Secretary or his designee.

(C) a requirement that any sample which tests positive on an initial screen test be submitted for a confirmatory test to a laboratory certified for performing such a test under this title.

(D) a requirement that all negative test results by initial screen be reported to the employer promptly by direct means.

(E) a requirement that no positive drug test result be reported to the employer before a confirmatory test has been conducted, except in the case of employees in sensitive positions pursuant to Sec. 2605(c) of this title.

(F) prompt adoption of testing protocols for any drug for which reliable testing methods are available and for other drugs as such methods become available.

(G) initial screen cutoff levels to reflect current testing technology.

(H) no bar to certification of a laboratory based on its physical setup or location, and no bar to certification of a laboratory which is part of a hospital or medical clinic on the grounds that the laboratory's drug testing facility is no separate from a secure laboratory facility which performs diagnostic or therapeutic tests, no on the grounds that staff medical personnel are allowed access to the testing facility, so long as the laboratory meets the requirements of this title.

(I) a requirement that, after the effective date of regulations implementing section 353 of the Public Health Service Act, 42 U.S.C. 263a. a laboratory may not be certified under the program established by this section unless the laboratory is certified under section 353, except that a laboratory which performs only drug tests is not required to be certified under section 353 to be certified under this certification program, nor is it required to be certified under section 353 for the purposes of that section.

(4) A laboratory which performs drug tests only on samples of arrestees, detainees, probationers, incarcerated persons, or parolees in the criminal justice system is not required to be certified under this section nor under section 353.

"(d) PERIODIC REVIEW.—At least once each year, the Secretary shall review, and where appropriate revise, the certification criteria established under subsection (b), taking into consideration the relevant scientific technical advances in the area of drug testing and revisions needed to reflect employer zero-drug tolerance practices.

SEC. 2602. ANTI-DRUG ABUSE POLICY

"(a) WRITTEN POLICY.—As a condition of implementing or maintaining a drug testing program, an employer shall establish a written anti-drug abuse policy that shall contain, at a minimum, an explanation concerning the—

"(1) circumstances under which a drug test will be administered, the procedures for notifying an employee of a sample which tests positive in a confirmatory test, and a statement the policy will be administered in a consistent and nondiscriminatory manner without regard to the position the employee holds;

"(2) safeguards established for protecting the privacy of individuals who are subject to testing, including chain of custody procedures and the limitations on disclosure of the results of drug tests;

"(3) availability of drug abuse treatment programs;

"(4) penalties that may be imposed by the employer for a violation of the anti-drug policy of the employer;

"(5) procedures for review by a medical officer in the case of a sample which tests positive in a confirmatory test; and

"(6) procedures under which an applicant or employee shall be given a reasonable opportunity to explain a sample which tests positive in a confirmatory test.

"(b) NOTICE.—An employer shall make a reasonable effort to provide notice of the written anti-drug policy to applicants and employees subject to testing using whatever methods the employer determines to be appropriate.

SEC. 2603. DRUG-FREE AWARENESS PROGRAM

"In order for an employer to be permitted to implement or maintain a drug testing program, such employer shall establish, as part of such drug testing program, a drug-free awareness program designed to inform its employees concerning—

"(1) the dangers of drug abuse, both inside and outside of the workplace;

"(2) the policy of the employer of maintaining a drug-free workplace;

"(3) information as to the existence and availability of counseling, employee assistance, rehabilitation, and other drug abuse treatment programs of which the employer is aware; and

"(4) the penalties that may be imposed by the employer on applicants and employees who test positive for the use of a drug, and for the manufacture, distribution, dispensation, possession, or use of a drug in the workplace of the employer.

SEC. 2604. STANDARDS FOR DRUG TESTING

"(a) APPLICANTS.—Nothing in this title shall be construed to prohibit an employer from requiring, as a condition of employment, that an applicant submit to and pass a drug test based on criteria established by the employer that are designed to achieve a drug-free workplace. Refusal by an applicant to submit to such a test may be treated in the same manner as a failure to pass a drug test.

"(b) EMPLOYEES.—Nothing in this title shall be construed to prohibit an employer from requiring an employee to submit to and pass a drug test—

"(1) on a for cause basis or where the employer has reasonable suspicion to believe that the employee is using or is under the influence of a drug;

"(2) where such test is administered as part of a scheduled medical examination;

"(3) in the case of an accident or incident involving the actual or potential loss of human life, bodily injury, or property damage;

"(4) during and for a reasonable period of time (not to exceed 5 years) after the completion of a drug abuse treatment program; or

"(5) on a random selection basis—

(A) in the case of sensitive employee positions;

(B) in work units, locations, or facilities where drug abuse has been identified as a problem; or

(C) as part of a universal testing program.

"(c) DEFINTION.—As used in this title, the term 'random' means the selection of individuals for testing based on uniform criteria

so that no employee is selected differently from other employees in similar circumstances. The term 'universal testing' means a program in which every employee in a particular work unit, location, or facility of an employer is tested.

SEC. 2605. EMPLOYEE PROTECTIONS

"(a) PROHIBITIONS.—In the case of an applicant or employee, it shall be a violation of this title—

"(1) for an employer to fail to make reasonable efforts to inform the applicant or employee as to the drug testing policy of the employee;

"(2) for an employer to take any adverse action based on the unconfirmed positive results of a drug test, except as provided in subsection (c);

"(3) for an employer, on the request of an applicant or employee, to fail to provide such applicant or employee with a reasonable opportunity to be informed of a sample which tests positive in a confirmatory test; and

"(4) for an employer, on the request of an applicant or employee, to fail to provide such applicant or employee with a reasonable opportunity to explain the results of a sample which tests positive in a confirmatory test.

"(b) ANTIRETALIATION PROHIBITION.—It shall be a violation of this title for an employer to take retaliatory action against an employee because of the exercise by the employee of any right granted or protected under this title.

"(c) EXCEPTION FOR SENSITIVE EMPLOYEES.—Pending the receipt of the results of a confirmatory drug test, an employer may transfer or reassign an employee in a sensitive position to another area or position without any loss in compensation to such employee if the initial drug test result is positive. If a confirmatory test of such employee is negative, such employee shall be entitled to immediate reinstatement to the position from which such employee has been transferred or reassigned.

SEC. 2606. CONFIDENTIALITY

"(a) IN GENERAL.—An individual, other than the applicant or employee who is the subject of a drug test, shall not disclose information obtained as a result of a drug test, except as provided in this section.

"(b) PERMITTED DISCLOSURES.—An employer, or individual conducting a drug test on behalf of an employer, may disclose information acquired from a drug test only—

"(1) to the applicant or employee taking such drug test or any other individual specifically designated in writing by such applicant or employee taking such drug test;

"(2) to the employer, including the duly authorized representatives of such employer, that requested such test;

"(3) to any court, governmental agency, arbitrator, or mediator, in accordance with the provisions of Federal or State law;

"(4) to appropriate drug abuse treatment providers; or

"(5) as required in defense of claims, suits, or proceedings challenging any employment action taken by an employer in reliance in whole or in part upon a drug test.

SEC. 2607. EMPLOYER PRACTICES

"(a) SAFE WORKPLACE.—Nothing in this title shall be construed to prohibit an employer from taking action necessary to apply personnel procedures and policies designed to ensure a safe workplace, without regard to whether or not a drug test is administered.

"(b) DRUG-FREE WORKPLACE.—Nothing in this title shall be construed to prohibit an employer from taking action necessary, up to and including termination, in the case of applicant or employee—

"(1) whose drug test is determined to be positive after a confirmatory test;

"(2) who refuses to take a drug test authorized under this title; or

"(3) who tampers with or adulterates a drug testing sample.

"(c) PARTICIPATION IN DRUG ABUSE TREATMENT PROGRAM.—Nothing in this title shall be construed to prohibit an employer from requiring an employee to participate in, and satisfactorily complete, a drug abuse treatment program as a condition of continued employment where the employee has a sample which tests positive in a confirmatory test, has refused to submit to a drug test, or has tampered with or adulterated a drug test sample.

"(d) SENSITIVE POSITION.—Notwithstanding any other provision of law, nothing in this title shall be construed to prohibit an employer from refusing to place an employee in, or to reinstate such employee, to a sensitive position if such employee has a sample which tests positive in a confirmatory test.

SEC. 2608. DRUG ABUSE TREATMENT PROGRAMS

"As part of the drug-free awareness program established pursuant to section 2603, employers shall provide information to employees concerning the existence and availability of public and private drug counseling, employee assistance, rehabilitation, and other drug abuse treatment programs of which the employer is aware.

SEC. 2609. REGULATIONS

"Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall—

"(1) establish a program for the certification of laboratories for the performance of toxicological urinalysis conducted for drug testing programs as described in this title; and

"(2) issue such other rules and regulations as may be necessary or appropriate to carry out his or her responsibilities under Section 2601 of this title.

SEC. 2610. ENFORCEMENT AND RELIEF

"(a) LABORATORY CERTIFICATION STANDARDS.—The certification program established pursuant to section 2601(b) shall be enforced in accordance with the procedures and sanctions contained in subsections (g), (h), (i), (j), (k), and (l) of section 353 of the Public Health Service Act, 42 U.S.C. 263a.

"(b) EMPLOYEE CHARGES CHARGING UNLAWFUL DISCHARGE OR DISCRIMINATION; INVESTIGATION; ORDER.

"(1) CHARGE.—An employee who believes that he or she has been discharged or otherwise discriminated against by an employer in violation of this title may, not later than 30 days after such alleged violation occurs, file (or have any individual file on behalf of such employee) a charge with the Secretary of Labor (hereinafter referred to in this subsection as the 'Secretary') alleging that such discharge or discrimination violates the provisions of this title. On receipt of such charge, the Secretary shall notify in writing the employer named in the charge of such filing.

"(2) INVESTIGATION.—On receipt of a charge filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in such charge. Not later than 30 days after the receipt of such charge, the Secretary shall complete such investigation and shall notify in writing the charging party and the employer named in the charge (and any individual acting on behalf of the employer) as to the results of such investigation.

"(3) ORDER.—Not later than 60 days after the completion of an investigation conducted pursuant to this section, the Secretary shall, unless the proceeding on the charge is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the employer alleged to have committed such violation, issue an order providing or denying the relief prescribed in this section.

"(4) RELIEF.—In response to a complaint filed under paragraph (1), the Secretary determines that a violation of this title has occurred, the Secretary shall order the employer who committed such violation to provide such suitable relief as the Secretary determines appropriate, including reinstatement, promotion, and the payment of lost wages and benefits.

"(5) REVIEW OF ORDER.—An employee or employer adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of such order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review shall be filed not later than 60 days after the issuance of the order of the Secretary under paragraph (3). Review by the Court of Appeals shall conform to Chapter 7 of Title 5, United States Code.

"(6) FAILURE TO COMPLY.—If a party fails to comply with a final order issued pursuant to paragraph (3), the Secretary may file a civil action to enforce such order in the United States court for the district in which the violation was found to occur. Such court, in issuing any final order under this subsection, may award the costs of litigation (including reasonable attorney and expert witness fees) to the prevailing party.

"(7) RULES AND REGULATIONS.—The Secretary of Labor may issue such rules and regulations as may be necessary to carry out his or her responsibilities under section 2610(b).

"(c) EXCLUSIVITY OF REMEDIES.—The rights and remedies provided for in this section shall be the exclusive enforcement rights and remedies for any violation of this title.

"(d) AFFIRMATIVE DEFENSE.—The good faith compliance of an employer with the standards and procedures established under this title shall constitute an affirmative defense against any charge filed under subsection (b).

"(e) CONSTRUCTION.—Nothing in this title shall be construed to require an employer to establish a drug testing program for applicants or employees or make employment decisions based on such test results.

SEC. 2611. EFFECT ON OTHER LAWS

"(a) STATE LAW SUPERSEDURE.—This section shall upon enactment of this title preempt any State or local law, rule, regulation, order, standard, or cause of action that applies to the private sector drug testing of an applicant or employee, or that relates to any matter addressed under this title. No State or local government shall adopt or enforce any law, rule, regulation, ordinance, standard or order relating to—

"(1) the certification of laboratories that perform drug testing analysis with respect to such analysis,

"(2) requirements for the conduct of drug testing under this title;

"(3) the establishment, scope, or conducting of employee or applicant drug testing programs;

"(4) the requirements applying to employer drug testing policies or drug awareness programs; or

"(5) any other matter relating to this title.

(b) OTHER FEDERAL LAWS.—Nothing in this title shall be construed to prohibit any Federal agency from issuing regulations with respect to drug and alcohol testing of private sector employees, including requirements for mandatory drug testing in specified circumstances, provided that compliance by an employer with the standards established under Section 2601(c)(3) of this title applicable to scientific and technical procedures also shall constitute compliance with such Federal agency regulations to the extent that such regulations differ from the standards established under section 2601(c)(3).

SEC. 2612. EFFECTIVE DATE

"Unless otherwise specified, the provisions of this title shall become effective one year after the date of enactment of this title, except that the prohibition contained in section 2601(a) shall not take effect prior to 1 year after establishment of the certification program required under section 2601(b).

SEC. 2613. SEPARABILITY OF PROVISIONS

"If any provision of this title, or the application of such provision to any individual or circumstances, shall be held invalid, the remainder of this title, or the application of such title to individuals or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 2614. DEFINITIONS

"As used in this title:

"(a) APPLICANT.—The term 'applicant' means any individual who has submitted an application to an employer, whether written or oral, for employment with such employer.

(b) DRUG.—The term 'drug' means any controlled substance listed in schedules I through V of the Controlled Substance Act, alcohol, steroids, and lawful prescription medications which are the subject of abuse.

"(c) DRUG ABUSE TREATMENT PROGRAM.—the term 'drug abuse treatment program' means a program, such as an employee assistance program, designed to assist an individual in dealing with problems caused by drug abuse.

(d) DRUG TEST.—The term 'drug test' means any test procedure used to take and analyze blood, breath, hair, urine or other body fluids or materials for the purpose of detecting the presence or absence of a drug or its metabolites, except that for purposes of this Act the term drug test does not include breath alcohol analysis.

"(e) CONFIRMATORY TEST.—the term 'confirmatory test' means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

"(f) EMPLOYEE.—The term 'employee' means an individual employed by an employer.

"(g) EMPLOYER.—The term 'employer' means an individual, partnership, corporation, association, or other entity, that employs one or more employees, and that is engaged in an industry affecting commerce.

"(h) SENSITIVE EMPLOYEE.—the term 'sensitive employee' means an individual employed in a position whose duties, as defined by the employer, involve responsibilities affecting such matters as national security, health, or safety, environment, or other responsibilities requiring a high degree of trust and confidence.

(i) MEDICAL REVIEW OFFICER.—The term 'medical review officer' means a licensed physician, registered nurse, or other individual who possesses the training and skills necessary to assess the documentation and results of a drug test and to identify illicit drug use.

SEC. 2615. PROFESSIONAL ATHLETES

"For purposes of this title, professional athletes may be treated in the same manner as employees who meet the definition of section 2614(g), except that professional athletes shall not be covered by section 2606(a)."

(b) CONFORMING AMENDMENTS.—

(1) Sections 2601 through 2614 of the Public Health Service Act (42 U.S.C. 300cc through 300cc–15) are redesignated as sections 2701 through 2714, respectively.

(2)(A) Sections 465(f) and 497 of such Act (42 U.S.C. 286(f) and 289(f) are each amended by striking out "2601" and inserting "2701".

(B) Section 305(i) of such Act (42 U.S.C. 242c(i)) is amended by striking out "2611" each place it appears and inserting "2711".

• Mr. BOREN. Mr. President, I am pleased to introduce again the Workplace Anti-Drug Abuse Act, which will play a vital role in the effort to detect and eliminate drug abuse in the workplace. My colleague, Senator HATCH, has explained the purpose and operation of the bill; I wish only to highlight a few of the important provisions in this act.

At the outset, we must keep in mind what this bill does not do; it does not mandate that any employer implement a system of drug testing for its employees. However, if an employer determines that such a system is necessary to combat the problems caused by drug abuse, this bill serves two functions. First, it establishes clear and uniform guidelines that employers must follow in establishing and operating their drug-testing programs. One of these requirements is that the laboratory performing the drug testing must be certified by the Secretary of Health and Human Services.

I note that the provisions concerning this certification process differ from similar provisions in the act that Senator HATCH and I introduced 2 years ago. The present bill is substantially more detailed in describing the certification standards, standards that are modeled after the National Institute of Drug Abuse guidelines applied in the Federal Government's drug-testing program but that are modified to provide flexibility for employers while continuing to ensure reliability.

The second function of this act is to protect the rights of workers. Surveys show that the majority of the workforce supports drug testing as a way to eliminate drug abuse in the workplace. This statistic is not surprising when one considers the dangers to workers caused by the abuse of drugs; drug use in the workplace costs this country $60 billion a year in worker accidents, insurance, lost productivity, and absenteeism.

While employees support drug testing, they have a right to expect that tests be conducted by reliable and federally certified labs, that tests be administered in a nondiscriminatory fashion, that employers provide full information about any drug-testing program, and that test results be kept confidential. This act ensures that those rights will be protected and that an employee whose rights have been violated can seek relief.

Simply put, this legislation strikes a balance. It provides employers with uniform and predictable standards for the implementation and operation of drug-testing programs, and it assures employees that testing will be conducted in a fair and accurate fashion.

I urge all Senators to study this bill carefully and to support this crucial legislation.•

By Mr. PACKWOOD (for himself, Mr. FOWLER, Mr. HATFIELD, Mr. NUNN, Mr. GORTON, Mr. BURNS, Mr. SHELBY, Mr. CRAIG, Mr. HEFLIN, Mr. SYMMS, and Mr. BREAUX):

S. 2009. A bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

REFORESTATION TAX ACT OF 1991

• Mr. PACKWOOD. Mr. President, today, I am introducing a comprehensive proposal, the Reforestation Tax Act of 1991, to encourage investment in and sound management of privately owned forest land. Identical legislation is being introduced in the House of Representatives by my colleague the gentleman from Oregon, Congressman RON WYDEN.

America's forests are one of our most valuable resources. They provide wildlife habitat, maintain watershed, and are used for a wide array of recreational activities such as hiking, camping, fishing, and hunting.

Our forests also serve as the foundation of a multibillion-dollar forest products industry. From lumber and construction materials to pulp and paper, timber provides a wide range of products that are essential to modern living.

The challenge for the future is to ensure we have enough forests to meet our wildlife habitat and watershed needs as well as sustain a reliable supply of timber for forest products. Harvest levels in many forest areas are undergoing large reductions in order to save endangered species, like the spotted owl. To fill this gap in our Nations's timber supply, we need to encourage private foresters to invest in and properly maintain their stock of trees.

Private forestry is a long-term, high-risk venture. Trees can take anywhere from 25 to 75 years to grow to maturity, depending on the type of tree and regional weather and soil conditions. The key to success is good management, which is costly. And fire and disease can wipe out acres of trees at any time during the long growing period.

Our legislation will boost private investment in forests and help with the cost of maintaining them. It does four things:

Partially eliminates tax on inflationary gains: The gain from the sale of private timber would be reduced by 3 percent for each year the timber was owned, up to a maximum reduction of 50 percent of the gain. This will partially protect long-term investors in forest land from being taxed on inflationary gains.

Doubles the reforestation tax credit: The current law reforestation tax credit has been eroded by inflation because it has not been increased since it was enacted in 1980. The bill doubles the reforestation expenditures eligible for the credit—from $10,000 to $20,000—and indexes this amount for inflation in the future.

Amortizaion of reforestation expenses: Similarly, the current law special 7-year amortization for up to $10,000 of reforestation expenses has not kept up with inflation since it was enacted in 1980. The bill increases this amount to $20,000, indexes it for future inflation, and reduces the amortization period to 5 years.

Passive loss rules: Proposed Treasury regulations discourage private foresters from employing sound forest management practices. The bill overturns the 100-hour rule in the regulations so that private foresters, like most other business entrepreneurs, can prove that they are materially participating in the forestry business.

This legislation is key to the preservation and expansion of investment in this vital natural resource. It has been endorsed by the following conservation, environmental, and forestry organizations:

The Wilderness Society;

The National Woodland Owners Association;

The Oregon Small Woodlands Association;

The Washington Farm Forestry Association;

The Forest Farmers Association;

1,000 Friends of Oregon;

The Idaho Forest Owners Association;

The Forest Landowners of California; and

The Natural Resources Defense Council.

I urge my colleagues to join us in this effort to encourage long-term investment in private forest land and cosponsor this important legislation.

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

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

S. 2009

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 "Reforestation Tax Act of 1991".

SEC. 2. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended by adding at the end the following new section:

"SEC. 1202. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

"(a) IN GENERAL.—At the election of any taxpayer who has qualified timber gain for any taxable year, there shall be allowed as a deduction from gross income an amount equal to the qualified percentage of such gain.

"(b) QUALIFIED TIMBER GAIN.—For purposes of this section, the term 'qualified timber gain' means the less of—

"(1) the net capital gain for the taxable year, or

"(2) the net capital gain for the taxable year determined by taking into account only gains and losses from timber.

"(c) QUALIFIED PERCENTAGE.—For purposes of this section, the term 'qualified percentage' means the percentage (not exceeding 50 percent) determined by multiplying—

"(1) 3 percent, by

"(2) the number of years in the holding period of the taxpayer with respect to the timber.

"(d) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets."

"(b) COORDINATION WITH EXISTING LIMITATIONS.—

(1) Subsection (h) of section 1 of such Code (relating to maximum capital gains rate) is amended by inserting after "net capital gain" each place it appears the following: "(other than qualified timber gain with respect to which an election is made under section 1202)".

(2) Subsection (a) of section 1201 of such Code (relating to alternative tax for corporations) is amended by inserting after "net capital gain" each place it appears the following: "(other than qualified timber gain with respect to which an election is made under section 1202)".

(c) ALLOWANCE OF DEDUCTION IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code (relating to definition of adjusted gross income) is amended by adding at the end the following new paragraph:

"(14) PARTIAL INFLATION ADJUSTMENT FOR TIMBER.—The deduction allowed by section 1202."

(d) CONFORMING AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 1202. Partial inflation adjustment for timber."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after December 31, 1991.

SEC. 3. APPLICATION OF PASSIVE LOSS LIMITATIONS TO TIMBER ACTIVITIES.

(a) DETERMINATION OF MATERIAL PARTICIPATION.—Subsection (h) of section 469 of the Internal Revenue Code of 1986 (defining material participation) is amended by adding at the end the following new paragraph:

"(6) TREATMENT OF TIMBER ACTIVITIES.—

"(A) IN GENERAL.—A taxpayer shall be treated as materially participating in any timber activity for a taxable year if—

"(i) the taxpayer's participation in the activity for such year constitutes substantially all of the participation in the activity of all individuals for such year, other than individuals—

"(I) who are not owners of interests in the activity,

"(II) who are retained and compensated directly by the taxpayer, and

"(III) whose activities are subject to the oversight, supervision, and control of the taxpayer, or

"(ii) based on all of the facts and circumstances, the taxpayer participates in the activity on a regular, continuous, and substantial basis during such year, except that for purposes of this clause—

"(I) the taxpayer shall not be required to participate in the activity for any minimum period of time during such year, and

"(II) the performance of services by individuals who are not owners of interests in the activity shall not be considered if the services are routinely provided by individuals specializing in such services and such services are subject to the oversight, supervision, and control of the taxpayer.

"(B) PARTNERS AND S CORPORATION SHAREHOLDERS.—Subject to paragraph (2), the determination of whether a partner or S corporation shareholder shall be treated as materially participating in any timber activity of the partnership or S corporation shall be based upon the combined participation of all of the partners or shareholders in the activity.

"(C) TIMBER ACTIVITY.—For purposes of this paragraph, the term 'timber activity' means the planting, cultivating, caring, cutting, or preparation (other than milling) for market, of trees."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986.

SEC. 4. AMORTIZATION OF REFORESTATION EXPENDITURES AND REFORESTATION TAX CREDIT.

(a) INCREASE IN MAXIMUM AMORTIZABLE AMOUNT.—

(1) IN GENERAL.—Paragraph (1) of section 194(b) of the Internal Revenue Code of 1986 (relating to maximum dollar amount) is amended by striking "$10,000 ($5,000" and inserting "$20,000 ($10,000".

(2) INFLATION ADJUSTMENT.—Subsection (b) of section 194 of such Code (relating to limitations) is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1992, each dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) of such section.

"(B) ROUNDING.—In any increase determined under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50."

(3) APPLICABILITY TO REFORESTATION CREDIT.—Paragraph (1) of section 48(b) of such Code (relating to reforestation credit) is amended by striking "section 194(b)(1)" and inserting "paragraphs (1) and (2) of section 194(b)".

(b) AVAILABILITY OF DEDUCTION AND CREDIT TO TRUSTS.—Subsection (b) of section 194 of such Code (as amended by subsection (a)(2) of this section) is amended—

(1) by striking paragraph (4),

(2) in paragraph (5)—

(A) by inserting "AND TRUSTS" after "ESTATES", and

(B) by inserting "and trusts" after "estates", and

(3) by redesignating paragraph (5) as paragraph (4).

(c) EFFECTIVE DATE.—

(1) AMORTIZATION PROVISIONS.—Except as provided in paragraph (2), the amendments made by this section shall apply to additions to capital account made after December 31, 1991.

(2) TAX CREDIT PROVISIONS.—In the case of the reforestation credit under section 48(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to property acquired after December 31, 1991.

• Mr. SYMMS. Mr. President, I support this bill because it is a new attempt to offer a capital gains tax cut to a broad section of the forest industry. I would prefer, and I will continue to work toward, a broader capital gains tax cut, not just for forest products but for all assets.

We need to cut capital gains as a matter of fairness, but more importantly, a capital gains tax cut is one of the few effective means at our disposal to get the economy moving again.

This bill is particularly helpful in that it offers a formula under which the forest industry can benefit from capital gains indexing. I believe capital gains indexing is the best, most fair, and most effective way to reduce the capital gains tax. The trouble has always been how do we get this to apply in a reasonable way to timber.

But I want to make one thing clear: This bill applies to a broad section of the timber industry. If there is ever a successful effort to cut certain sections of the timber industry out of the bill, or if there is some effort to use these benefits to reduce the lands available for logging, my support for this bill will disappear immediately.

By Mr. CRANSTON (for himself and Mr. PELL):

S. 2011. A bill to provide agricultural and other essential commodities to the Soviet Union in exchange for Soviet fissile materials and to assist the development of lending institutions in the Soviet republics; to the Committee on Foreign Relations.

NUCLEAR WARHEADS SECURITY AND PLOWSHARES ACT OF 1991

Mr. CRANSTON. Mr. President, I rise today to introduce the Nuclear Weapons Security and Plowshares Act of 1991. I am joined in this effort by my good friend and distinguished colleague, the chairman of the Senate Foreign Relations Committee [Mr. PELL].

The truly extraordinary changes taking place within the former Soviet Union today confront the world with a series of equally sweeping and momentous challenges.

Perhaps the greatest threat to international security in this post-cold war era comes from the continued threat of nuclear proliferation.

And perhaps the most important aspect of this threat today is the huge number of obsolete and unwanted nuclear weapons and huge quantities of weapons materials lying about in the far reaches of the former Soviet Union.

These weapons and weapons materials have been rendered surplus by the end of the cold war, the START Treaty, and unilateral Soviet declarations matching those initiated by President Bush. The newly independent republics do not want the weapons, but they do need help in getting rid of them in ways that prevent further regional instabilities or worldwide proliferation.

It is clear that the former Soviet Union cannot manage its mammoth nuclear legacy without outside help.

Last month Victor Mikhaylov, the Soviet deputy minister of atomic power and industry, warned that the Union needs help from the United States to reclaim, dismantle and make safe the enormous number of nuclear weapons involved. Mikhaylov noted that alone the Soviets cannot hope to address this problem before the end of this decade.

Enterprises, agents and individuals formerly involved in the weapons programs of the U.S.S.R. are already desperate for hard currency and there are growing reports of Soviet nuclear scientists looking to "freelance" their knowledge and skills around the world.

Unless we can find constructive ways to influence the direction of events, we are in danger of trading the balance of terror in the cold war years for an era of nuclear anarchy.

The problem of the weapons is aggravated by the twin threat to order and democracy created by the collapsing Soviet economy and shortages of food and basic necessities. Desperation may all too soon rule.

A few days ago, my good friend, Amb. Robert Strauss, spoke in the most vivid terms about what might happen if we do nothing. The situation in the Soviet Union, he said, "sure can blow up in our face in the next 6 months."

"I'd rather risk a couple of billion bucks out here for our country," Strauss said, "than fail to risk a couple of billion bucks and end up looking at a real fascist-type situation."

Mr. President, I would ask each of my colleagues to reflect a moment on that day in August when we first heard a coup had taken place in the Soviet Union. At that moment, we faced the end of democratic change in the Soviet Union and a revival of the arms race.

Thanks to a burst of nationalist and democratic energy, the coup failed. As a result we are not facing a second cold war. Instead we need to stabilize the process of democratic change and prevent hunger and disorder from provoking another reactionary coup. And we need to help clean up the dangerous debris of 40 years of nuclear armament, lest it turn against us in new ways.

There is a mechanism to do both.

Time is short. As I think Ambassador Strauss is saying, there is a window of opportunity here—for us, for them, and for the world—that will surely slam shut if we do not know how to take advantage of it.

For that reason, Mr. President, I am proposing the "Nuclear Weapons Security and Plowshares Act of 1991." The bill provides a way for the United States and the Soviets to work together, in a mutually verifiable way, to gather, dismantle, and safeguard the materials in nuclear weapons that have been declared surplus. This can be done in a way that benefits the domestic United States economy as well as United States security interests, while providing the food and financial assistance essential to a peaceful transition in the former Soviet Union.

If enacted, this legislation could provide a needed next step to current arms reduction agreements that call for the elimination of some nuclear delivery systems but do not require the dismantling of warheads or safeguarding of nuclear weapons materials.

Actions by Western governments to offer trade credits for purchases of food based on the commercial value of Soviet weapons-grade uranium diluted to civilian reactor-grade could eliminate a critical threat to nonproliferation efforts and consolidated democratic and free-market reform.

Mr. President, under this proposal the United States would use the commercial value of uranium derived from Soviet weapons to offset the cost of sending food to the people of the former Soviet Union, but also includes a sweetener for the Soviet republics, which have made it clear that they, too, want a say in nuclear weapons policy.

Twenty-five percent of the commercial monetary value of Soviet fissile materials acquired under the provisions of this bill would be given to the republics in the form of financial aid. These monies would be earmarked for the creation of regional and local development banks.

The Nuclear Weapons Security and Plowshares Act also expresses the sense of Congress that reductions in the Soviet weapons-usable fissile stockpile should be accompanied by a parallel decrease in our own inventories, and by implementation of bilateral, multilateral or international safeguards on these materials.

It is the intention of this bill to help stabilize the transfer of Soviet weapons uranium to civilian use through the United States Department of Energy, and also to focus attention and provide resources for safety storing and ultimately disposing of plutonium inventories.

Funds for carrying out the provisions of the bill would come from unobligated Department of Defense monies.

Mr. President, I believe that the purchase of diluted Soviet fissile nuclear material would be advantageous to United States domestic as well as security interests.

This bill would serve as an incentive for the control and dismantling of an almost-unthinkable number of Soviet nuclear weapons which, in other circumstances, could pose horrendous regional, strategic and proliferation risks.

Because the purchase of what would become a safeguardable form of moderately enriched uranium would be made with credits for American agricultural and other essential goods, U.S. dollars would be spent within the U.S. economy.

A few weeks ago, there were not a few voices raised during the debate on foreign aid in favor of tied aid. If this isn't tied-aid, then I don't know what is!

Mr. President, nuclear security for the United States has been tremendously expensive. The Nuclear Weapons Security and Plowshares Act provides for greatly increasing this security at much lower cost.

There are 10,000 to 20,000 warheads—about half the Soviet arsenal—which would be included under the terms of this proposal. Most of these are tactical weapons that are less secure against diversion or regional misuse than strategic weapons.

The United States still spends large sums to counter the threats posed by these weapons, and may end up spending even more if proliferation occurs.

The cost of this bill is more than justified on an avoided-defense cost basis. And, of course, the long-term gains in security will mean more money available to take care of our own long-neglected domestic agenda.

The purchased lower-enriched uranium can be used to reduce costs in the operation of Department of Energy enrichment plants. This use would not disrupt commercial markets. United States uranium producers have recently filed anti-dumping actions against the Soviets, and DOE's enrichment enterprise has been severely injured by low-priced sales by Soviet enterprises. This bill would reduce the domestic Soviet pressures that have led to this dumping and redirect Soviet efforts towards arms control, rather than commercial or even clandestine sales.

Enactment of this measure will provide substantial savings that will make the proposal revenue-neutral, and most likely positive.

The Department of Defense would avoid the future costs of countering tactical and strategic weapons that might otherwise likely remain intact and widely dispersed. There would also be savings from the reduction of the need to counter regional threats that might arise from eventual diversion of tactical weapons to third party states, or proliferation associated with migration of expertise.

American farmers and ordinary businesses, not defense contractors, would find themselves on the front lines in our effort to provide ourselves and our allies greater security.

Furthermore, the Department of Energy will save money on power and operational costs and increase future revenues from domestic and international sales.

Mr. President, penny wise and pound foolish is a bad way to run a government, but penny foolish and pound foolish at this critical time in our country's history will only ensure that the American people will not be able to enjoy the fruits of the end of the cold war.

Great challenges need to be met with great resourcefulness. Let's help the American farmer and the American worker win the peace for which so much money has already been spilled. Let us go forth in the manner which has made the United States a model for the rest of the world; let's show them that self-interest and common interest can be done.

Mr. President, I ask unanimous consent that several recent newspaper articles be included in the RECORD, as well as letters of support for the bill, two of the most highly-regarded practitioners in the non-proliferation field, and a "fact sheet" on the bill prepared by one of them, Dr. Thomas L. Neff of the Massachusetts Institute of Technology. I also ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 2011

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 "Nuclear Warheads Security and Plowshares Act of 1991".

SEC. 2. FINDINGS

The Congress finds that—

(1) the leadership of the Soviet Union is seeking to transform that country economically and politically while at the same time maintaining control of the more than 25,000 nuclear weapons on the territory of its newly independent constituent republics;

(2) the warheads in the Soviet nuclear arsenal contain quantities of valuable enriched uranium that may be processed and used in commercial nuclear power plants, as well as plutonium that should be placed under internationally accepted safeguards;

(3) failure of the United States and other modern democratic nations to fully support change in the Soviet Union may contribute to its further political and economic disintegration, thus creating a grave threat to world peace and stability;

(4) under the Strategic Arms Reduction Treaty and new commitments to dismantle tactical and strategic weapons, up to 40 percent of Soviet warhead materials will be rendered useless;

(5) current arms control agreements provide for the elimination of delivery systems, but do not address the issue of the dangerous and growing stockpile of weapons-usable fissile materials in retired nuclear warheads which are being recovered in the process of warhead dismantlement;

(6) a second and related danger resides in the possibility that such material might be sold, either officially or surreptitiously, in its weapons-usable form on an uncontrolled world market;

(7) the risk of clandestine or unsafeguarded international transfer of fissile materials presents a relatively new and highly dangerous threat to efforts at nuclear nonproliferation;

(8) a small portion of the plutonium and highly enriched uranium recovered as a result of the dismantlement of United States and Soviet warheads will be sufficient to supply nonweapons uses of these materials (such as fueling naval propulsion reactors) for decades, thus further production of these materials would be dangerous as well as wasteful because such production would make the problem of safeguarding against diversion unnecessarily complex; and

(9) action by Western governments to offer trade credits for purchases of food and other essential goods based on the commercial value of Soviet weapons materials would—

(A) strengthen United States agricultural interests while meeting urgent food needs in the Soviet Union;

(B) eliminate a critical threat to nonproliferation efforts; and

(C) help to consolidate democratic and free market reform in the Soviet Union.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to strengthen United States agricultural interests while meeting urgent food needs in the Soviet Union;

(2) to help to consolidate democratic and free market reform in the Soviet Union; and

(3) to eliminate a critical threat to nuclear nonproliferation efforts by safeguarding dangerous weapons-usable materials from United States and Soviet warheads.

SEC. 4. POLICIES TO REINFORCE NUCLEAR NONPROLIFERATION.

(a) DETERMINATION OF PURCHASE PRICE OF SOVIET FISSILE MATERIALS.—The Congress urges the President, in consultation with concerned allies, to determine a fair and equitable price for the purchase of diluted uranium equivalent to the volume of Soviet fissile materials which have been made redundant through unilateral reductions and arms control agreements.

(b) COLLECTION, DILUTION, AND SAFEGUARDING OF SOVIET FISSLE MATERIALS.—The Congress further urges the President to consult with the leadership of the Soviet Union for the purposes of establishing a procedure for the collection, dilution, and safeguarding of fissile materials from dismantled weapons.

(c) MUTUAL REDUCTION IN INVENTORIES AND IMPLEMENTATION OF SAFEGUARDS.—It is the sense of the Congress that it should be the policy of the United States Government that any reduction of the Soviet stockpile of fissile material for weapons should be accompanied by a parallel decrease in the United States' own inventories of fissile materials used in nuclear weapons, and by implementation of appropriate safeguards on such materials.

(d) PROPOSED AGREEMENT WITH IAEA.—It is the sense of the Congress that the President should initiate talks with the President of the Soviet Union and the Director-General of the International Atomic Energy Agency

(IAEA) to seek agreement that the mutual and verifiable destruction and storage of nuclear warheads, including on-site and challenge inspections, will be subject to mutually agreeable and comprehensive verification; and to discuss the advisability and feasibility of an agreement to place all civilian fissile materials possessed by the United States and the Soviet Union under IAEA or equivalent bilateral safeguards, including such materials that have been permanently transferred from weapons uses.

SEC. 5. PROVISION OF AGRICULTURAL AND OTHER ESSENTIAL COMMODITIES FOR SOVIET FISSILE MATERIALS.

(a) EXCHANGE OF AGRICULTURAL COMMODITIES FOR SOVIET FISSILE MATERIALS.—The President shall provide to the Soviet Union—

(1) surplus agricultural commodities owned or controlled by the Commodity Credit Corporation which are available for disposition under section 416(b) of the Agricultural Act of 1949; or

(2) agricultural commodities or other essential commodities purchased at market prices,

in exchange for Soviet fissile materials of equivalent value.

(b) FINANCIAL ASSISTANCE FOR SOVIET DEVELOPMENT BANKS.—In addition to the commodities provided under subsection (a), the President shall provide 25 percent of the monetary value of the Soviet fissile materials acquired under value of the Soviet fissile materials acquired under such subsection to the Soviet republics in the form of financial assistance which shall be available only for the establishment of regional and local development banks.

(c) REIMBURSEMENT OF COMMODITY CREDIT CORPORATION.—The President shall reimburse appropriations for the Commodity Credit Corporation for commodities provided under subsection (a).

(d) SUPERSEDING EXISTING LAW.—Any agricultural commodity or financial assistance provided under this section to the Soviet Union or to any Soviet republic shall be provided notwithstanding any other provision of law.

SEC. 6. STORAGE, SAFEGUARDING, USE, AND ELIMINATION OF FISSILE MATERIALS.

(a) REPORTS.—Not later than 180 days after the date of enactment of this Act, with respect to paragraphs (1) and (2), and not later than one year after such date, with respect to paragraph (3), the Secretary of Energy shall submit a report to the Congress setting forth—

(1) a plan for the safeguarded storage and dilution on enriched uranium acquired under this Act;

(2) a plan for the safeguarding of plutonium in facilities in the Soviet Union and in the United States; and

(3) the findings of the study conducted under subsection (b).

(b) STUDY ON PLUTONIUM STOCKS.—The Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall conduct a study on United States and Soviet Union plutonium stocks and safe and effective means to store and ultimately dispose of such inventories and the plutonium accumulating in spent civilian-power reactor fuel.

SEC. 7. POLICY REGARDING NEGOTIATION OF BILATERAL AGREEMENT.

It is the sense of the Congress that the Secretary of State should explore with the Soviet Union an agreement not to produce highly enriched uranium or separated plutonium.

SEC. 8. TRANSFER OF FUNDS CUT OF DEPARTMENT OF DEFENSE ACCOUNTS.

The Secretary of Defense shall transfer to the President out of such accounts of the Department of Defense as he may designate during fiscal years 1992 through 1966 such funds as may be necessary to carry out the purposes of section 5.

SEC. 9. DEFINITIONS.

For purposes of this Act—

(1) the term "agricultural commodity" includes any edible agricultural commodity grown in the United States;

(2) the term "nuclear weapon state" has the same meaning given to such term by Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons, signed at Washington, London, and Moscow on July 1, 1968;

(3) the term "safeguards" means the safeguards set forth in an agreement between a country and the International Atomic Energy Agency, as authorized by Article III(A)(5) of the Statute of the International Atomic Energy Agency, done at the headquarters of the United Nations on October 26, 1956;

(4) the term "Soviet Union" includes all successor states to the Soviet Union; and

(5) the term "weapons-usable nuclear material" means (A) any uranium that is enriched to more than 20 percent in U-235 or U-233, or both, or (B) any mixture of plutonium isotopes containing less than 80 percent PU-238.

FEDERATION OF AMERICAN SCIENTISTS FUND,
Washington, DC November 3, 1991.

Senator ALAN CRANSTON,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR CRANSTON, Your proposed "Nuclear Warheads Security and Plowshares Act of 1991" will be exceedingly helpful if enacted. Many of us are increasingly doubtful about the ability of the former USSR to manage its huge nuclear legacy without external help. Because of loss of confidence in the ruble, Soviet organizations are looking increasingly desperately for opportunities to earn hard currency. As your bill recognizes, that could be dangerous in the case of the Soviet nuclear establishment.

As your bill also recognizes, Soviet enriched uranium, both inside and outside nuclear warheads, has hard-currency value for legitimate peaceful purposes. After dilution to low-enrichment levels, it can be sold commercially as fuel for nuclear-power reactors.

It is important that this asset—one of the few fungible assets the Soviet people currently have—is not simply used for the benefit of a few well-placed apparatchiks. I think that your bill takes a long step in this direction by exchanging Soviet enriched uranium for essential commodities instead of cash. Some of these commodities will hopefully be used to keep the Soviet workers responsible for safeguarding and dismantling Soviet nuclear warheads on the job.

It is also important that your bill would have the U.S. undertake symmetrical commitments to verifiably move fissile materials from weapons to safeguarded storage or non-weapons uses. Otherwise, I think that Soviet hard-liners would balk at Soviet "unilateral disarmament."

Thank you for your far-sighted leadership in this matter. Please feel free to contact me if I can be of any further assistance.

Sincerely yours,

FRANK VON HIPPEL,
Chairman, FAS Fund (the research arm of the FAS) and Professor of Public and International Affairs, Princeton University.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, CENTER FOR INTERNATIONAL STUDIES,
Cambridge, MA, November 20, 1991.

Senator ALAN CRANSTON,
112 Hart Senate Office Building, Washington DC.

DEAR SENATOR CRANSTON: Thank you for providing the final draft of the "Nuclear Warheads Security and Plowshares Act of 1991." The Act would facilitate a major step in arms control under a dramatically changed and changing situation in the Soviet Union, while providing the Executive Branch with flexibility in implementation. I believe the Bill reflects the major objectives of the proposal I put forward late in October, with additional incentives to the post-Soviet republics.

It is important to recognize that the U.S. and the USSR are no longer in symmetric strategic or institutional positions on weapons, and that many of the traditional assumptions of superpower negotiation no longer apply. This has been quite evident in the unilateral actions taken by Presidents Bush and Gorbachev. The dominant issue in the post-Soviet republics is now food and economic stabilization, not nuclear confrontation with the U.S. Nuclear weapons deployed across the republic, once assets of national power, have become liabilities to all.

It is in the interest of the U.S. to assist with food and economic stabilization and to help insure that nuclear weapons and weapons-usable fissile material do not go astray. These are related issues, since the desperations of economic stabilization that is explicitly linked to solution of a arms control problem that has been fundamentally transformed, in a way that meets U.S. Soviet security objectives.

We would not propose to help failing central ministries collect their weapons, lest they simply consolidate their power, but rather propose to trade peaceful economic assistance for the verified destruction and conversion to civilian use of surplus Soviet fissile material that is either in nuclear warheads or could—equivalently—be used to make warheads. This economic assistance would be provided in a way that provides direct incentives for the collection, dismantlement, dilution and safeguarding of surplus Soviet warheads.

To provide the most expeditious assistance, the U.S. should be prepared to purchase Soviet stockpiles of enriched weapons grade uranium equivalent in fissile content to weapons to be retrieved, dismantled and safeguarded under mutually agreed verification procedures. The United States stopped production of weapons-grade uranium in 1964. The USSR continued to produce it until at least 1987 and appears to have substantial stockpiles. Such stockpiles would actually pose the greatest new strategic threat to the U.S. since they are the most readily available for producing new weapons. Obsolete tactical weapons in the field pose a proliferation threat and need to be recovered.

Soviet officials estimate that it will take as much as a decade to collect and dismantle these obsolete warheads. By making an immediate purchase, the U.S. can provide the resources to make this possible, as well as aid the Soviet people at a critical moment. Material from warhead dismantlement can be gradually converted to safeguarded civilian use, with the volume eventually checked against the initial purchase agreement. Pay-

ment, in the form of credits, would be made as surplus fissile material was delivered. This procedure would allow a rapid aid response while allowing time for U.S. and Soviet defense institutions to develop, coordinate, and implement verifiable destruction of warheads.

The Bill as written calls for funds to be drawn from the DOD budget, reflecting the substantial gains to U.S. security. There is a question about how DOE should treat the material financially. I would suggest that DOE analyze the operation of its enrichment enterprise and calculate the cost savings that would result from use of Soviet fissile material in its operations, and that this be the part of the purchase cost eventually attributed to the DOE budget. It is clear that the bargain proposed has both commercial and security benefits and the amount paid can reflect both.

The language of the Bill appears to provide for dilution in the Soviet Union of weapons-grade uranium to a level consistent with safe transport and protection against misuse (perhaps 20 percent U-235 rather than 93 percent), and with IAEA safeguard regulations and capabilities. To reassure everyone, it should only be moved under such safeguards and with sufficient physical protection.

It must be recognized that despite current problems, authorities in the post-Soviet world will remain concerned about strategic balances now and in the future, just as the U.S. must. The transfer of substantial fissile stocks must therefore be guaranteed not to increase U.S. weapons capabilities. The safest way to do this is to convert the material to civilian use under international or bilateral safeguards. Moreover, both sides must be assured that weapons dismantlement will proceed in parallel and in ways that ensure mutual confidence. There are technical and institutional mechanisms for doing so.

It seems appropriate to offer purchase credits rather than currency since agricultural and other essential goods are most needed, and since such credits are more difficult to turn to military use and are unlikely to be hoarded by particular groups. Purchase credits can also play an important role in accelerating development of a market economy. However the credits are initially allocated, it is likely that they will be bartered internally until they find the highest value uses. For example, a weapons dismantlement facility may not be able to use a large amount of grain purchase credits, but they could use those credits internally to procure steel, chemicals or other necessities for their activities. In this way, the effect of the credits in providing a hard currency equivalent for internal transactions that would be multiplied many times over.

I hope these comments are of value in your subsequent deliberations. Please let me know if I can be of further assistance.

With best wishes, and

Sincerely,

THOMAS L. NEFF.

QUESTIONS AND ANSWERS: SOVIET FISSILE MATERIAL PURCHASE PROPOSAL

(Proposed "Nuclear Weapons Security and Plowshares Act")

What is the Soviet surplus weapons and weapons-material problem?

According to the Ministry of Atomic Power and Industry of the former Soviet Union, there are between 10,000 and 20,000 surplus nuclear warheads widely distributed among the newly sovereign republics. Most of these are tactical weapons, which are mobile and more easily diverted than strategic weapons.

The central agencies of the former USSR that might otherwise be able to reclaim these weapons and destroy them no longer have the resources to do so, nor perhaps the political of financial leverage to deal with republics. At least some republics would prefer international involvement in the dismantlement process to sole dominance by another republic or old central agencies. A system of food and other incentives would provide the carrot to get agreement. Agricultural credits would support the technical and logistic efforts through their barter value, without providing direct hard currency support to military or weapons agencies.

There are also large stocks of weapons-usable highly-enriched uranium and plutonium, which would be the preferred material for new modernized nuclear weapons-usable parts destroyed or otherwise secured against misuse, under bilateral or multilateral safeguards. At present, there is no evident basis for achieving this.

Why might the commercial value of weapons material provide incentives?

Warheads and fissile stocks consist of both highly enriched uranium about 93 percent U-235) and plutonium. If processed and diluted with natural uranium, the highly enriched uranium has significant commercial value for civilian program use. Some older tactical weapons may contain more than 50 kilograms of HEU, worth more than a million dollars if converted to civilian use. Stocks of HEU may be worth billions.

Plutonium stocks and material derived from weapons has little civilian value, but action on the associated HEU would provide mechanisms and incentives to collect, store and safeguard this dangerous material in the former Soviet Union.

Highly enriched uranium stocks and warhead material would be diluted down to levels that no longer make it usable for weapons and purchased by the U.S. government in exchange for purchase credits for U.S. agricultural and other goods.

How might a U.S. purchase of Soviet Uranium solve domestic commercial problems?

Former Soviet enterprises, including MAPI, have already been selling increasing amounts of natural and low-enriched uranium to raise much needed hard currency for their activities. But in doing so, they have helped drive down prices in Western markets to all-time lows. This has limited the amount the Soviets can earn. It has also severely damaged Western mining activities, increasing unemployment, and greatly reduced the value and the ability of the U.S. government's Enrichment Enterprise to make profitable sales.

Congress has mandated two current investigations of Soviet dumping, and U.S. uranium producers, together with the Oil, Chemical and Atomic Workers Union, have recently filed an unfair trade action against the Soviets.

A large-scale government-to-government purchase would relieve the pressures on the Soviets to dump commercially, providing them with far more assistance than could be derived from dumping. The lower-enriched uranium (e.g., 20 percent U-235) would be used by the U.S. Department of Energy to reduce power and other costs in its operations. In this way, surplus material would not enter commercial markets, relieving pressure on Western uranium producers and increasing domestic employment. Removal of the threat of continued Soviet enrichment sales at non-competitive prices would allow DOE both to reduce government expenditures and make profitable new sales.

Why is the proposal cost-effective in meeting U.S. security interests?

The U.S. already spends very large amounts of money to counter the threat of Soviet nuclear weapons. If surplus weapons, weapons material, or expertise lead to further nuclear weapons proliferation, such events would require large new defense expenditures, one lesson of Iraq.

Expenditure of modest sums to neutralize these threats now would be far preferable to the large expenditures needed to respond to them later. The savings on current programs could well exceed the cost of a fissile material purchase. The long-run avoided defense cost may be extremely large.

The food and other assistance to the former Union deriving from this purchase would help prevent the desperation that may otherwise lead to reactionary change in the former Union or in republics, changes that would pose new threats to U.S. security.

How does the proposal meet domestic U.S. objectives?

The U.S. wishes to provide assistance to the people of the former Soviet Union, but it is politically difficult to do so unless there is a quid pro quo that results in enhancing domestic U.S. interests.

The proposal does so by ensuring that cash expenditures are made in the U.S. economy, particularly in vital non-defense sectors like agriculture, by reducing costs at Defense and the Department of Energy, and resolving problems of unemployment caused by Soviet dumping.

The purchase proposal makes sense from a purely domestic perspective. It also provides substantial assistance in maintaining post-Soviet economic, political and nuclear stability, all of which are in U.S. economic as well as security interests. The proposal is consistent with other suggestions for assistance, but has explicit objectives and payoffs for the U.S.

[From Newsday, Nov. 21, 1991]

NUCLEAR ALARM—SEIZED PLUTONIUM, URANIUM HINT OF EUROPE BLACK MARKET

(By Earl Lane and Knut Royce)

WASHINGTON.—Recent police seizures of plutonium and enriched uranium in Western Europe provide firm evidence for the first time of a black market in nuclear material that would be required for clandestine nuclear bomb factories, experts have told Newsday.

The latest incident occurred last week, when Swiss police seized about 65 pounds of contraband material in Zurich. Laboratory analysis has shown it to be low-enriched uranium. In mid-October, police in Como, Italy—acting on a tip from two informants—seized a tenth of a milligram of radioactive material that was subsequently found to be nearly pure bomb-grade plutonium.

While there is no determination on the origin of the materials seized in Como and Zurich, specialists interviewed by Newsday say there are intriguing hints of possible Soviet or Eastern Block origin.

Both plutonium and highly enriched uranium, in sufficient quantities, can serve as the core for an atomic bomb. Access to even low-enriched uranium as was seized in Zurich—can save a bomb maker many steps in the process turning natural uranium into fissionable material, experts said. The amount of uranium seized—even if it was subsequently enriched to weapons-grade—falls well short of the amount needed for a bomb, experts said.

Additional indications of a shadowy trade in nuclear material come from Africa, where an Angolan businessman recently told a Belgian firm that he had five boxes of enriched uranium for sale at $100,000 each. A faxed copy of the offer, which included blurry photos of the boxes, was obtained by Newsday. The contents of the boxes could not be determined.

While access to nuclear material is strictly controlled under international conventions, black market sales have long been rumored. The reports have often proved to be hoaxes, but specialists say the incidents in Europe—which are still under investigation—are cause for alarm.

"My greatest concern does not have to do with the quantity of plutonium that's been found but the fact that you actually had nuclear material of weapons-grade potential crossing borders illegally," said William Potter, an arms-control specialist at the Monterey Institute of International Studies in California. "I'm not aware of any prior documented cases in which materials such as enriched uranium or actual plutonium have been seized in the black market."

Potter and other arms-control experts worry particularly that economic and political chaos in the Soviet Union might induce renegade entrepreneurs to try to divert substantial amounts of nuclear materials from Soviet military or commercial facilities.

The deputy prosecutor in Como, Romano Dolce, told Newsday that documents written in Cyrillic—the alphabet used in the Soviet Union, Bulgaria, Serbia and Mongolia—were seized with the plutonium sample. Dolce declined to discuss the documents in detail. But in an earlier interview with the Swiss News Agency, Dolce said he believes the material may have been smuggled out of the Soviet Union after the failed coup in August.

The plutonium—which police officials says was being offered as a sample of bigger things to come—consists largely of pure plutonium-239 with lesser amounts of the isotopes plutonium-238 and americium-241, according to a source familiar with the laboratory analysis of the material. The 0.1 milligram plutonium sample was embedded in a plastic casing about the size of a silver dollar, the source said.

John Hessard, a physicist at Imperial College in London, said such isotope ratios are consistent with material produced by a military weapons program.

In the case of the uranium seized in Zurich, lab analyses just completed have found that its enrichment is at a level consistent with use in Soviet-made RBMK nuclear reactors. Natural uranium ore contains two major varieties—or isotopes—of uranium. It is 99.3 percent uranium-238 and 0.7 percent uranium-235. For the material to be useful in a power reactor, scientists must raise the amount of uranium-235 isotope only a few percent; for an atom bomb, the enrichment level typically is increased to above 90 percent.

Laboratory analysis has determined that the enriched material seized in Zurich has been raised to 1.2 percent uranium-235. Several experts said that RBMK reactors have used fuel enriched anywhere from 1.1 to 1.8 percent during initial fuel loading. Western commercial reactors typically use fuel about 3 percent enriched in uranium-235. "It's possible it's from an RBMK," one physicist said.

"This could be evidence of the kinds of leakage out of the Soviet program that a lot of people are worried about," said Paul Leventhal, head of the private Nuclear Control Institute and a specialist on proliferation issues. Vladimir Medinsky, a spokesman for the Soviet Embassy in Washington, said he was unaware of the seizures in Europe but said "the Soviet Union must be looking into this."

There also are hints of a Soviet connection in the Angola case. According to an intermediary who provided the photos to the Central Intelligence Agency, an agency representative told him that the boxes appeared to be of Soviet origin. There has been no analysis of the material in the Angola incident, however, and efforts by Newsday to reach the businessman who made the offer have been unsuccessful. The CIA declined to confirm or deny whether it is investigating the incident.

Whatever the outcome of that case, nonproliferation specialists said they found it and the recent seizures in Europe to be troubling. "The big question is, were there larger amounts for sale, and are we looking at a criminal network that has access to those amounts?" asked Gary Milhollin, director of the Wisconsin Project on Nuclear Arms, a private group.

Intelligence specialists and several experts on nuclear proliferation cautioned that investigations of alleged black market activity in uranium often lead nowhere. One U.S. intelligence source who tracks such reports said that the recent cases may reflect efforts by arms dealers and smugglers to capitalize on a perceived buyers' market for enriched uranium in such potential nuclear states as Libya and Iran.

That view is reinforced by reports in recent years of several amateurish attempts to peddle small amounts of natural uranium concentrate—known in the industry as "yellowcake"—at exorbitant prices. Yellowcake is a starting material for any attempt to enrich uranium, either for use in power reactors or in nuclear bombs. Experts said clandestine sales of yellowcake could readily avoid existing international safeguards since the material is not tracked nearly as closely as enriched uranium.

Sen. John Glenn (D. Ohio), a member of both the Armed Services and Intelligence Committees, has called for stronger safeguards on all nuclear material, saying that without stronger controls, "significant amounts of this material will increasingly appear on the black market."

Leventhal said that a country seeking to develop a clandestine nuclear bomb potential would likely seek to buy yellowcake on the black market in order to avoid advertising its intentions.

But it is the impossible leakage of enriched uranium or plutonium that has specialists most intrigued. "It is potentially very disturbing," Leventhal said.

Kurt Zollinger, a chemist in the Zurich police laboratory—where the seized enriched uranium is being held—said in a telephone interview that it consists of many irregularly shaped, small pieces of black material. While the intended use and origin of the material is a mystery, Zollinger speculated that it might be broken pieces from a fuel rod for a reactor.

"If this is a fuel rod, it is manufactured material which is supposed to be accounted for" under international safeguards, Milhollin said.

Under the 1980 convention on the physical protection of nuclear material, enriched uranium must be stored under controlled access and shipped "under special precautions," including formal arrangements among the buyer, seller and carrier and compliance with laws of the importing and exporting states.

The Zurich material is to be shipped to the Paul Scherrer Institute, Switzerland's national nuclear research center, for further analysis. Andreas Pritzger, head of administration for the institute, told Newsday that the two samples tested so far both were 1.2 percent enriched uranium.

Dolce is convinced there is "a close link" between the incidents in Como and in Zurich. "They [Swiss officials] got information and details from us," Dolce said. Seven people were arrested in the Zurich case—four of them police infiltrators, according to Dolce. Swiss police have thus far played down any connection between the cases, however.

In the Angolan case, a businessman named Amandio Dias was identified as a person to contact for the sale of the alleged enriched uranium, according to two persons familiar with the proposed deal. The offer was made by Fax to the Belgian diamond firm and included blurred photos of two rectangular boxes for sale. The fax material included the price, the number of boxes, the location, Angola, and the notation "can be seen on the spot."

The Belgian firm passed the offer to a Canadian importer in Toronto. The Canadian, who spoke with Newsday but asked not be identified, said that he urged the Belgian firm instead to report the unusual offer to the CIA. Al DeProspero, a former Army special forces officer who was asked by the Canadian to serve as a go-between, said the information immediately raised eyebrows at the CIA. "The intelligence people jumped on it," DeProspero said. He said that a CIA representative remarked that the boxes appeared to be "of Soviet origin."

"Someone in one of the [former Soviet] satellite countries evidently is hungry, got rid of this stuff," said DeProspero. Repeated efforts to contact Dias in Angola were unsuccessful.

DeProspero and the Canadian agent said they did not know whether, in fact, the boxes did contain any enriched uranium—either the highly enriched type useful in atomic bombs or the low-enriched commercial grade used in nuclear power reactors.

[From the Washington Post, Nov. 13, 1991]

SOVIETS ACCUSED OF 'DUMPING' URANIUM ON U.S.

(By Thomas W. Lippman)

Driven nearly to extinction by falling prices, U.S. uranium procedures have formally complained to federal trade officials that the Soviet Union is illegally "dumping" the commodity on the American market.

If the Commerce Department and the International Trade Commission find that the complaint is valid, the Bush administration would find itself in the paradoxical position as early as next summer of imposing trade sanctions on the Soviet Union just as it is trying to help that nation's crippled economy.

Experts throughout the industry said this week that the complaint appears to have merit. Uranium, in the natural form known as "yellowcake" and in the enriched form used as fuel for nuclear power plants, is one of the few products the Soviet, Union can export to earn desperately needed hard currency. The shutdown of several nuclear power plants in the Soviet Union and Eastern Europe since the 1986 accident at Chernobyl has reduced Soviet demand for nuclear fuel, and the Soviets are aggressively seeking new markets, unloading their uranium in the face of a worldwide glut, according to the Energy Department and independent analysts.

The complaint was filed by 13 U.S. producers and the Oil, Chemical and Atomic Workers Union, which represents a fast-dwindling work force. They are represented by lawyers from the Washington office of Akin, Gump, Hauer & Feld, a firm whose most visible partner used to be Robert Strauss, now U.S. ambassador to Moscow.

The U.S. complainants say that they will lose $49.9 million this year because of the allegedly unfair Soviet practices. The Soviets also are reportedly underselling other producer nations, such as Namibia.

Laurence J. Hoffman, the firm's managing partner, said the lawyers "absolutely did not" consult Strauss or notify him that the complaint was coming. But the firm did inform the Bush administration, he said, and "the government may have" alerted Strauss to the case.

The trade complaint, formally filed on Friday, could be doubly embarrassing for the administration because the U.S. government stands to be a major beneficiary if sanctions are imposed. The Energy Department is this nation's sole producer of enriched uranium, and its obsolete plants have rapidly been losing market share to more efficient and lower-cost producers, including the Soviets.

The Energy Department is not a plaintiff in the case because U.S. anti-dumping laws were enacted to protect private corporations, not the federal government. As recently as a year ago, the Energy Department was negotiating with the Soviet Union to import Soviet enriched uranium to supply to its own clients—a deal that would have given the Soviets access to the U.S. market without price cutting and allowed the Energy Department to reduce production at its high-cost plants. However, that deal was blocked by Congress.

In a statement issued by Akin, Gump, Michael McMurphy, president of the Uranium Producers Association, said the producers "really struggled with the decision to file an anti-dumping petition. Nobody wanted to jeopardize sensitive political relationships, and everybody is concerned about the economic plight of the Soviet people. However, the industry is itself in serious straits caused by the devastating program of Soviet dumping and simply must do something about it."

Under well-established trade regulation procedures, the Commerce Department will investigate whether the Soviets are selling uranium at an unfairly low price. The International Trade Commission will decide whether the domestic industry has been harmed. If the answer to both questions is yes, according to Akin, Gump attorney Valerie A. Slater, the government will be required to impose cash import duties on the Soviet Union.

No one disputes that the U.S. uranium industry is in dire condition. Energy Department statistics-show that employment in the mines and mills, mainly in the southwestern states, has declined from 22,000 workers in 1979 to fewer than 1,300. Production is down from 44 million pounds in 1980 to about 9 million pounds. Prices have declined from a peak of $43.45 a pound in the 1970s to about $10 on the spot market.

The Energy Department, which once held a monopoly on the enriched uranium market in the non-communist world, now has about 40 percent of it, as competitors in France, Germany and Japan have entered the market, in addition to the Soviets.

U.S. nuclear utilities, which are free to buy their uranium wherever they wish, have turned increasingly to Canada, Australia and other foreign suppliers with more efficient mines and lower costs. Imports increased from 13.1 million pounds in 1989 to 24.3 million pounds in 1990, according to the U.S. Energy Information Administration. The Soviet share of the U.S. market has leaped from near zero in 1987 to about 17 percent.

The true value of Soviet uranium is difficult to determine, because the Soviet Union remains a state-controlled economy insulated from real prices for transportation, energy and labor. "They have no shareholders, no management and a bunch of virtual slaves," said Daniel R. Einbund, a New York uranium broker who has negotiated with them.

Much of the U.S. firms' complaint is devoted to calculations aimed at showing that the Soviets' export price is below its "imputed value," based on comparison with similar operations in Canada. The complaint says the price would have to rise at least 132 percent to be fair.

[The New York Times, Thursday, Oct. 24, 1991]

A GRAND URANIUM BARGAIN

(By Thomas L. Neff)

CAMBRIDGE, MS.—The Soviet Government is struggling to transform itself economically and politically while maintaining control of more than 24,000 nuclear weapons in the newly independent republics. Mikhail Gorbachev has pledged to dismantle thousands of them, but the bankrupt Government may not be able to pay for doing so in ways that prevent misuse or wider proliferation. There is, however, a way to pay for disarmament that also provides economic motivation to the republics and the central Government.

The warheads contain substantial amounts of valuable material that can be processed for use in commercial nuclear power plants. It may be advantageous for the U.S. to buy or barter of such materials and turn them safely to commercial use. This can be done in ways that protect Western and Soviet commercial and security interests.

If we do not obtain the material, agents in the former Soviet Union, perhaps uncontrolled by central authority, may flood commercial nuclear fuel markets with material from arms programs or even seek to sell weapons-grade materials to the highest bidders.

The Soviets have been selling increasing amounts of natural and enriched uranium in Western commercial markets, feeding a downward price spiral that has driven some uranium producers out of business and threatened the uranium enrichment business of America's Energy Department, the world's largest supplier of commercial fuel.

The risk of costly disruptions of the supply of uranium has been greatly increased by growing disorder in the former Soviet Union. Possible Soviet dumping could keep prices low for years, or alternately the supply may suddenly dry up. U.S. action thus offers the potential for stabilizing Western commercial markets.

The Soviet arsenal's explosive power comes from some 500 tons of uranium highly enriched in the isotope U-235 and about 100 tons of plutonium. If diluted with natural uranium, both highly enriched uranium and plutonium can be used in civilian reactors, though most countries prefer fuel not containing plutonium. Under the Strategic Arms Reduction Treaty and new commitments to dismantle tactical and strategic weapons, up to 40 percent of Soviet warhead material will be freed up.

A deal in which the U.S. offered trade credits for purchases of food and other essential goods could be based on the commercial value of the weapons material. The central Government could use these credits in negotiations with the republics to arrange for collecting, dismantling, diluting and exporting material usable for commercial but not arms purposes, and could pay for safe-guarding plutonium.

A typical warhead might yield fuel worth $200,000. Ten thousand warheads containing 200 tons of highly enriched uranium would be worth about $2 billion. This would be a good deal for the Soviets, for if they tried to sell such a volume commercially, prices would crash.

How might the material be accommodated without disrupting Western markets? The Energy Department could use the enriched material to help meet its delivery commitments, saving on its own production costs. It has tried to improve the economics of its enrichment enterprise, largely because of the threat of low-priced Soviet enrichment services.

Substitution of enriched Soviet material would result in larger Energy Department inventories of natural uranium, which potentially is a concern to miners in the West. But it seems better for everyone to accept a gradual buildup of U.S. natural uranium stocks in order to diminish the threat of large volumes of material that might destroy commercial markets and pose a major threat to international security.

It is important for the U.S. and the Soviet Union to be assured that such a transaction would not compromise their security. One solution is for Soviet enterprises to dilute the material down to a level that would make reuse of it for weapons difficult and transport safer. Dismantling weapons could be monitored bilaterally, with subsequent processing, shipment and conversion to reactor fuel in the U.S. safeguarded by the U.N. through the International Atomic Energy Agency.

A U.S.-Soviet agreement on weapon uranium would not just provide economic incentives to dismantle weapons but also would set useful precedents for dealing with the more difficult issue of plutonium stocks and for dismantling additional nuclear weapon systems.

Such an agreement would go far in satisfying non-weapons states that the superpowers are finally keeping their part of the bargain in the non-proliferation treaty. It would also provide a basis for international involvement in the post-Soviet republics that have nuclear activities, and would justify greater international oversight in other countries.

If the U.S. pursued and the Soviets accepted this grand bargain, the U.S. should accept bilateral monitoring of the dismantling of its own excess weapons and put subsequent processing of material from those weapons under international safeguards.

[From the Wall Street Journal, Oct. 20, 1991]

ARMS CONTROL—THE RISK NOW POSED BY THE SOVIET 'NUKES' IS ONE OF MANAGEMENT

(By John J. Fialka)

One day last spring, a heavily guarded military convoy emerged from the mists near Lychen, a resort town north of Berlin. After dropping off its keys with a local mayor, the column headed east toward home with its cargo: the terrible burden of an elite Soviet KGB military unit known as VK79.

Inside the Soviet trucks were dozens of desk-sized metal boxes, each containing a nuclear warhead for a Scud missile. Inside the warheads were explosive-wrapped globes of plutonium, each capable of triggering a

blast almost as large as the one that devastated Hiroshima.

For many military units, the Cold War is over. But for detachments like VK79, it is more like the beginning of the end. The threat presented by its weapons lingers, because they are small, easily hidden, easily transported—and susceptible to theft.

MANY RISKS

Within the coming months and years, if all goes well, VK79's warheads will cease to exist. They are among some 10,000 tactical nuclear weapons that George Bush and Mikhail Gorbachev have vowed to eliminate, in history's first large-scale destruction of nuclear weapons (in the past, explosive parts of retired nuclear weapons have been recycled, not destroyed).

But Western experts have discovered that this "if" is a very big one. The rapidly unraveling Soviet Union lacks the resources to quickly collect and eliminate its share of the weapons, at least 7,000 warheads. Moreover, the 200 soldiers of VK79 don't seem to have the training or the experience to cope with terrorists, corruption, criminal gangs, coups, drugs and divisive politics—all growing facets of the uneasy peace they found when they returned home.

"They were oriented toward fighting a war," says William M. Arkin, military analyst for the environmental group Greenpeace and one of the first Americans to visit VK79's abandoned German base. Inside the 10-acre camp, hidden deep in a pine forest, he found a citadel—two underground bunkers surrounded by five barbed-wire-tipped fences, some electrified. Infantry trenches were arrayed around the bunkers, facing the probable direction of an enemy attack.

When Mr. Arkin, once a U.S. Army intelligence officer in West Germany, entered the bunker, he came upon a familiar scene; a secret world of warhead bays, sophisticated protective systems and evidence of extreme spit-and-polish discipline much like that in U.S. bunkers.

But he also sensed a big difference. The fenced compounds of U.S. nuclear storage sites, which dot the landscape in western Germany, are kept starkly illuminated and surrounded by open space. They were designed that way in the 1970s to cope with the more immediate threat of terrorists and demonstrators. The Soviet bunker had none of these features. Its soldiers seemed prepared only for the terrifying opening scenes of a third world war.

Today it is the non-war threats that are most worrisome to guard units like VK79, or units of the super-secret U.S. Army equivalent, the 59th Ordnance Brigade based in Germany. Of all nuclear weapons, tactical ones are the most vulnerable, because they are small enough for an enemy or a terrorist group to carry away.

MANAGEMENT IS KEY

Although a wide array of gadgets, including electronic combination locks called "permissive action links," are used by both sides to secure nuclear weapons, a determined expert can thwart them. The main defense is a tough management system involving tens of thousands of technicians and guards maintained by the U.S. and what remains of the Soviet Union. "It is their [the Soviets'] system of management that has to stay coherent. This is the one system that ought not to collapse in the Soviet Union," warns Fred C. Ikle, a former undersecretary of defense.

And it will have to stay coherent for a long time. A team of Soviet nuclear weapons experts who recently visited Washington said it may take 10 years and the equivalent of $2 billion to collect and destroy the tactical nuclear weapons. The Russians said they were considering plans to build a system of highly secured shelters to store about 15,000 weapons, after retrieval from outlying storage sites and other republics. (Only ethnic Russians were assigned to elite nuclear weapons units, so the republics would be starting from scratch in the business of guarding nukes.) After the weapons are retrieved, they are to be disassembled and their plutonium cores guarded in another type of shelter until they are burned up as fuel in reactors or submarines.

Victor N. Mikhailov, deputy minister of the Soviet Ministry of Atomic Power and Industry, worries that during the "several years" all this will take, "what might happen is difficult to predict." It would be cheaper and quicker, he told U.S. weapons experts, for the Soviet Union to pack a number of nuclear weapons in an underground tunnel and vaporize them with the searing blast from another nuclear weapon. "To destroy 30,000 weapons you will need 15 to 30 explosions underground," he calculated.

You also need money. During an informal meeting with U.S. senators, the Soviet nuclear experts suggested they needed U.S. funds to help build the storage and destruction shelters. But no such aid appears likely: Congress recently killed a provision in the defense budget that would have let the Bush administration spend up to $1 billion to help the Soviets shift their economy away from a war footing. Sen. Sam Nunn (D., Ga.), one of the measure's authors, contends such spending should be viewed not as aid but as "a direct way to reduce a threat to U.S. security."

U.S. weapons experts will begin talks with the Soviets in the next few weeks, an administration official says. The U.S. is prepared to offer "technical assistance" to help the Soviets destroy their weapons, he says, but he is unsure what form it would take. "We just don't know enough about their [nuclear weapons] system yet."

Even if the Soviets find funds for the destruction, there will be further difficulties: The system for accounting for the weapons must be perfect on both sides. Any missing nuclear device could provide a crisis. But tough accounting raises another touchy problem: secrecy. Both sides still worry that a mutually verified destruction process would reveal their bomb designs.

Complex problems are nothing new to U.S. politicians and officials who have spent many sleepless nights worrying about the ultra-secret business of managing tactical nuclear weapons. While other nuclear weapons were safely stored in remote silos, in hangers or under the sea, tactical ones have had to be kept in densely populated Central Europe.

Now much of this tension shifts to the Soviet side, where, in many cases, newly created managers and politicians must quickly learn the unforgiving nature of the mission of guarding the nukes. For the Russians, and the emerging rulers of the other Soviet republics, their job for months to come will be, in many respects, like the work of U.S. soldiers guarding the bunkers in what was West Germany.

Living close to danger and chaos came with their territory. There was always a Catch-22 aspect about what they did, U.S. Army nuclear artillery shells had to be housed within 15 miles of the East German border to be effective in wartime. That meant they were always in imminent danger of being overrun by Soviet forces before they could be used. Moreover, because they had to be stored in populous areas, threats of terrorist attack and political demonstrations were constant. The situation was a fertile one for morale problems. They began with the generals and ran to the lowliest guards in bunkers.

The presence of some 10,000 nuclear warheads that the U.S. Army pumped into Europe during the 1970s forced the Soviet army to spread out its armored formations so they couldn't be annihilated during an attack. But they also painted the U.S. Army into a corner; its strategy became "use them or lose them." Fortner Army chief of staff Gen. Edward C. Meyer recalls that in the 1970s, "the mission was delay, delay—then nuke. Every war game we played came to the point where you had to resort to nuclear weapons."

While the policy was clear, the matter of carrying it out haunted those in the nuclear bunkers. Since bunkers would be targets, at the first hint of preparations for an enemy attack, the mission was to load up the warheads and get them out in the field. That would take 10 hours, says a former commander of an Army nuclear ordnance company, who adds: "I know we would never get the first weapon out before we'd all be dead."

The actual protection and care of the warheads was left to carefully selected technicians, soldiers in their early 20s. The U.S. Army went to great lengths to keep technicians and guards happy, with everything in the bunker designed for "stress avoidance." The insides of U.S. bunkers are painted in soft pastels (as is the bunker vacated by the Soviet VK79). There is a great deal of busywork. Walls, hardware and floors are always kept freshly painted. "A clean bomb is a happy bomb," says a U.S. Army manual.

The Army also developed field manuals full of euphemisms to keep the average 22-year-old from thinking too deeply about his mission. For instance, troops nearest the nuclear blast wouldn't die from radiation burns and endless vomiting in their foxholes, but rather would sustain "Immediate permanent incapacitation."

As the commander of a nuclear bunker, says the former U.S. officer, who asked not to be named, "I was at the absolute mercy of the lowest dog in the unit. All he had to do is screw up and my career was gone. In the nuclear business, you had to be more perfect than perfect."

But perfect was hardly the word for the U.S. Army in Europe in the 1970s. The troops were plagued with drug, alcohol and morale problems, some of them a hangover from Vietnam. Nuclear units were no exception. In the officer's unit of 256 men, he says, there were almost 50 court martials, many for drug use.

By 1990, it was the Red Army that had severe morals problems. Soldiers in Germany began deserting and selling stolen uniforms and even weapons to get money. Moscow this spring ordered a hasty withdrawal of most nuclear units from Germany, up to two years ahead of time.

Mr. Arkin, the Greenpeace investigator, says the VK79 unit appeared equipped to handle every military contingency. There was a thick layer of earth on the roof and foot-thick doors to protect against direct hits. There were hundreds of gas masks, chemical protective suits, and an elaborate air conditioning and airlock system designed to thwart chemical attacks. He found a camouflaged loading dock and a timetable showing when U.S. satellites would pass overhead.

Unlike other departing Soviet units, which stripped their bases to the walls, VK79 had left in a hurry, abandoning much of its expensive equipment. "I guess the one thing they weren't prepared for was peace," he concludes.

[From the Los Angeles Times]

U.S. FEARS SALE OF SOVIET A-ARMS AND TECHNOLOGY

(By Norman Kempster and Stanley Meisler)

WASHINGTON.—U.S. officials are expressing increasing concern that the Soviet Union's extensive inventory of defense technology—including nuclear weapons hardware and expertise—may soon go on the world market as a new class of opportunistic capitalists try to turn a fast profit from superpower disintegration.

Echoing a theme that has been discussed privately among U.S. officials for some time, Defense Secretary Dick Cheney said Saturday that he is seriously worried that the breakup of the Soviet Union "will result in dissemination of knowledge about weapons of mass destruction."

Cheney, addressing potential Soviet arms proliferation on a Cable News Network television program, warned of "individuals who've got technical expertise going to work for other countries, and possibly even the flow of some of those weapons themselves to third parties."

Noting that the Soviet Union still has 27,000 to 30,000 nuclear warheads, Cheney said the experts who work on the Soviet nuclear program might be tempted by high salaries to join the nuclear programs of Third World countries. And he said that Iraq and North Korea are two countries that would probably be interested in hiring Soviet nuclear scientists.

"Remember how we started our space program after World War II with Werner von Braun and his German [scientists]," Cheney said.

Other Bush Administration officials have expressed concern about potential sales of Soviet chemical warfare weapons or, even worse, about a Soviet economic collapse that could spawn black market sales of all kinds of weapons during the chaos.

These officials said that Washington has made it clear to the central Soviet government and to leaders of the increasingly independent republics that they must prevent clandestine weapons sales if they hope to obtain economic aid from the United States and Western Europe.

That will probably be enough to stop government-level sales, said one senior Administration official who requested anonymity. But there is no guarantee that the authorities will be able to prevent individual hustlers from getting their hands on weapons or other technology that might find a ready market in the Third World.

"If things go to hell in a handbag, if there are outbreaks of domestic violence, then all of the reservations which local leaders might have about entering into unsavory arms deals might disappear," the Administration official said.

He said that in the "nightmare scenario," hard-pressed Soviet troops might start to sell their weapons to the highest bidder.

The way Administration officials and some American businessmen see it, weapons and other military technology are the only things produced by the Soviet Union that measure up to world standards. With the economy starved for hard currency, the temptation to sell that equipment may prove irresistible.

"I think the fact that they have not made any progress in terms of economic reform," Cheney said, "enhances the possibility that the kind of chaotic situation may develop where there'll be an even greater incentive for people to allow the spread of that [military] capability than has been true before."

Not all potential sales of Soviet military equipment would have a nefarious impact on the Third World. Some top-secret Soviet defense technology can be adapted to produce new and valuable civilian products.

For instance, Philip S. Myers, president of Montecito Trading Co. of Santa Barbara, said that Soviet rocket scientists have developed a chemical spray that could revolutionize the cleanup of oil spills at sea. That is, it could if Moscow had the manufacturing and distribution capacity to put it on the market.

Myers, who hopes to put together seed-capital funds to market Soviet technology, said the spray hardens petroleum into a solid mass. Applied to a leaking oil tanker, the chemical could turn the leaking oil into a patch that would stop the leak and harden oil already in the water into a glob that could be easily removed.

"They can bring out their beakers and show what it does," Myers said. "This is a breakthrough. But first they have to patent it and prove it. The Russians don't know how to pick up the ball from the point where they have the nifty little spray in the laboratory."

The senior Administration official said the United States would have no objection to the sale of military technology for clearly civilian uses. But he agreed with Myers that Soviet companies are ill-equipped to exploit scientific developments.

The Soviet Union has been able to sell military equipment for many years. The armies of Iraq and Syria, to name just two, use Soviet weaponry almost exclusively. But the market for legitimate government-to-government sales may be drying up. Soviet arms, at least in Iraqi hands, did not perform well against high-tech American weaponry during the Gulf War.

U.S. officials are concerned that if the Soviet Union is unable to sell its arms to legitimate buyers, the temptation may increase to unload the weaponry to terrorist groups or other purchasers who are shut out of the legal market.

Moreover, there is a growing concern in the West that the Soviet army will begin to unravel, leaving behind unemployed and increasingly desperate soldiers and arms makers who might try to support themselves by selling their equipment or skills to anyone willing to buy.

In his television interview, Cheney made it clear that the Soviet Union and its breakaway republics are not his only concern as a source of the technology of mass destruction. He also is worried that China may be in the business of spreading nuclear know-how and weapons.

"We're concerned that they [the Chinese] need to conduct themselves in such a way that they don't contribute to the spread of weapons of mass destruction," he said. "That's a point that we push with them consistently."

[From the Washington Times, Oct. 31, 1991]

ACCIDENTAL SOVIET MISSILE LAUNCH WORRIES THE WEST

(By Gerald Nadler)

MOSCOW.—Reports yesterday of an errant missile launch in the Ukraine underscored fears that the Soviet Union may be losing control of its nuclear arsenal.

"A ground-to-air missile was accidentally launched in the Ukraine," the Tass news agency said. "* * * The missile flew 7 kilometers [4.2 miles] toward Kiremenchug in the Poltava region, there was no explosion and consequently no casualties. The missile had no nuclear warhead."

The Interfax news agency said the missile landed on a highway near the town of Kremenchug, 40 miles south of Kiev. Shrapnel from the impact flew 450 feet, injuring several soldiers but no civilians, Interfax reported without elaboration.

Neither dispatch said when the missile leaped from its launch pad. But the timing of the reports could not have been worse for President Mikhail Gorbachev, who was in Madrid, Spain, for the Middle East peace conference.

August's failed coup prompted widespread concern that a disintegrating Soviet Union might lose control of its nuclear arsenal.

Doomsday fears arose when Soviet newspapers confirmed the hard-line plotters took the so-called black box needed to launch a nuclear strike from the detained Soviet president.

Heightening the alarm, the Ukraine declared independence after the thwarted coup and then recently demanded joint control over the nuclear weapons on its territory.

Kazakhstan, headed by its influential president, Nursultan Nazarbayev, also indicated it wants joint control over the nuclear arms on its territory. Kazakhstan is "a nuclear republic," Mr. Nazarbayev has said.

In London yesterday, Mr. Nazarbayev again said his Muslim central Asian republic would be a player in controlling and reducing nuclear arms through negotiations.

"The solution for the problem in our opinion consists in establishing double control over nuclear power, similar to the system of the 'double key' * * * used for a long time regarding the American nuclear arsenal in a number of countries in Western Europe," he said.

Mr. Nazarbayev's stand raises a dilemma for the United States, whose major arms treaties—including last July's START pact to cut long-range nuclear missiles by one-third—were negotiated with Mr. Gorbachev.

Both Ukraine and Kazakhstan pledged to honor the pacts. But they also indicated they want a say in implementing the accords.

Voicing the discomfort of the Western nations, Spanish Prime Minister Felipe Gonzalez said at a joint news conference with Mr. Gorbachev in Madrid that the Soviet Union must be preserved as a single country capable of maintaining a dialogue with other countries.

Soviet unity is compatible with respect for the sovereignty of the Soviet republics and will guarantee stability and international cooperation, the Spanish premier said.

Other Western nations are also seeking assurances from Mr. Gorbachev.

Mr. Gorbachev left Madrid for Paris yesterday to discuss nuclear security and Western aid with French President Francois Mitterrand. Soviet Foreign Minister Boris Pankin tried last week to reassure France that Moscow retained sole control over the Soviet nuclear missiles.

In Moscow, Soviet Defense Minister Yevgeny Shaposhnikov also dismissed the concerns about nuclear control.

"The nuclear button will remain as before, in the hands of the center," Mr. Shaposhnikov told the government newspaper Izvestia on Tuesday.

[From the New York Times, Nov. 7, 1991]

A SOVIET COMPANY OFFERS NUCLEAR BLASTS FOR SALE TO ANYONE WITH THE CASH

(By William J. Broad)

A new Soviet trading company is trying to market the power of underground nuclear explosions for commercial application to anyone in the world who has the cash.

It is the first time that nuclear blasts are known to have been put up for sale, but the venture is surrounded by great uncertainty given the political turbulence in the Soviet Union and rising opposition around the world to nuclear blasts.

The atomic explosions are being marketed by the International Chetek Corporation of Moscow, a private trading company tied to the Soviet arms complex. Its initial goal is to carry out blasts in the Soviet Union for the incineration of toxic wastes. But the company says it will eventually try to do whatever the customer wants, as long as it is commercial and peaceful in nature, including conducting nuclear explosions in other nations.

DANGERS CITED

The move has startled Western experts, who say nuclear blasts could damage the environment and that the nuclear devices would be at risk of falling into unfriendly hands. Other experts, however, say the Soviet ideas may have technical merit and should be evaluated.

There apparently are no international accords that bar one country from selling nuclear devices to another for peaceful purposes.

The nascent marketing effort shows the lengths to which the crumbling Soviet bloc will go to acquire hard currency by converting military industries to civilian ones.

"We're willing to entertain all ideas," said Danny Wolfson, an agent for Chetek at Ph.D. International Trading Inc., a small concern in Montreal, Quebec. "It doesn't matter who, where or when. We have all the technologies and they're going to be used."

Mr. Wolfson said Chetek is owned by shareholders that include company officers, private Soviet enterprises, a scientific center, and most importantly, the Soviet ministry charged with production of nuclear weapons.

HAS MANY USES

Of the world's nuclear nations, only the Soviets have an extensive record of using underground nuclear blasts for civil ventures. Applications have included the creation of underground storage vaults, seismic exploration of geologic formations and the stimulation of gas and oil production.

Opposition to the fledging effort at commercializing the blasts is widespread among environmentalists and arms-control experts who know of it.

Dr. William C. Potter, an official of the Monterey Institute of International Studies in California, tried to foster public debate over the marketing effort after visiting Chetek's office in Moscow last month. He wrote an article appearing on the Op-Ed page of The New York Times today.

"Chetek is representative of a general danger," Dr. Potter said in an interview. "Soviet weapons scientists are faced with tremendous economic hardships and are going to be tempted to sell their services to anyone who is prepared to provide hard currency.

Tariq Rauf, a senior associate with the Canadian Center for Arms Control and Disarmament, in Ottawa, has also investigated and publicized Chetek and similar Soviet ventures that are getting under way.

"Everyone in Moscow wants to make a deal," he said. "These people are not really concerned about the consequences of the sales. They only want the dollars."

Dr. Ray E. Kidder, a weapons expert at the Lawrence Livermore National Laboratory in California, said the notion of using nuclear blasts to incinerate hazardous wastes and even nuclear warheads had technical merit.

"It would be cheapest way to dispose of them, by far," Dr. Kidder said. "But lots of environmental questions would have to be settled. You'd also have to find ways to make sure the blasts would not be used covertly for the further development of nuclear arms."

Underground detonations are essential for perfecting new warheads. Thus, their cessation is often seen as a way to halt the nuclear arms race.

The Non-Proliferation Treaty, ratified in 1970, has no apparent prohibition against commercial sales, as long as the blasts are for peaceful purposes.

Its only conditions are that transfers from a nuclear power to a non-nuclear one occur "under appropriate international observation and through appropriate international procedures," and that the price be fair.

For decades the Soviets have led the world in applying nuclear detonations to civilian efforts, conducting more than 120 blasts. The United States also investigated such peaceful applications of the atom, but dropped the effort in the 1970's as fears arose about the contamination of the environment with radioactive residue from the work.

The Soviet Union used the blasts to create underground cavities for storing fuels and disposing of chemical wastes such as the brine produced by oil fields. Another use was to stimulate the production of gas and oil fields by shattering rock and releasing trapped pockets. They also used blasts to extinguish stubborn fires in gas wells, and to generate powerful shock waves that helped geologists learn more about the earth's crust and mantle.

Chetek, an acronym formed from the Russian words for man, technology and capital, was formed late last year to try to sell these and other nuclear technologies to the world. In particular, it has promoted the novel idea of using nuclear blasts to vaporize all kinds of extremely dangerous wastes. The destruction would occur a little more than a half mile beneath the earth's surface, where a nuclear bomb was surrounded by waste and then exploded.

MARKETING CAMPAIGN

The company's president, Vladimir B. Dmitriev, began a quiet marketing blitz in early April, hailing the process at an international scientific conference in Moscow on the elimination of chemical arms. "It will be possible to export services," Mr. Dmitriev told the conference. "The problem of chemical weapons and highly toxic waste products destruction is urgent for many countries of the world."

Later in April, Mr. Dmitriev traveled to Ottawa for a scientific meeting on the environmental consequences of underground nuclear testing, sponsored by the Canadian Center for Arms Control and Disarmament, a private group. There he startled the audience by detailing his company's plans and suggesting that a trial waste-elimination blast be conducted in the Soviet Union under international supervision.

Also at the meeting and backing the waste plan was Dr. Alexander K. Chernyshev, a department head at Arzamas 16, the principal Soviet bomb-design laboratory.

"Everybody in the room thought they were nuts," recalled John M. Lamb, executive director of the Canadian center and the meeting's chairman. Later Mr. Lamb objected strongly when Chetek sought to say in a promotional brochure that the Canadian meeting had "discussed and approved" the nuclear technology.

MOSCOW BACKED PLAN

The commercial effort did, however, soon get boost from Viktor N. Mikhailov, the Soviet deputy minister of atomic energy and industry. He wrote the United Nations to endorse Chetek and the notion of using nuclear weapons to incinerate all kinds of wastes.

On Oct. 7, Mr. Dmitriev of Chetek signed an agreement with Ph.D. International Trading to have the exclusive rights in North America for any waste destruction, and the international rights, excluding Europe, for all other nuclear services or technologies. "This process will be carried out by the company together with the ministry of nuclear energy of the U.S.S.R.," said the agreement.

Mr. Wolfson said that he has had preliminary discussions with companies in the United States and Canada about the destruction of chemical wastes as well as other peaceful applications of nuclear blasts.

Mr. Wolfson played down the idea that bombs would be traveling between countries, saying there would probably be strong political objections to such transfers. Even though such exports are envisioned by Chetek, he said, they might never materialize.

For the waste-incineration plan, he said, the initial strategy is for waste material to be shipped to the Soviet Union for destruction there. He said his company has already made arrangements for special canisters, trucks and ships that could safely transport even radioactive wastes.

PRICE RANGE

The cost for waste destruction, he said, ranged between $300 and $1,200 per kilogram, or 2.2 pounds. "It goes by the danger," he said. "We just can't take a back loader and go after it. You need specialized equipment. The actual transport is done at night because you don't want to bother anybody.

"People may not like it," he added, "but it's the cheapest, easiest way to get rid of really dangerous wastes."

Opposition to such blasts is great and growing, however, even in the Soviet Union. Last month, President Mikhail S. Gorbachev announced a unilateral, one-year moratorium on underground nuclear tests and urged other nuclear powers to follow suit.

Mr. Wolfson, without being specific, said the moratorium posed no difficulty. Private arms experts say that Chetek and the Soviet Defense Ministry are pushing to have the moratorium interpreted as applying only to blasts for arms development.

Christopher E. Paine, a senior research associate with the Natural Resources Defense Council, a private group in Washington, said the whole idea of marketing nuclear blasts was dangerous.

"It's, 'Have bomb, Will travel,'" he said. "It's serious and has huge implications for weapons proliferation. The largest nuclear establishment in the world is undergoing a process of financial and political disintegration."

[From the Atlanta Journal/The Atlanta Constitution, Nov. 4, 1991]

AID SOUGHT TO SECURE SOVIET ARSENAL

(By Joseph Albright)

WASHINGTON.—The chief of the Soviet nuclear weapons complex has appealed to the United States for up to $2 billion in U.S. aid to help him move thousands of nuclear warheads from unstable Soviet republics.

In meetings with senators and U.S. weapons experts last month, Victor Mikhaylov warned that all nuclear weapons storage depots in the Russian republic already are crammed with obsolete warheads.

Mr. Mikhaylov, the Soviet deputy minister of atomic power and industry, said that unless his ministry gets a foreign cash infusion, he will have to store surplus warheads for as long as 10 years inside spare bunkers in the Ukraine and other independence-minded republics.

That prospect has caused shudders among some nuclear weapons experts, especially since the Ukrainian Parliament has proclaimed its determination to create a 400,000-strong Ukrainian army. The republic, which borders Poland, Czechoslovakia, Hungary and Romania, expects to achieve full sovereignty through a popular referendum set for Dec. 1.

"If this is how much it would cost to get 10,000 nuclear weapons out of the hands of the republics and see them destroyed, it could be a bargain," said Chris Paine, a weapons expert at the Natural Resources Defense Council who heard the presentation.

In a reflection of the chaos besetting official Moscow, Mr. Mikhaylov launched his plea without going through ordinary diplomatic channels.

Arriving as a member of a Soviet scientific delegation Oct. 18, he spoke first to American scientists and then, in quickly arranged meetings, with four U.S. senators. He also is thought to have met with at least one Bush administration official during his weeklong stay.

U.S. SENATORS SIGNAL INTEREST

Sen. Ted Stevens (R-Alaska), the ranking Republican on the Senate defense appropriations subcommittee, took an interest in the proposal and urged the Soviet delegates to present it to the Bush administration through government-to-government channels, according to his spokesman.

Mr. Mikhaylov also met with Sens. John Warner (R-Va.), Edward M. Kennedy (D-Mass.) and Jeff Bingaman (D-N.M.) and with aides to Sen. Sam Nunn (D-Ga.).

A Nunn aide said Mr. Mikhaylov laid out a plan to spend $2 billion in foreign funds over the next four to five years. Mr. Mikhaylov said the money would build a new complex in the Russian republic that could temporarily store thousands of weapons, take them apart and keep the resulting uranium and plutonium in long-term storage vaults.

If the project is funded, Mr. Mikhaylov said, his ministry will be ready to dismantle 10,000 to 20,000 nuclear warheads over the next seven to nine years.

The Defense Department has estimated that the Soviet Union has 27,000 nuclear weapons. According to a new, unofficial estimate by the Bulletin of the Atomic Scientists, 19,000 of those weapons are in Russia, 4,000 are in the Ukraine, 1,800 are in Kazakhstan, 1,250 are in Byelorussia, and the rest are scattered among eight other Soviet republics.

[From the New York Times, Nov. 7, 1991]

RUSSIA'S NUCLEAR ENTREPRENEURS

(By William C. Potter)

Monterey, Calif.—It is premature to speak of the rise of capitalism in what once passed for the Union of Soviet Socialist Republics. But in at least one realm—nuclear trade—Russian entrepreneurs have discovered the free market with a vengeance. If you're in the market for a fast-breeder reactor, enriched uranium, a little heavy water or even "peaceful nuclear explosives," Moscow is the place to shop.

All visitors have to do is find their way to 15 Varvarka Street, home of the International Chetek Corporation, in the Kremlin's shadow. Chetek says it provides "peaceful nuclear explosives"—P.N.E.'s—as a desirable means of disposing of toxic waste, decommissioned reactors and retired nuclear weapons. A demonstration, the company says, is scheduled for the summer of 1992 at the Novaya Zemlya testing ground in the Soviet Arctic. For only $300 a kilo, Chetek promises to dispose of anyone's toxic waste (including Iraqi chemical arms) and guarantees "total safety." Chetek has also promoted P.N.E.'s as a way to put out Kuwait's oil fires.

Who are the Chetek nuclear salesmen? Where do they get their wares? Do they pose a threat to nonproliferation and strategic arms control?

Cheteck, an acronym for the Russian words for man, technology and capital, was founded in December 1990 as a private holding company. It is the child of the Soviet Ministry of Atomic Power and Industry and the All-Union Research Institute of Experimental Physics, better known as Arzamas 16, the Soviet nuclear weapon design center. The ministry has provided Chetek with exclusive rights to peaceful nuclear explosives; the institute has supplied much of the company's senior personnel. Chetek has also recruited from other Soviet nuclear research institutes and arms laboratories, which are struggling to survive in the post-Chernobyl, post-cold war environmental.

The marketing options for nuclear weapons are limited. But the founders of Chetek have discovered the old Madison Avenue wisdom that if you can't sell the product, alter the package. Voilá—nuclear weapons become peaceful nuclear explosives.

In a military-dominated economy that seeks to convert tank factories into ice cream machine plants, it is tempting to dismiss Chetek's machinations as another surreal but harmless product of the passing of Communism But the company may have closer links to the former and current Soviet military and nuclear establishment than it is prepared to advertise.

Chetek claims to have more than 200 million rubles in operating capital. It maintains a fleet of private jets and limousines, offices in eight cities in several republics and a luxurious retreat outside Moscow that was once the playground of the party elite. Rumors abound as to the sources of the company's fortune. Chetek may be a post-Communism success story. Alternatively, it may give new meaning to "blat," a Soviet-era term meaning "connections."

It is not clear how Chetek, even with its powerful patrons, will be able to carry out its intended 1992 demonstration in light of Mikhail Gorbachev's pledge of a one-year moratorium on nuclear tests. Chetek may also find that once word of its plans become more widely known that it had underestimated grass-roots opposition to testing in the Arctic. The company will probably need all the public relations help it can get, and has already hired a Canadian P.R. firm.

Most dangerous from the standpoint of nonproliferation is that Soviet firms like Chetek appear able to acquire and market nuclear-related material, equipment and know-how with little regard to export regulations. If the economy continues to deteriorate, one can expect nuclear export decisions in the former Soviet Union to be increasingly based on the need for hard currency. In this environment, perhaps it is too much to expect that entrepreneurs will show as much restraint as they do creativity in promoting their nuclear wares.

[From the Dallas Morning News, Nov. 12, 1991]

NUCLEAR MARKET

During a trip to the Soviet Union recently, a group of Americans was taken to what was once a top-secret ballistic missile manufacturing plant. There is some question whether the U.S. government knew of its location. Yet these Americans were given the royal tour.

That's not the half of it. The manager of the plant offered to sell a missile to one of the Americans who is a member of a wealthy oil family. The manager's asking price was $25 million, but when he was jokingly offered $20 million by the American, the manager said, "SOLD!"

In all likelihood, the manager was not joking. If he was willing to supply a wealthy American with a personal ballistic missile arsenal, he and others like him are certainly willing to supply wealthy despots with one of their own.

In the increasingly chaotic and economically strapped Soviet Union, everything is for sale to anybody with the cold, hard cash to pay. Some of the most saleable items are the things the Soviets were best at making and have the most of—military hardware.

If the Soviet sell-an-arsenal scenario doesn't make Americans more than a little uncomfortable, try "have nuke, will travel." It was reported last week that a newly formed Soviet company wants to sell its underground nuclear blast technology to dispose of the world's hazardous waste and for other peaceful purposes. The company, Chetek, would initially vaporize the waste in the Soviet Union after it was shipped there. But it would eventually export the nuclear devices to wherever its customers were. Neither the Peaceful Nuclear Explosion Treaty nor the Nuclear Non-proliferation Treaty prevents this, as long as the blasts are for peaceful purposes. But there could be no certainty that all customers would use the devices for peaceful means.

The potential security risks involved with this idea, not to mention the potential for environmental catastrophes from the nuclear blasts and the transport of toxic waste, are enormous. This takes the loose-Soviet-nukes scenario to new heights. The initial concern has been that the nuclear weapons in the restive Soviet republics might fall into the hands of militant nationalists. But now the leaders of these republics might follow the lead of Chetek and just sell them to the highest bidder.

Americans rightly want the Bush administration to spend more time on domestic issues, but the arms proliferation nightmare that is beginning to unfold with the disintegration of the Soviet Union is one that neither the U.S. president nor any other world leader can afford to ignore. This administration has been at the forefront of efforts to curb the spread of ballistic missiles and nuclear technology. But in the wake of what's going on in the Soviet Union, clearly more has to be done. Leading the international effort to prevent the sale of underground nuclear blasts should be part of that effort.

[From the Toronto Star, Nov. 8, 1991]

SOVIET NUCLEAR DEALS: A NEW TIME-BOMB?

(By Tariq Rauf)

A nuclear time-bomb may be quietly ticking away in the Soviet Union and some of its

republics. Evidence is growing that some elements of the Soviet nuclear industry complex have teamed up with private corporations to market their wares abroad.

Controls on such exports have been weakened in the breakup of the old Soviet Union. And the dramatic reductions in Soviet Union defence expenditures and virtual collapse of the economic infrastructure have spurred creation of private commercial enterprises that are now seeking foreign markets for a variety of Soviet military goods, materials, services, and technologies.

Facing diminished resources and demand, the Soviet nuclear production complex also is seeking new ways of financing its laboratories and facilities. The threat of such developments to global non-proliferation norms cannot be over-emphasized, given the present unsettled state of affairs in the Soviet Union and its republics.

The defence industries used to get their funding from Moscow through agencies such as the Military-Industrial Commission (VPK) and the State Planning Committee (Gosplan). Both the VPK and Gosplan have now been dissolved.

Most Soviet defence industries now have conversion, or the production of non-military goods, as their main goal. But certain specialized ones, notably in the nuclear field, face structural problems in converting due to the nature of their products and services. It is these industries that are trying to finance their operations by entering into agreements with private corporations. These corporations, in turn, want to make money by seeking both foreign and domestic joint-venture markets for the products and services of the defense industries.

It is a matter of public record that Chetek, a private corporation reportedly funded from the defunct VPK's funds, is now financing part of the work of the Ministry for Atomic Power and Industry (MAPI) and of Arzamas 16, the main nuclear weapons laboratory in the Soviet Union. MAPI, the counterpart of the U.S. Department of Energy, is responsible for the entire Soviet nuclear fuel cycle and for the Soviet Union's nuclear weapons production and testing program.

With Chetek's financial support, MAPI and Arzamas are working on a commercial plan to dispose of—by means of underground nuclear explosions—such items as chemical and radioactive wastes, chemical weapons, decommissioned nuclear reactors and retired nuclear warheads. MAPI/Arzamas will provide the technological know-how, the "peaceful" nuclear explosive devices and destruction sites. A demonstration explosion was planned for next summer at the Soviet nuclear test site at Novaya Zemlya, in the Arctic region. While Soviet foreign ministry officials assert that the moratorium on nuclear testing recently announced by President Mikhail Gorbachev means a halt to all tests and the closing of the Arctic site, Chetek and Arzamas officials maintain that the moratorium exempts "peaceful" nuclear explosions.

A radio-chemical enterprise near Dodonovo in south-central Siberia is reportedly also associated with private commercial interests. Dodonovo has three military reactors, plus plutonium production and reprocessing and tritium separation facilities. And a partially built, 1,500-metric-tons-per-year reprocessing facility has teamed up with Chetek to market its "chemical" expertise, now that its government funding has been terminated and further construction halted.

There are reports that several other export-oriented partnerships exist, including one working on converting weapons-grade nuclear material from nuclear warheads for use in power reactors.

Previously, Technabexport (or Tenex), the export firm of MAPI, had the monopoly for all Soviet nuclear exports. Since these exports were channelled through a single government-controlled company, controls could be properly enforced. Tenex's monopoly has now been broken and other companies also have entered the field.

Canada should, among other measures:

Seek additional information on these developments from Soviet and Russian Republic officials.

Table Canada's concerns with both the Soviet and Russian foreign ministries.

Offer to share Canada's experience in drafting and implementing export control legislation.

Support the inclusion of Russia (and other relevant republics) in such arrangements as the Nuclear Suppliers Guidelines.

Consider sponsoring a multilateral conference or working group to examine the feasibility of a total cut-off in the production of weapons-grade fissionable (or nuclear) material.

Further, Canada might consider making future economic co-operation and aid to Russia and other republics with nuclear facilities conditional upon their enacting and enforcing acceptable export controls, making full-scope safeguards a condition of supply, and subscribing to other non-proliferation norms.

Tariq Rauf is co-ordinator of nuclear non-proliferation research at the Canadian Centre for Arms Control and Disarmament at Ottawa. He visited Moscow last month for talks on these issues with Soviet officials and business people.

[From the New York Times, Nov. 4, 1991]

THE SOVIET DISUNION'S MISSILES

The disintegration of the Soviet Union has left hundreds of nuclear arms in republics eager for independence. That risks perilous proliferation. The world was reassured by the republics' initial virtuous commitment to become nuclear-free. Now, however, nationalism is pushing them in the opposite direction.

The disintegration of authority at all levels of Soviet government makes prompt U.S. action imperative. Yet the Bush Administration has failed to press for ratification of a strategic arms treaty that makes deep cuts in these arms.

With the Start treaty in place, Washington could quickly agree to deeper cuts eliminating the missiles outside Russia. And it could insist on isolation of any republic that insisted on keeping nuclear arms. What is the President waiting for?

No good can come of permitting nuclear arms to fall under local control in a region with uncertain borders and long-suppressed ethnic rivalries. A nuclear-armed Ukraine would cause special alarm not only in Russia, but also in neighboring Lithuania, Poland and Germany. Of special concern to the U.S. are long-range missiles based in Kazakhstan, the Ukraine and Byelorussia.

Washington took heart from grass-roots anti-nuclear movement that prompted the parliaments in all three republics to declare nuclear-free status. Washington expected them to turn their arms over to Russia, and even negotiated a Start treaty provision to facilitate that.

But irked by Russian pressure, the republics have had second thoughts. Kazakhstan's President, Nursultan Nazarbayev, is now trying to use the 100 SS-18 missiles on his soil as a bargaining chip in negotiations with Moscow. And ardent nationalists threaten to overwhelm the nuclear abolitionists in the Ukraine. There have been disturbing efforts to bar removal of nuclear arms.

Washington remains unaccountably placid. There is even talk of delaying Start ratification until the lines of political authority in the Soviet Union are clarified. But that could take years. Prompt ratification would put the U.S. in a better position to insist that successor governments live up to Soviet international obligations, including the Nuclear Nonproliferation Treaty, which prohibits nuclear-armed states from transferring arms.

Washington could prevent proliferation by negotiating elimination of the missiles in the outlying republics. The republics know that those missiles were not slated for destruction under Start. Rising nationalism demands that they be given up only in return for cuts in Russian missiles.

The U.S. could make that easier by offering equivalent cuts—accepting a lower warhead ceiling in Start. Washington could also facilitate Start-mandated destruction of missiles by providing storage facilities and other help.

The Pentagon resists deeper cuts, saying there is no one in Moscow with authority to negotiate. But appropriate interlocutors do exist in the form of a State Council meant to deal with nuclear arms and Foreign Ministry negotiating teams that include representatives of the republics.

The Soviet republics, splitting at the seams, have nuclear weapons. The only rational American goal is the fastest possible nuclear disarmanent.

[From the Nuclear Fuel, Nov. 11, 1991]

CRANSTON FOOD-FOR-SOVIET-HEU BILL COULD SEND WEAPONS MATERIAL TO MARKET

Sen. Alan Cranston (D-Calif.) plans to introduce a bill this week that would call for the exchange of Soviet high-enriched uranium (HEU) now in nuclear weapons for U.S. food and cash. If the U.S. did buy the HEU, it could eventually find its way into the commercial market, but those commercial decisions would then be in the hands of U.S., and not Soviet, officials, Cranston aides said.

The draft bill, termed the Nuclear Warheads Security and Plowshares Act of 1991, calls for Soviet HEU to be collected, diluted, and placed under IAEA safeguards in exchange for surplus U.S. food and financial assistance. The ultimate fate of the material is not laid out in the bill. A draft of the proposal calls for the U.S. Energy Secretary to submit a plan for the storage and dilution of the HEU. The material could be "utilized in the civilian nuclear energy cycle," according to a Cranston handout on the bill. The bill itself says "warheads in the Soviet nuclear arsenal contain quantities of uranium that may be processed and used in commercial nuclear power plants, as well as plutonium that should be placed under international safeguards."

Cranston said in a letter seeking cosponsors for the legislation that though current arms control agreements call for the elimination of some nuclear delivery systems, they do not require the disposal of fissile material. "Actions by Western governments to offer trade credits for purchases of food based on the commercial value of Soviet weapons materials could eliminate a critical threat to nonproliferation efforts and consolidate democratic and free market reform."

While the U.S. would send the surplus food to the central Soviet government under the Cranston bill, the proposal includes a "sweetener" for Soviet republics, which have been seeking a say in the country's nuclear weapons policy. The bill calls for 25% of the commercial monetary value of the Soviet fissile materials acquired under it to be given to the republics "in the form of financial assistance which shall be available only for the establishment of regional and local development banks."

The draft bill calls for the president to consult with U.S. allies and "determine a fair and equitable price for the purchase of existing stocks of Soviet fissile materials which have been made redundant through unilateral reductions and arms control agreements." The proposal expresses a "sense of the Congress," i.e., a non-binding resolution that reductions in the Soviet fissile stockpile" should be accompanied by a parallel decrease in the U.S.'s own inventories of nuclear weapons-usable materials, and by implementation of appropriate safeguards on surplus materials."

Observers noted that the bill would use funds already obligated to, but unspent, by the Defense Department to pay for the commodities to be delivered to the Soviet Union, as well as the republics' development banks. The transfer of funds from defense to purchases of food would be attractive to lawmakers from agricultural states, the observers said.

Cranston and his partisans hold that the HEU from the Soviet weapons will reach the commercial market anyway, and that the draft bill would serve the purpose of stabilizing its transfer to the commercial U.S. market.

The bill also calls for a study by DOE and the Environmental Protection Agency on U.S. and Soviet stocks of plutonium and ways of safely and effectively storing and ultimately disposing of such inventories.

[From the Energy Report, Nov. 18, 1991]

CRANSTON TO PROPOSE GRAIN FOR URANIUM SWAP

Meanwhile, Sen. Alan Cranston, D-Calif., has another suggestion for helping the domestic industry. Next week he plans to introduce a bill shipping unobligated funds from the defense budget to the Commodity Credit Corp. in exchange for surplus agricultural products. Cranston would have the U.S. exchange the surplus crops for the Soviets' surplus highly enriched uranium at an exchange rate based on the commercial value of the uranium.

Lawmakers who were pushing for money to be given to the Soviets to help the financially struggling nation withdrew their efforts last week for lack of support. Now that it is clear the Soviets won't get something for nothing. Capitol Hill sources speculate, they may be willing to back a proposal like Cranston's.

Mr. PELL. Mr. President, I am pleased to be a principal cosponsor of the Nuclear Warheads Security and Plowshares Act of 1991. I congratulate the Senator from California [Mr. CRANSTON] for his initiative in introducing this legislation.

The Soviet Union faces a very real challenge that this bill addresses. The solutions proposed by the bill would be very much in both our interests.

The START Treaty to be considered next year by the Senate would, if ratified, lead to the elimination of several thousand warheads. The unilateral decisions by Presidents Bush and Gorbachev in September and October will lead to the elimination of additional thousands of nuclear warheads—possibly as many as 10,000 or so. These warheads could contain some 200 tons of high enriched uranium and some 50 tons of highly toxic plutonium. Because of the uncertain relationship between the Soviet Union's Central Government, the remaining 12 republics, and various ethnic groups, there is a significant possibility that these weapons or the nuclear materials could become items of commerce on the black market. If these nuclear weapons fall into the hands of dictators and terrorists, the world could be held hostage.

Dr. Valeri Davydov of the Soviet Institute of United States and Canada Studies comments on this situation:

There was at least one incident, in Azerbaijan, in which a band of rebels briefly broke into an installation at which nukes were stored. That is why a majority of experts underlined the necessity to destroy the tactical nukes and welcome the new Bush proposals on arms control.

Our bill would make the uranium harmless by requiring the mixing of the 90 percent enriched uranium with normal uranium. Both the uranium and plutonium would be placed under safeguards. Soviet officials have stated that the Soviets will not be able to dismantle their nuclear weapons before the turn of the century. A decade is too long a time for the vast amounts of materials to be in an uncertain state.

The second key part of the bill is that the Soviet Union and the Republics would receive United States agricultural commodities in return for accepting this plan. This linkage makes a lot of sense to me, and it could have tremendous benefits for all involved.

By Mr. SPECTER:

S. 2012. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for high-speed rail and certain other mass transportation equipment; to the Committee on Finance.

INVESTMENT TAX CREDIT FOR HIGH-SPEED RAIL AND MASS TRANSPORTATION EQUIPMENT

• Mr. SPECTER. Mr. President, we must begin now to develop the transportation infrastructure we will need by the turn of the century. Reports indicate that congestion on our Nation's highways and airways is rapidly increasing. A study by the Federal Highway Administration forecasts that vehicle miles traveled on the Nation's roads will increase from 1.6 trillion in 1985 to 2.6 trillion in 2005. In turn, the average speed during trips is expected to decrease due to expected congestion.

The Federal Highway Administration expects vehicle delays to increase from 2.7 billion vehicle hours in 1985 to over 11.9 billion vehicle hours in 2005. To quantify this delay in terms of cost to the user, the 1985 cost of $12 billion per year will increase to $48 billion a year in the year 2005. This represents an increase of $36 billion per year in lost time and fuel costs. The Federal Highway Administration has further indicated that vehicle congestion in peak hours shows that in 1987, approximately 65 percent of peak hour was congested, up from the 1983 estimate of 54 percent peak hour congestion. If this trend continues, reports indicate that by the year 2005, nearly all peak hour travel will be under congested conditions.

At our Nation's airports, air traffic continues to increase adding additional congestion to an already full capacity system. According to the Transportation Research Board of the National Research Council, 11 major airports experience severe delays of over 8 minutes per takeoff. Reports indicate that the number of airports experiencing severe delays will increase to 29 by 1996 and is expected to be as high as 47 by 2005. The Department of Transportation expects demand for addition enplanements and passenger miles to more than double by the year 2005. The cost of delay in response to this demand is expected to increase from $5 billion in 1986 to $13 billion in the year 2005.

Mr. President, the recent report by Secretary of Transportation Samuel Skinner on National Transportation Policy recognizes the urgent need to upgrade our current modes of transportation. The policy direction of the report is based upon six essential elements to provide a transportation system well into the next century. Included in the policy's proposals are maintenance and expansion of our current modes of transportation, while encouraging advanced technology for transportation. I would agree that no single transportation mode will be able to meet the full range of transportation requirements, and that other forms of transportation should be developed which can offer relief for our Nation's highway and airway congestion. One of the most promising modes for this relief is that of the development of high-speed rail.

The development of high-speed rail was once an American initiative. Today, however, the United States trails behind a half dozen countries in the development and implementation of this advanced technology. The most promising of the high-speed rail technologies appears to be the use of magnets to separate the passenger vehicle from the guideway and to propel the vehicle at speeds up to 300 miles per hour. This approach, known as maglev, can offer high-speed ground transportation which is potentially superior to both airplanes and automobiles for trips between 100 and 600 miles. At these distances, it is believed that the journey may be too long to drive comfortably in a car but not

great enough to be accommodated efficiently in today's large commercial aircraft and congested airports.

Mr. President, the bill I am introducing today will assist developers of high-speed transportation systems, while maintaining the essential partnership between public development and private enterprise. Specifically, the bill would provide a 10-percent investment tax credit for the development of high-speed intercity rail facilities. The tax credit will be provided to qualified investments at the purchase price which are placed in service during the specific taxable year. To qualify, the property must be new, domestically produced, and also be a high-speed rail mass transportation system which does not burn fossil fuels directly for its propulsion or lift.

It is my belief that the Federal Government must act as a catalyst in promoting domestic development of this technology. In addition to its development, I believe that such systems deserve to be produced using domestic technology, resources, and labor. Therefore, as required under the investment tax credit provisions, to be eligible for the tax credit the qualified investment must be completed in the United States with the majority of its resources domestically produced.

I long have been interested in the development of high-speed rail in the United States. In 1985, I introduced legislation to determine the most effective means in which the Federal Government could encourage the development of high-speed rail systems within the United States. It is through the development of that legislation that I now believe that development of high-speed transportation systems should be through public-private-labor partnerships. In addition, I supported legislation in 1984 which provided Federal consent to an interstate compact involving Pennsylvania, Illinois, Indiana, Michigan, and Ohio for the preparation of a feasibility study for the development of high-speed inter-city rail service.

Mr. President, a high-speed rail network will not only provide the transportation system necessary to relieve congestion on our Nation's highways and airways, but also will deliver benefits related to its planning and construction. In my own State of Pennsylvania, a study prepared by the Pennsylvania High Speed Intercity Rail Passenger Commission found that new jobs directly created can boost the State's employment growth rate by as much as 68 percent during the construction years. In addition to construction jobs, a domestically produced high-speed rail industry will bring with it all the production and manufacturing of the equipment associated with the technology.

It is equally important to note that this economic and business activity would be shared by a wide range of industries, sparking an employment upturn in many of the same industries that built the Interstate Highway System, such as construction companies and those providing the steel necessary to construct bridges and guideways. Heavy industry currently building conventional railroad equipment would have a new market, while construction also would involve the advanced technology required for communications, operations, ticketing, and other aspects of a high-speed rail system.

There are many projects under consideration throughout the United States. In Pennsylvania, the Pittsburgh maglev project which grew out of a working group of private enterprise, industry, labor, and local government in conjunction with the High-Speed Ground Transportation Center at Carnegie Mellon University, has proposed the development of a regional system extending out of Pittsburgh toward the Midwest and the east coast. Their immediate focus is for a demonstration project between the Pittsburgh International Airport and downtown Pittsburgh.

Pennsylvania is a perfect candidate for high-speed rail because it has two large cities about 300 miles apart, with the infrastructure to handle the construction and production of the system. Depending on the technology used, a cross State trip could take approximately 2 to 3 hours. A high-speed magnetically levitated train as proposed by the Pennsylvania High-Speed Intercity Rail Passenger Commission would greatly reduce cross-State travel time. The current 7-hour trip between Philadelphia and Pittsburgh, for example, could be cut to 2 hours and 8 minutes, with intermediate stops several in Pennsylvania communities such as Lancaster, Harrisburg, State College, Altoona, and Johnstown.

In addition to its transportation benefits, high-speed rail systems are appealing because of its environmental benefits. Magnetically levitated [maglev] high-speed rail systems have better energy efficiency and would reduce air pollution. Electrically powered vehicles do not emit any pollutant in comparison to autos, trucks, and airplanes which emit toxic emissions. In some cases, however, high-speed rail systems will indirectly produce pollutants, since powerplants do emit pollutants which provide the electricity for the systems. However, the amount of these emissions is considered much less than that from autos, trucks, and airplanes. If we are to encourage the use of alternative fuels and less emissions in our urban areas, I believe that the development of an alternative, environmentally sound transportation mode of high-speed rail needs to be pursued.

Mr. President, I wish to thank those who have contributed to the advancement and development of high-speed rail in Pennsylvania and the Nation. Specifically, of the Maglev, Inc. of Pennsylvania, Mr. James Roddey, current chairman of Maglev, Inc.; Mr. John W. Kapala, chief operating officer of Maglev, Inc.; Dr. Richard A. Uher, director of the High Speed Ground Transportation Center at Carnegie Mellon University; Mr. Jay Weinberg of the Steel Valley Authority; and, Mr. Evan Stoddard, Rev. Pierre Whalon, Mr. Philip Shucet, Mr. Donald Deer, Mr. Andrew "Lefty" Palm, and others on the board of directors and advisory committees of Maglev, Inc. In addition, I wish to thank Meyer Berger, Esquire, Mr. Robert Casey, president of the High Speed Rail Association, and Mr. David O'Laughlin of Pittsburgh for his assistance in the development of maglev systems and contributions to this legislation. And lastly, I want to thank Pennsylvania State Representative Richard Geist for his continued leadership in the development of high-speed intercity rail service in Pennsylvania.

Just as railroads once paved the way for the development of our Nation, high-speed rail can pave the way for revitalization of our cities by relieving congestion, stimulating tourism, increasing employment opportunities, and encouraging business development. The promise of these economic benefits has stimulated private industry with State and local interest to begin to develop high-speed rail service, but these interests cannot meet this national need for an improved transportation infrastructure on their own.

I am pleased to join with many of my colleagues in this quest for the development of this important mode of transportation here in the United States. The legislation that I am introducing today, in conjunction with other bills introduced, is testament of the U.S. Senate's desire for Federal support for development of this needed mode of transportation. The public-private partnership which the Secretary of Transportation is calling for certainly appears to be in place. Now the Federal Government must serve as the catalyst in promoting this technology domestically.

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

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

S. 2012

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

SECTION 1. INVESTMENT TAX CREDIT FOR HIGH-SPEED RAIL AND OTHER MASS TRANSPORTATION EQUIPMENT.

(a) ALLOWANCE OF INVESTMENT CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to amount of credit) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of para-

graph (3) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(4) the mass transportation credit."

(b) MASS TRANSPORTATION CREDIT.—Section 48 of such Code (relating to energy and reforestation credits) is amended by adding at the end thereof the following new subsection:

"(c) MASS TRANSPORTATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the mass transportation credit is the mass transportation percentage of the basis of each mass transportation property placed in service during the taxable year.

"(2) MASS TRANSPORTATION PERCENTAGE.—The mass transportation percentage is 10 percent."

"(3) QUALIFIED MASS TRANSPORTATION PROPERTY.—For purposes of this subpart—

"(A) IN GENERAL.—The term 'qualified mass transportation property' means tangible property—

"(i) which is used as an integral part of a qualified mass transit system, and

"(ii) the original use of which begins with the taxpayer.

"(B) QUALIFIED MASS TRANSIT SYSTEM.—For purposes of paragraph (1), the term 'qualified mass transit system' means a transportation system which—

"(i) is a high-speed rail system, a magnetic levitation system using magnetic forces for its lift and propulsion, or other land transit system (whether surface or subsurface), or a water or air transit system,

"(ii) is operated under franchise, license, or other regulatory approval of the Federal Government or a State or local government, or any agency or instrumentality thereof,

"(iii) charges a fare-for-hire,

"(iv) is open to the general public without restriction (other than fares and times of service), and

"(v) does not directly use or consume fossil fuels or their derivatives for its normal operation.

"(C) CONSUMPTION OF FUELS.—For purposes of subparagraph (B)(v), a system shall not be treated as using or consuming fossil fuels or derivatives, if—

"(i) such fuels or derivatives are used as lubricants (and are not involved in providing the motive or lift forces necessary for normal operation), or

"(ii) such fuels or derivatives are used in emergency operations."

(c) CREDIT ONLY FOR PROPERTY PRODUCED IN UNITED STATES.—Section 50(d) of such Code (relating to certain rules made applicable) is amended by adding at the end thereof the following new flush sentence: "In the case of the mass transportation credit, rules similar to the rules of section 48(a)(7) (relating to exceptions for property completed abroad or predominantly of foreign origin), as so in effect, shall apply."

(d) CONFORMING AMENDMENTS.—

(1) The heading for section 48 of such Code is amended by inserting "; MASS TRANSPORTATION CREDIT" after "REFORESTATION CREDIT".

(2) The item relating to section 48 in the table of contents for subpart E of part IV of subchapter A of chapter 1 of such Code is amended by inserting "; mass transportation credit" after "reforestation credit".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 1991, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).●

By Mr. LEAHY:

S. 2013. A bill to amend chapter 1 of title 17, United States Code, to enable satellite distributors to sue satellite carriers for unlawful discrimination; to the Committee on the Judiciary.

SATELLITE HOME VIEWER ACT AMENDMENTS OF 1991

Mr. LEAHY. Mr. President, the bill I am introducing today, and that Congressman BOUCHER is introducing in the House, is intended to help reduce the amount that home dish owners have to pay for programming.

In 1988, Congress passed the Satellite Home Viewer Act, which created a temporary statutory license allowing satellite carriers to retransmit the signals of superstations and network affiliates for private viewing by home dishowners. That act specifically bars satellite carriers from discriminating in the prices they charge distributors of satellite programming as compared to the prices they charge cable operators.

In a report issued June 5, 1991, the Federal Communications Commission issued a report in which it concluded that some satellite carriers were engaging in price discrimination. This price discrimination against satellite distributors in turn drives up the price that home dishowners have to pay for programming.

The problem is that, although price discrimination is illegal under the Satellite Home Viewer Act, satellite distributors have no standing to sue to enforce their rights.

The legislation I introduce today will correct this anomaly by making clear that satellite distributors have such standing.

The bill also defines unlawful discrimination as: First, an unreasonable refusal by a carrier to deal with any distributor which meets reasonable requirements of creditworthiness, or second, discrimination in the price, terms, or conditions of service, taking into account cost savings reasonably attributable to the number of subscribers served by the distributor or cable operator.

In addition, the bill makes it clear that a satellite carrier may offer different price, terms or conditions to a distributor to the extent that the carrier can demonstrate that such differences are justified by differences in the cost of providing wholesale carriage.

The bill also emphasizes that nothing in its provisions creates any right on behalf of a satellite distributor in the copyright for works delivered to the distributor by a carrier.

The owners of home satellite dishes, many of whom live in rural areas, already have to pay a high price for television. Unlike cable subscribers, they have to pay for the dish itself and the decoder that allows them to watch scrambled signals. It is unjust and unnecessary to force them to pay more than cable subscribers for the programming itself. This legislation will put some teeth into the antidiscrimination section of the Satellite Home Viewer Act and help end the unfair treatment of home dishowners.

I ask unanimous consent that the full text of the bill be included in the Record.

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

S. 2013

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 "Satellite Home Viewer Act Amendments of 1991".

SEC. 2. FINDINGS.

The Congress finds—

(1) the Satellite Home Viewer Act of 1988 (hereafter in this section referred to as the Act) was adopted to create a temporary statutory license allowing satellite carriers to retransmit the signals of superstations and network stations for private viewing by owners of home satellite dishes;

(2) unlawful discrimination by satellite carriers against home satellite distributors was recognized as contrary to the public policy objectives of the Act and was made actionable as an act of copyright infringement under section 119(a)(6) of title 17, United States Code;

(3) the Act also required the Federal Communications Commission to conduct an inquiry and submit to Congress a report on whether, and the extent to which, satellite carriers discriminate against satellite distributors;

(4) on June 5, 1991, the Commission adopted a report which found that some carriers were charging home dish distributors significantly higher prices for superstation and network station programming than they were charging cable companies, and found that these disparities were not justified by the cost of providing service;

(5) the Act has been interpreted not to grant standing to sue to satellite distributors; and

(6) home satellite dish owners may be penalized by unreasonably high prices when a satellite carrier unlawfully discriminates against a distributor.

SEC. 3. UNLAWFUL DISCRIMINATION AGAINST DISTRIBUTORS.

Section 119(a)(6) of title 17, United States Code, is amended to read as follows:

"(6) DISCRIMINATION BY A SATELLITE CARRIER.—

"(A) INFRINGEMENT OF COPYRIGHT.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

"(B) UNLAWFUL DISCRIMINATION AGAINST DISTRIBUTORS.—

"(i) STANDING.—For any willful or repeated secondary transmission to the public by a satellite carrier which is actionable as an act of infringement under subparagraph (A), a distributor shall also have standing to sue.

"(ii) UNLAWFUL DISCRIMINATION.—A satellite carrier shall be determined to have unlawfully discriminated against a distributor under subparagraph (A), if the carrier—

"(I) has unreasonably refused to deal with any distributor which meets reasonable requirements for creditworthiness; or

"(II) has discriminated against a distributor, as compared to a cable operator or other multichannel video provider, in the price, terms or conditions of the service provided under this section, taking into account cost savings reasonably attributable to the number of subscribers served by such distributor, cable operator or other multichannel video provider.

"(iii) EXCEPTION TO UNLAWFUL DISCRIMINATION.—

"(I) EXCEPTION.—Notwithstanding clause (ii)(II), a satellite carrier may offer a different price or different terms or conditions to a distributor as compared to a cable operator or other multichannel video provider to the extent that the satellite carrier can demonstrate that such differences are justified by the difference, if any, in the cost of providing wholesale carriage for such cable operator or other multichannel video provider as compared to the cost of providing wholesale carriage for such distributor.

"(II) JUSTIFIABLE COST.—For the purpose of this clause, any costs associated with the retail provision of service, including advertising, marketing and other costs, may not be considered, except to the extent that the distributor, without coercion, requests the satellite carrier to provide such services.

"(iv) PROTECTION OF RIGHTS OF COPYRIGHT OWNERS.—No provision of this subparagraph shall be construed to create on behalf of any distributor any right, title or interest in the copyright for works delivered to the distributor by the satellite carrier.".

SEC. 4. EFFECTIVE DATE.

The provisions of this Act and amendments made by this Act shall be effective on the date of the enactment of this Act, shall apply with respect to acts of discrimination occurring before, on, or after such date, and shall apply to any satellite carrier or successor entity that receives or has received a statutory license under section 119 of title 17, United States Code.●

By Mr. GRASSLEY (for himself, Mr. PACKWOOD, Mr. GRAHAM, and Mr. JEFFORDS):

S. 2014. A bill to amend the Employee Retirement Income Security Act of 1974 and title 11, United States Code, to protect the single-employer plan termination insurance program by clarifying the status of claims of the Pension Benefit Guaranty Corporation and the treatment of pension plans in bankruptcy proceedings, and for other purposes; to the Committee on the Judiciary.

PENSION PROTECTION IN BANKRUPTCY ACT

● Mr. GRASSLEY. Mr. President, today, with my colleagues Senators PACKWOOD and GRAHAM, I am introducing legislation the purpose of which is to ensure that the Pension Benefit Guaranty Corporation receives priority in bankruptcy proceedings.

The need for this legislation arises from a recent district court decision which held that the Corporation does not have priority over other creditors for its claims in bankruptcy proceedings, and that, once in bankruptcy, a company does not have to continue funding its pension plans. Although the Corporation's claims are spelled out in the Tax Code and the Employee Retirement Income Security Act, the major statute regulating private pensions, they are not spelled out in bankruptcy law. Thus, creditors have argued that the PBGC was only a general, unsecured, creditor in bankruptcy proceedings. The recent court decision supported this claim.

This decision, if allowed to stand, could have a serious adverse effect on the viability of the Corporation. The Corporation believes that its current net worth deficit, now figured at $2 billion, could swell to $16 billion by the end of the decade as a consequence of this decision. Furthermore, the PBGC faces an exposure of some $40 billion in underfunded pension plans. Of this total, about $13 billion is concentrated in plans sponsored by financially troubled companies.

According to the General Accounting Office, in testimony presented before the Subcommittee on Oversight of the Committee on Ways and Means last August 1, the PBGC "* * * is experiencing financial difficulties." Although there does not appear to be an immediate risk to the PBGC's ability to pay benefits currently due and to meet its administrative expenses, the GAO does consider that the PBGC belongs on their list of "high risk" agencies and programs. The reasons for this were the "Corporation's long-standing control weaknesses, reported $1.8 billion accumulated deficit, and possible future losses for underfunded on-going pension plans * * *." According to the GAO in its August testimony, there is about $8 billion in underfunding among financially troubled companies in bankruptcy or close to it. (More recent estimates place that figure at closer to the $13 billion I just cited earlier.) The GAO stated that, in the event that many of these underfunded plans terminate in the near future "there is a serious question as to whether the Corporation's premium structure could be adjusted to meet the resulting funding needs. Such events could raise the possibility of Federal assistance."

Although the Pension Benefit Guaranty Corporation is probably not very well known by most workers or most retirees, it is clearly, by virtue of its responsibility for protecting the pension benefits of nearly 40 million people, one of the most important Federal agencies for millions of retired persons. The need for the pension protection provided by the PBGC arises when an employer experiences financial distress and is unable to fund those benefits. On such occasions, the PBGC draws on its premiums and trust funds to pay the pension benefits protected under terms of the Employee Retirement Income Security Act. The funds from which the PBGC draws to provide those pension benefits are built up from per employee premiums paid into the funds by companies sponsoring pension plans, from earnings on investments, and from recoveries in bankruptcy.

Depriving PBGC of a priority claim in bankruptcy has two major consequences for the Corporation's financial Health. The first, and most obvious and direct, consequence is that it reduces the recoveries the PBGC can make in bankruptcy. This weakens PBGC's trust funds. And it also reduces the pension levels of these companies' plan participants who receive a share of recoveries for those benefits not guaranteed by the PBGC. Second, and very important, failing companies with underfunded pension plans have a strong incentive to "dump" their pension obligations on the PBGC. A priority status for PBGC in bankruptcy proceedings would ensure that pension obligations are taken seriously by companies tempted to underfund their plans.

Mr. President, the legislation we are introducing today:

First, clarifies in the bankruptcy code PBGC's priority claims for unpaid pension contributions and for underfunding up to 30 percent of a controlled groups net worth.

Second, ties the priority claims for underfunding to a gradually increasing percentage of underfunding.

Third, gives tax priority to claims for underfunding due to shutdown benefits triggered within 3 years of termination of a pension plan.

Fourth, allows PBGC's claim to arise without having to terminate a plan in the event a sponsor liquidates and the controlled group assumes the plan.

Fifth, gives PBGC the option to be a member of creditors' committees.

Mr. President, I ask that the full text of the bill be included in the RECORD, together with a section-by-section description of the bill.

Mr. President, in conclusion I want to say that I think the Congress needs to take seriously the Pension Benefit Guaranty Corporation's financial exposure. I quite agree with Secretary of Labor Martin, Chairman of PBGC's Board of Directors, who said today that "steps must be taken now to make sure that pension promises made to American workers are kept and American taxpayers are not faced with the specter of another S&L-type bailout."

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

S. 2014

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pension Protection in Bankruptcy Act of 1991".

(b) TABLE OF CONTENTS.—

TITLE I—EMPLOYER LIABILITY, LIEN AND PRIORITY

Subtitle A—Amendments to Title IV of the Employee Retirement Income Security Act of 1974

Sec. 101. Employer liability lien and priority amount.

Sec. 102. Liability upon liquidation of contributing sponsor where plan remains ongoing.

Subtitle B—Amendments to Title 11, United States Code

Sec. 121. Pension Benefit Guaranty Corporation permitted to be a member of an unsecured creditors' committee.

Sec. 122. Clarification of priorities in conformity with the Employee Retirement Income Security Act of 1974.

Sec. 123. Notice required where federally-insured pension plan is administered by the debtor or its affiliate.

TITLE II—MISCELLANEOUS ERISA TITLE IV AMENDMENTS

Sec. 201. Enforcement of minimum funding requirements.

Sec. 202. Definition of contributing sponsor.

Sec. 203. Recovery ratio payable under corporation's guaranty.

Sec. 204. Elimination of the seventh revolving fund.

Sec. 205. Distress termination criteria for banking institutions.

Sec. 206. Variable rate premium exemption.

TITLE I—EMPLOYER LIABILITY, LIEN AND PRIORITY

Subtitle A—Amendments to Title IV of the Employee Retirement Income Security Act of 1974

SEC. 101. EMPLOYER LIABILITY LIEN AND PRIORITY AMOUNT.

(a) REVISED LIMITATIONS ON LIEN AND TAX PRIORITY AMOUNT.—Section 4068(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1368(a)) is amended—

(1) by striking "If any person liable to the corporation" and inserting "(1) Subject to paragraphs (2) and (3), if any person liable to the corporation";

(2) by striking "section 4062" and inserting "section 4062(a)(1)";

(3) by striking the comma after "belonging to such person" and inserting a period;

(4) by striking "except that such lien" and inserting the following:

"(2) In the case of plan terminations under section 4041 with respect to which notices of intent to terminate under section 4041(a)(2) are provided before January 1, 1992, and plan terminations with respect to which proceedings are instituted by the corporation before January 1, 1992, the lien established under paragraph (1)";

and

(5) by adding at the end the following new paragraph:

"(3)(A) In the case of plan terminations under section 4041 with respect to which notices of intent to terminate under section 4041(a)(2) are provided on or after January 1, 1992, and plan terminations with respect to which proceedings are instituted by the corporation on or after January 1, 1992, the lien established under paragraph (1) may not be in an amount in excess of the sum of—

"(i) the amount of benefits attributable to the occurrence of unpredictable contingent events valued as of the date of plan termination arising at any time during the 3 years preceding the date of plan termination (to the extent not funded prior to plan termination), plus

"(ii) the greater of—

"(I) 30 percent of the collective net worth of all persons described in section 4062(a), or

"(II) the currently applicable percentage of the excess of the amount of unfunded benefit liabilities under the plan as of the date of plan termination over the amount described in clause (i).

"(B) For purposes of this paragraph—

"(i) The term 'currently applicable percentage' means—

"(I) with respect to plan terminations initiated in calendar year 1992, 10 percent,

"(II) with respect to plan terminations initiated in any calendar year after 1992 and before 2012, the percentage determined under this clause with respect to plan terminations initiated in the preceding calendar year, plus 2 percent, and

"(III) with respect to plan terminations initiated in calendar years after 2011, 50 percent.

"(ii) The term 'amount of benefits attributable to the occurrence of unpredictable contingent events' means, with respect to any plan, the present value of unpredictable contingent event benefits (within the meaning of section 302(d)(7)(B)(ii)), determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044.

"(C) In applying subparagraph (A), the corporation may disregard subclause (I) of clause (ii) thereof if the corporation determines, in its sole discretion, that disregarding such subclause (I) is cost-effective.".

(b) CONFORMING AND CLARIFYING AMENDMENTS RELATING TO AMOUNT ENTITLED TO PRIORITY TREATMENT IN INSOLVENCY AND BANKRUPTCY CASES.—Section 4068(c)(2) of such Act (29 U.S.C. 1368(c)(2)) is amended by inserting "(A)" after "(2)" and by adding at the end the following new subparagraph:

"(B) Subparagraph (A) shall apply—

"(i) in the case of terminations described in paragraph (2) of subsection (a), only with respect to so much of the liability as does not exceed the amount determined under such paragraph (2), and

"(ii) in the case of terminations described in paragraph (3) of subsection (a), only with respect to so much of the liability as does not exceed the amount determined under such paragraph (3).".

(c) CLARIFICATION OF BANKRUPTCY AND INSOLVENCY CLAIM.—Section 9312(b)(2)(B) of the Pension Protection Act (Public Law 100-203, 101 Stat. 1330-361) is amended by adding at the end the following new clause:

"(iii) Section 4068(c)(2) of ERISA (29 U.S.C. 1368(c)(2)) is amended—

"(I) by striking 'the lien imposed under subsection (a)' and inserting 'the liability to the corporation under section 4062(a)(1), 4063, or 4064'; and

"(II) by inserting 'which is' after 'tax', and by inserting 'and assigned priority' after 'United States'.".

(d) EFFECTIVE DATES.—

(1) Section 4068(a)(2) of the Employee Retirement Income Security Act of 1974 (as amended by subsection (a)) and section 4068(c)(2)(B)(i) of such Act (as amended by subsection (b)) shall be effective with respect to plan terminations under section 4041 of such Act with respect to which notices of intent to terminate under section 4041(a)(2) of such Act are provided before January 1, 1992, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of such Act before January 1, 1992.

(2) Section 4068(a)(3) of the Employee Retirement Income Security Act of 1974 (as amended by subsection (a)) and section 4068(c)(2)(B)(ii) of such Act (as amended by subsection (b)) shall be effective with respect to plan terminations under section 4041 of such Act with respect to which notices of intent to terminate under section 4041(a)(2) of such Act are provided on or after January 1, 1992, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of such Act on or after January 1, 1992.

(3) The amendment made by subsection (a)(2) shall be effective as if included in the enactment of section 11011(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Public Law 99-272; 100 Stat. 253).

(4) The amendment made by subsection (c) shall be effective as if included in the enactment of section 9312(b)(2)(B) of the Pension Protection Act (Public Law 100-203, 101 Stat. 1330-361).

SEC. 102. LIABILITY UPON LIQUIDATION OF CONTRIBUTING SPONSOR WHERE PLAN REMAINS ONGOING.

(a) IN GENERAL.—Section 4062 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1362) is amended by adding at the end the following new subsection:

"(f) LIABILITY ON LIQUIDATION OF CONTRIBUTING SPONSOR.—

"(1) IN GENERAL.—In any case in which all or substantially all of the assets of a person who is a contributing sponsor of a single-employer plan are liquidated in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision of a State, and in the course of such liquidation another member of such person's controlled group remains a contributing sponsor of the plan or is liable for payment of contributions or installments under section 302(c)(11) of this Act or section 412(c)(11) of the Internal Revenue Code of 1986, such person shall be deemed liable under subsection (b) as if such plan had terminated under section 4041(c) in the course of such liquidation and as if the termination date were the date determined by the corporation as the date on which the liquidation was initiated.

"(2) APPLICABILITY OF OTHER PROVISIONS.—Any provision of this Act or any other provision of law that applies to liability under this section upon termination of a plan shall apply in the same manner and to the same extent to the liability established under this subsection. For purposes of this paragraph, the date referred to in paragraph (1) shall be deemed the date of plan termination.

"(3) TRANSFER OF LIABILITY PAYMENTS TO THE ONGOING PLAN.—The corporation shall pay to the plan amounts collected by the corporation in satisfaction of any liability established under this subsection in connection with such plan.

"(4) REGULATIONS.—The corporation may prescribe regulations under this subsection. Such regulations may—

"(A) prescribe rules governing—

"(i) the basis upon which the plan will continue as an ongoing plan maintained by other members of the controlled group,

"(ii) the determination of whether a liquidation referred to in this subsection has occurred, and

"(iii) the assignment of the corporation's claim to liability payments under this subsection to other members of the controlled group as a means of collecting such payments, subject to the transfer of such payments to the plan, and

"(B) provide alternative arrangements for making liability payments under this subsection.".

(b) CONFORMING AMENDMENT.—Section 4062(a)(1) of such Act (29 U.S.C. 1362(a)(1)) is amended by striking "subsection (b)" and inserting "subsections (b) and (f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective for liquidations initiated on or after the date of the enactment of this Act.

Subtitle B—Amendments to Title 11, United States Code

SEC. 121. PENSION BENEFIT GUARANTY CORPORATION PERMITTED TO BE A MEMBER OF AN UNSECURED CREDITORS' COMMITTEE.

(a) DEFINITION.—Section 101(41) of title 11 of the United States Code is amended by inserting "that guarantees pension benefits of the debtor or an affiliate of the debtor, or" after "governmental unit" the second time it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

SEC. 122. CLARIFICATION OF PRIORITIES IN CONFORMITY WITH THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) PRIORITY AS EXPENSES ARISING BEFORE COMMENCEMENT OF CASE.—Paragraph (7) of section 507(a) of title 11 of the United States Code is amended—

(1) in subparagraph (F), by striking "or" at the end;

(2) in subparagraph (G), by striking the period at the end and inserting a semicolon; and

(3) by adding after subparagraph (G) the following:

"(H) unpaid contributions (including interest) to pension plans for plan years beginning after December 31, 1987, which are attributable to the period prior to the date of the filing of the petition and treated as taxes owing to the United States under section 412(n)(4)(C) of the Internal Revenue Code of 1986; or

"(I) liability (including interest) arising under section 4062(a)(1), 4063, or 4064 of the Employee Retirement Income Security Act of 1974 to the extent it is treated as a tax under section 4068(c)(2) of such Act, if the date of pension plan termination is on or prior to the date of the filing of the petition.

For purposes of subparagraph (I), the date of plan termination, the amount of the liability, and the extent to which the liability is treated as a tax shall be determined in accordance with the provisions of the Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder.".

(b) PRIORITY AS ADMINISTRATIVE EXPENSES ARISING AFTER COMMENCEMENT OF CASE.—Section 503(b) of such title 11 is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(7)(A) unpaid contributions (including interest) to pension plans for plan years beginning after December 31, 1987, which are attributable to the period beginning on the date of the filing of the petition and treated as taxes owing to the United States under section 412(n)(4)(C) of the Internal Revenue Code of 1986; and

"(B) liability (including interest) arising under section 4062(a)(1), 4063, or 4064 of the Employee Retirement Income Security Act of 1974 to the extent it is treated as a tax under section 4068(c)(2) of such Act, if the date of pension plan termination is after the date of the filing of the petition.

For purposes of paragraph (7)(B), the date of plan termination, the amount of the liability, and the extent to which the liability is treated as a tax shall be determined in accordance with the provisions of the Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder.".

(c) EFFECTIVE DATE.—Sections 507(a)(7)(H) and 503(b)(1)(7)(A) of title 11 of the United States Code (as amended by this section) shall be effective as if included in section 9304(e) of the Pension Protection Act (Public Law 100-203; 101 Stat. 1330-348). Sections 507(a)(7)(I) and 503(b)(1)(7)(B) of such title (as amended by this section) shall be effective with respect to cases under such title which commence on or after the date of the enactment of this Act or cases under such title which are pending on the date of the enactment of this Act and in which claims for liability have not been resolved as of such date.

SEC. 123. NOTICE REQUIRED WHERE FEDERALLY INSURED PENSION PLAN IS ADMINISTERED BY THE DEBTOR OR ITS AFFILIATE.

(a) IN GENERAL.—Rule 2002(j) of the Bankruptcy Rules (11 U.S.C. Appendix) is amended by inserting before the period at the end the following: "; (5) to the Pension Benefit Guaranty Corporation in any case in which the debtor or an affiliate of the debtor maintains a pension plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE II—MISCELLANEOUS ERISA TITLE IV AMENDMENTS

SEC. 201. ENFORCEMENT OF MINIMUM FUNDING REQUIREMENTS.

(a) IN GENERAL.—Paragraph (1) of section 4003(e) of Employee Retirement Income Security Act of 1974 (29 U.S.C. 1303(e)(1)) is amended by inserting after "title" the following: "and, in the case of a plan to which this title applies under section 4021, section 302 of this Act or section 412 of the Internal Revenue Code of 1986".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective for installments and other payments required under section 302 of the Employee Retirement Income Security Act of 1974 or section 412 of the Internal Revenue Code of 1986 due on or after the date of the enactment of this Act.

SEC. 202. DEFINITION OF CONTRIBUTING SPONSOR.

(a) IN GENERAL.—Paragraph (13) of section 4001(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(13)) is amended to read as follows:

"(13) 'contributing sponsor' means, with respect to a single-employer plan, a person entitled to receive a deduction under section 404(a)(1) of the Internal Revenue Code of 1986 for contributions required to be made to the plan under section 302 of this Act or section 412 of such Code."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in section 9305 of the Pension Protection Act (Public Law 100-203; 101 Stat. 1330-351).

SEC. 203. RECOVERY RATIO PAYABLE UNDER CORPORATION'S GUARANTY.

(a) IN GENERAL.—Section 4022(c)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(c)(3)(B)) is amended—

(1) by redesignating clauses (i) and (ii) as clauses (ii) and (iii) respectively; and

(2) by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) the outstanding amount of benefit liabilities does not exceed $20,000,000,".

(b) TERMINATIONS.—Clause (iii) of section 4022(c)(3)(B) of such Act (29 U.S.C. 1322(c)(3)(B)), as redesignated by subsection (a), is amended—

(1) by inserting ", or proceedings were instituted under section 4042," after "provided"; and

(2) by striking "in which occurs the date of the notice of intent to terminate with respect to the plan termination".

(c) CONFORMING AMENDMENTS.—Clause (i) of section 9312(b)(3)(B) of the Pension Protection Act is amended by—

(1) inserting ", or proceedings were instituted under section 4042," after "provided"; and

(2) striking "1990" and inserting "1994".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 9312(b)(3) of the Pension Protection Act (Public Law 100-203; 101 Stat. 1330-362).

SEC. 204. ELIMINATION OF THE SEVENTH REVOLVING FUND.

(a) TRANSFER.—Effective September 30, 1991, all assets and liabilities of the fund described in section 4005(f)(1) of the Employee Retirement Income Security Act of 1974 (as in effect before the amendments made by this section) shall be transferred to the fund established pursuant to section 4005(a) of such Act with respect to basic benefits guaranteed under section 4022 of such Act.

(b) REPEAL.—Section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning after September 30, 1991.

SEC. 205. DISTRESS TERMINATION CRITERIA FOR BANKING INSTITUTIONS.

(a) IN GENERAL.—Subclause (I) of section 4041(c)(2)(B)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)(B)(i)(I)) is amended by inserting "Federal law or" before "law of a State".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan terminations under section 4041 of the Employee Retirement Income Security Act of 1974 with respect to which notices of intent to terminate under section 4041(a)(2) of such Act are provided on or after the date of the enactment of this Act.

SEC. 206. VARIABLE RATE PREMIUM EXEMPTION.

(a) IN GENERAL.—Clause (v) of section 4006(a)(3)(E) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by striking all that follows "not less than" and inserting "the maximum amount that may be contributed without incurring an excise tax under section 4972 of the Internal Revenue Code of 1986".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1991.

SECTION-BY-SECTION ANALYSIS OF THE PENSION PROTECTION IN BANKRUPTCY ACT OF 1991

TITLE I. EMPLOYER LIABILITY, LIEN AND PRIORITY

Subtitle A. Amendments to Title IV of the Employee Retirement Income Security Act of 1974

Sec. 101. Employer Liability Lien and Priority Amount.

Subsection (a) of section 101 of the bill amends section 4068(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") to provide that for terminations initiated on or after January 1, 1992, the PBGC's lien for employer liability shall not exceed the sum of:

(1) the amount of benefits attributable to the occurrence of unpredictable contingent events within the three years before plan termination, plus

(2) the greater of—

(a) 30 percent of the collective net worth of liable persons, or

(b) the currently applicable percentage of the excess of the amount of unfunded benefit liabilities over the amount of unpredictable contingent event benefits in (1) above. The applicable percentage is 10 percent for terminations initiated in 1992 and increases by two percentage points a year up to 50 percent, where it remains.

The term "amount of benefits attributable to the occurrence of unpredictable contingent events" means the present value of unpredictable contingent event benefits (within the meaning of section 302(d)(7)(B)(ii) of ERISA) determined as of the termination date on the basis of assumptions prescribed by the PBGC for purposes of section 4044 of ERISA.

The PBGC may, where cost effective, compute the amount of the lien without regard to the 30 percent of net worth amount described in (2)(a) above.

Subsections (b) and (c) amend section 4068(c)(2) of ERISA to clarify that liability to the PBGC under sections 4062, 4063 and 4064 of ERISA has the priority of a tax due and owing the United States in bankruptcy and insolvency proceedings and conforms the limit on the amount of this liability to the revisions to the limit made by section 101(a) of the bill.

The amendments made by subsections (a) and (b) of this section and the conforming amendments thereto made by subsection (c) are effective for terminations initiated on or after January 1, 1992. The clarification set out in subsection (c) is effective as if included in the Pension Protection Act.

SEC. 102. Liability Upon Liquidation of Contributing Sponsor Where Plan Remains Ongoing.

Section 102 of the bill adds a new subsection (f) to section 4062 of ERISA that provides that in the event all or substantially all of the assets of a contributing sponsor of an ongoing plan are being liquidated in a bankruptcy proceeding and, therefore, the sponsor's controlled group members become responsible for maintaining the plan by operation of law, such sponsor is liable as though the plan had terminated in a distress termination as of a date determined by the PBGC as the date liquidation was initiated. The PBGC shall collect the liability and pay amounts it collects to the plan. The PBGC may, by regulation, issue rules to implement this subsection.

The amendment made by this section is effective for liquidations initiated on or after the date of enactment.

Subtitle B. Amendments to Title 11, United States Code

SEC. 121. Amendment Permitting the Pension Benefit Guaranty Corporation to be a Member of an Unsecured Creditors' Committee.

This section amends section 101(a)(35) of the Bankruptcy Code to permit the PBGC to be a member of an unsecured creditors' committee.

The amendment made by this section is effective for cases initiated on or after the date of enactment.

SEC. 122. Clarification of Priorities.

Subsection (a) of section 122 of the bill adds two new subparagraphs to section 507(a)(7) of the Bankruptcy Code to clarify the seventh priority claims include:

(1) unpaid pension contributions that are attributable to the pre-petition period and treated as taxes owing the United States under section 412(n)(4)(C) of the Internal Revenue Code and

(2) employer liability that arises under sections 4062, 4063, and 4064 of ERISA, to the extent the employer liability is treated as a tax under section 4068(c)(2) of ERISA, where termination occurs on or prior to the petition date.

Subsection (b) adds a new paragraph (7) to section 503(b) to clarify that unpaid contributions for plan years beginning after December 31, 1987 that are attributable to the post-petition period, and that employer liability arising after bankruptcy exist in the amounts specified in section 412(n)(4)(C) of the Internal Revenue Code and in Title IV of ERISA.

The clarifications set out in this section with respect to unpaid contributions are effective as if included in the Pension Protection Act. The clarifications with respect to employer liability are effective for cases commenced on or after enactment or cases pending on enactment in which claims for liability have not been resolved as of the date of enactment.

SEC. 123. Notice Required Where Federally Insured Pension Plan is Administered by the Debtor or Its Affiliate.

Section 123 of the bill amends the Bankruptcy Rules to provide that the bankruptcy court shall give the PBGC notice of a petition filed and all other notices required to be served upon creditors and interested parties, in any case under Title 11 in which the debtor or an affiliate maintains a pension plan covered under Title IV of ERISA.

This section is effective on date of enactment.

TITLE II. MISCELLANEOUS ERISA TITLE IV AMENDMENTS

SEC. 201. Enforcement of Minimum Funding Requirements.

Section 201 of the bill gives the PBGC the power to bring a civil action to enforce minimum funding standards, including the enforcement of liens, in plans covered under section 4021 of ERISA. (The enforcement authority of the Department of Labor would not be changed.)

The amendment made by this section is effective for installments and other required payments due on or after the date of enactment.

SEC. 202. Definition of Contributing Sponsor.

Section 202 of the bill makes a clarifying change in the definition of contributing sponsor of a single-employer plan to clarify that the contributing sponsor is the person entitled to receive a tax deduction under section 404(a)(1) of the Internal Revenue Code for contributions required to be made to the plan under section 302 of the Act or 412 of the Code.

The amendment made by this section is effective as if included in the Pension Protection Act.

SEC. 203. Recovery Ratio under ERISA Section 4022(c).

Section 203 of the bill clarifies that the average recovery ratio that PBGC applies to outstanding benefit liabilities to determine the portion of nonguaranteed benefits that will be paid to participants in small plans terminated in distress or involuntary terminations is calculated using the PBGC's recovery experience for distress and involuntary terminations of small plans only. The section also extends from three to seven years the transitional rule under which the recovery ratio in small plans is based on the recovery in the plan rather than the average recovery ratio.

The amendments made by this section are effective as if included in the provision of the Pension Protection Act to which such amendments relate.

SEC. 204. Seventh Revolving Fund.

The Pension Protection Act created a seventh revolving fund to receive premiums for plan years beginning on or after January 1, 1988, and to pay benefits in plans terminating on or after October 1, 1988, or before that date if other funds are no longer available. This section discontinues the seventh fund and merges its assets and liabilities with the assets and liabilities of the first revolving fund (the single-employer basic benefits guaranty fund).

The elimination of the seventh fund is effective as of September 30, 1991.

SEC. 205. Distress Termination Criteria for Banking Institutions.

A contributing sponsor or controlled group member can qualify for a distress termination under the first distress test of ERISA section 4041(c)(2)(b) if the sponsor or member is liquidating under Title 11, United States Code, or under any similar law of a State or political subdivision of a State. Section 205 of the bill extends the first distress test to proceedings under other Federal laws that are similar to Title 11 proceedings.

The amendment made by this section is effective for terminations initiated on or after the date of enactment.

SEC. 206. Variable Rate Premium Exemption.

A single-employer plan that is at the full funding limitation under section 412(c)(7) of the Internal Revenue Code for the preceding plan year is exempt from the variable-rate PBGC premium charge for unfunded vested benefits. Section 206 of the bill amends section 4006(a)(3)(E)(v) of ERISA to allow an exemption from the variable-rate charge when contributions to the plan for the preceding plan year are not less than the maximum amount that may be contributed without incurring an excise tax under section 4972 of the Code.

The amendments made by this section are effective for plan years beginning after December 31, 1991.•

• Mr. GRAHAM. Mr. President, I rise today to join the distinguished ranking member of the Senate Subcommittee on Courts, Senator GRASSLEY, in sponsoring legislation to ensure the financial soundness of the entity established to protect the retirement benefits of 40 million workers.

The Pension Benefit Guarantee Corp. was established by the Employee Retiree Income Security Act of 1974 to ensure that, when a private corporation or business went bankrupt or was in other financial trouble, employee pensions would not be in jeopardy.

The fund is financed by contributions from employers for each employee enrolled in a defined benefit pension plan.

Unfortunately, Congress did not foresee the large number of bankruptcies that have been filed in the last few years. The liabilities of the PBGC are much greater than expected. Despite the overall financial health of the defined benefit system insured by PBGC, the Corporation faces an exposure of $40 billion in underfunded plans.

The problem, Mr. President, is that companies facing financial difficulty often begin underfunding their pension plans or falling behind in their contributions to the PBGC. Once a pension plan is terminated for lack of funds, the PBGC is required by law to pick up payments to the plans beneficiaries. Today PBGC makes payments to 350,000 workers and retirees.

If the PBGC is going to be able to make payments to the thousands of pensioners whose former employers go bankrupt, the Corporation needs to be able to claim some of the assets of the liquidating business in the bankruptcy process. Otherwise, PBGC will have to come to Congress for a bailout.

Unfortunately, the bankruptcy courts have not consistently found that the PBGC has any right to a priority claim on assets of a liquidating business. The Corporation's claims are considered only after numerous other creditors are paid and only then considered on par with all other unsecured creditors.

I hate to be the voice of doom, but under the current economic climate, I think it is safe to assume that PBGC's responsibility for taking over pension payments will continue to increase. Mr. President, I don't think the American people will look very favorably on a costly bail out of another Federal insurance program. And frankly, the Federal Government can't afford to bail out the PBGC. If we are serious about ensuring pension payments, we have to give PBGC the ability to fight for its beneficiaries in bankruptcy court.

I remind my colleagues that the PBGC is an involuntary creditor in bankruptcy—it cannot establish terms for or limit its commitment to guarantee pension liabilities, but is required by law to insure certain workers' pensions.

This legislation clarifies the bankruptcy code with regard to the PBGC's priority claims for unpaid pension contributions and for underfunding up to 30 percent of a controlled group's net worth. The bill also gives PBGC the option to be a member of creditors' committees in order to have access to information routinely available to other creditors and to hasten the reorganization process.

According to James Lockhart, PBGC executive director, clarification and improvements in PBGC's bankruptcy status "would be among the most significant statutory changes that could be made to strengthen the pension safety net."

Some may oppose this bill because it introduces a new liability in bankruptcy that is not on the books when investors and service providers are deciding whether to do business with a company. In the next few years, Mr. President, companies will be required by the Financial Accounting Standards Board [FASB] to list their retiree health liabilities on their annual balance sheets. I submit that perhaps business should also be required to shed more light on their ability to meet their pension obligations in the future.

Mr. President, it is my hope that this legislation will be considered in a timely fashion so that PBGC can have a leg to stand on in bankruptcy court; American workers can be assured that their pensions are safe; and taxpayers can be relieved of the need for another expensive bailout.●

By Mr. DOLE (for himself, Mr. D'AMATO, Mr. SIMON, Mr. HOLLINGS, Mr. NUNN, Mr. LUGAR, Mr. INOUYE, Mr. DURENBERGER, Mr. DECONCINI, Mr. STEVENS, Mr. METZENBAUM, Mr. GORTON, Mr. BUMPERS, Mr. DANFORTH, Mr. BOND, Mr. BURDICK, Mr. COHEN, Mr. CRAIG, Mr. REID, Mr. SIMPSON, Mr. THURMOND, Mr. MCCAIN, Mr. SHELBY, Mr. CONRAD, Mr. SASSER, Mr. FOWLER, Mr. BRYAN, Mr. SEYMOUR, Mr. HATCH, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. DIXON, Mr. FORD, Mr. HATFIELD, Mr. BURNS, Mr. SPECTER, Mr. LOTT, Mr. MACK, and Mr. BOREN):

S. 2015. A bill to urge and request the award of the bronze star to Navy and Marine Corps personnel who served in the defense on Corregidor Island, the Philippines, under General Wainwright; to the Committee on Armed Services.

AWARDING OF BRONZE STAR TO VETERANS OF BATAAN

Mr. DOLE. Mr. President, I rise today to correct an injustice that has been done to the sailors and marines that fought at Corregidor in the Philippine Islands in the opening days of World War II.

In the dark days that followed the attack on Pearl Harbor, America found itself at war, ill-prepared and untested. With the bulk of the American fleet devastated, and our aircraft in the Pacific destroyed at Hickham and Clark Airbases, the Japanese invasion of the Philippines was timed to ensure the minimum of resistance. However under the command of Gen. Jonathan Wainwright, soldiers, sailors, and marines fought a holding action at Corregidor. Although these Americans were outnumbered and out-gunned and had no possibility of relief or resupply, they held Corregidor and the Manila Bay against battle-hardened troops and constant bombardment until April of 1942. After over 4 months of savage fighting and impossible deprivations, these American heroes, were turned over to ruthless captors and forced to endure the atrocities of the infamous Bataan death march. The courage, vigilance, and loyalty displayed by the defenders of Bataan will live forever in the annals of American military history.

As a result of this action, all U.S. Army personnel at Bataan were awarded the Bronze Star. However, the over 3,000 sailors, and marines who fought with the same tenacity and suffered the same terrible fate of the Bataan death march were not awarded the Bronze Star. I believe that the fact that these Americans were in another branch of the service should not deny them the same recognition and honor that their Army counterparts received. The American heroes of the United States Naval Service deserve that recognition and that honor. In my view, that honor is long overdue.

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. 2015

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

SECTION 1. AWARD OF THE BRONZE STAR TO NAVY AND MARINE CORPS PERSONNEL WHO SERVED ON CORREGIDOR, THE PHILIPPINES, UNDER GENERAL WAINWRIGHT.

(a) FINDINGS.—Congress finds:

(1) United States Army personnel under the command of General Jonathan Wainwright who fought in and were captured during the defense of Corregidor Island, the Phillipines, at the outbreak of World War II were awarded the bronze star.

(2) Approximately 3,000 United States Navy and Marine Corps personnel, serving in various units under the overall command of General Wainwright, fought in the defense of Corregidor Island.

(3) These Navy and Marine Corps personnel were not awarded the bronze star pursuant to Navy policy not to award medals for gallantry to all personnel in a unit.

(4) the Navy and Marine Corps personnel demonstrated courage, endurance, and intrepidity in battle and in suffering the privations of battle, capture and internment after capture that was every bit exemplary as their Army counterparts.

(5) An award of the bronze star medal to Navy and Marine Corps personnel who served under General Wainwright in the defense of Corregidor Island provides appropriate recognition of and honor for the courage, endurance, and intrepidity of such personnel.

(b) AWARD OF BRONZE STAR MEDAL.—The President is urged and requested to require that the Secretary of an appropriate military department award the bronze star medal to each member of the United States Navy or Marine Corps who served under General Jonathan Wainwright during the defense of Corregidor Island, the Philippines, during World War II.

By Mr. SEYMOUR:

S. 2016. A bill to protect, restore, and enhance fish, and wildlife habitat within the central valley of California, mitigate Central Valley project impacts in order to maintain the continued orderly operation of the Central Valley project, and for other purposes; to the Committee on Energy and Natural Resources.

CENTRAL VALLEY PROJECT FISH AND WILDLIFE ACT OF 1991

Mr. SEYMOUR. Mr. President, I rise today to introduce the Central Valley Project Fish and Wildlife Act of 1991.

Mr. President, this bill is a beginning. It is a bill written in, by and for Californians. It is the product of California groups; urban, agricultural, conservation interests all working together to develop legislation to address the fish and wildlife needs in the Central Valley. This is a first step in an attempt to resolve the water dilemma which has torn at the State of California for decades.

Specifically, this bill provides a mechanism for water transfers from agricultural use to urban and environmental uses. It includes actions for the restoration of fish and wildlife, and mandates firm water supplies for the wildlife refuges and fishery habitat. And it preserves the agricultural economy which is so vital to our State.

For the record, my position on Central Valley project legislation has been clear from the very beginning. I have strongly opposed a federally mandated reallocation of California State water, and I will continue to oppose any Federal legislation which dictates how a State will use or allocate water within its borders. Since the first hearing on Senator Bradley's bill, S.484, in Los Angeles on March 18, I have opposed any Federal reallocation of California water. In my remarks at that hearing, I stated that the political will of the citizens of the State of California should not be substituted by the wisdom of the Potomac. I said then and still do have faith in the people of California to resolve our problems. This bill is a step in that direction.

I advocate consensus rather than advancing a particular bottom line or specific view or position. This bill allows flexibility for the people of California to work together to improve upon this legislation with one simple objective. The objective is balance.

California is growing at an estimated rate of 700,000 people a year. Imagine a city the size of San Francisco. This is California's annual growth. The demands upon the natural resources in California will only continue to increase as our population grows. If California is to ever clear this hurdle which threatens both our economy and the quality of life for our citizens, we must balance the often competing needs of our cities and rural communities with our limited natural resources. I do not believe that commerce and conservation are incompatible.

I believe that we must balance the quality of life for our citizens. We must balance the often competing needs of cities and rural communities. And in ensuring that commerce and conservation are not incompatible, there is going to be sacrifice and difficult decisions lie ahead of us, but working together, we will resolve the water dilemma which has polarized our State for so long.

Having attended all four hearings on CVP legislation, it is clear to this Senator that any CVP legislation that properly addresses fish and wildlife problems, can only result from compromise, cooperation, and consensus. Therefore, the only condition that I attach to this bill is simple. Californians must make the decisions that will shape this bill. As it will be Californians who will make the difficult decisions regarding water policy in my State, it will be Californians who must make these sacrifices.

This bill will provide firm supplies of water for fish and for wildlife. It will result in the transfer of water from agricultural use to thirsty cities such as Los Angeles and it will begin to bring about the restoration of the environment. Are these not long-term water policy solutions?

This bill is the beginning of a responsible and equitable solution. I am willing to consider any ideas from Californians on how to improve it. I am specifically interested in several areas. Today I will be calling various members of several conservation groups, such as the California Chapters of Ducks Unlimited and The Nature Conservancy, and agricultural organizations in California, to request their continued participation in developing a solution, as well as to discuss delivering much-needed water to rice land in the winter for duck habitat.

This can provide off-stream storage, as well as provide substantial benefit to wintering waterfowl who rest and feed as they make their way south through the Pacific Flyway.

I will also request their input on the potential benefit and feasibility of incorporating fallowed and set-aside land into dryland habitat for wildlife benefits. I will also speak with fishing interests to seek their input on specific ideas and recommendations to begin to restore the north coast and river fisheries. This bill includes several provisions such as the rehabilitation of the Coleman National fish hatchery, the installation of a temperature control device at Shasta Dam, and a program for the replenishing of river gravels for spawning. While these projects will help restore the fisheries, I realize that any restoration will not be complete without increased supplies of water.

This bill recognizes the importance of stabilizing and augmenting river flows to restore, and if possible, enhance the natural production of anadromous fish. The economic and asthetic importance of salmon and steelhead runs, striped bass, and other fisheries along the north coast of California and in the rivers and streams are vital to our State, as well as to the States of Oregon and Washington. In March of this year, I introduced S. 728, the Upper Sacramento River Fishery Resources Restoration Act. Many of the requirements contained in that bill, including mandated instream flow requirements, have been embodied in this bill. The Secretary of the Interior is directed to work with the State of California in establishing desirable flows in the rivers and streams below project dams. Once established, these flows will become a firm requirement of the Central Valley project.

In addition, the bill immediately commits water to the wildlife refuges in the central valley and then increases the supplies to be made available to these important wildlife and waterfowl areas. Upon enactment of this legislation, the Secretary of the Interior will begin the immediate delivery of more than 380,000 acre-feet of firm water supplies to the 15 National Wildlife Refuges and Wildlife Management Areas in the central valley. The wetlands and associated habitat are important to several threatened and endangered species such as the American peregrine falcon, bald eagle, Aleutian Canada goose, and San Joaquin kit fox, and support a winter population of nearly 6 million waterfowl. Sixty percent of the ducks, geese, swans, and millions of shore birds of the Pacific Flyway crowd the existing acres. The bill directs, by the turn of the century, the Secretary of the Interior to increase the water supply to over 525,000 acre-feet. This has been identified by the Secretary of the Interior as the amount needed to fully manage all lands within the existing refuge boundaries.

I am committed to making such water supplies to the refuges and to fish a requirement of the Central Valley project.

Growth in California's urban areas is causing an increasing strain on the State's developed water supplies. It is no secret that agriculture accounts for a significant amount of the water deliveries in California. This bill provides a mechanism for voluntary transfers of water from agricultural users to urban users. Water may be transferred from a Central Valley project water contractor to any water user in the State. Limits are placed on the quantity that may be transferred out of an area so as to protect local ground water and environmental resources and to protect the economies of rural farming communities dependent on water for agricultural production. Such transfers will be consistent with California State water and environmental laws. The water

which will be available for transfer includes water resulting from programs involving the conjunctive use of surface and ground water supplies, water conservation programs, and temporary or permanent land fallowing. The transfer provision in this bill is the result of long and difficult negotiations between agriculture and urban users. This accomplishment is truly to the benefit of all Californians.

On October 31, this body passed the Reclamation States Emergency Drought Relief Act of 1991 which contained authorities for the Secretary of the Interior to carry out actions during drought conditions to reduce impacts on water users and fish and wildlife. Many authorities in that bill are needed even during nondrought years to meet the multiple demands for water in California. Some of the concepts of that bill have been incorporated here, such as conjunctive use of ground water and surface water and obtaining additional sources of water supplies. Others may be added as discussions are undertaken.

I am also interested in a funding mechanism devoted exclusively to the restoration of fish and wildlife in the central valley. Provisions in the bill direct the Central Valley project contractors to make annual payments into a fund established for this very purpose. Payments to the fund, of approximately $5.5 to $7.5 million annually will commence the first water year following enactment. Over 40 years, the total water contractor contributions will generate nearly $290 million for this purpose.

Mr. President, I intend to continue to work with the chairman of the Energy Committee, Senator JOHNSTON, as we continue the development of a responsible and balanced solution for California. In fact, Mr. President, several of the chairman's remarks at the September 4 hearing in San Francisco were helpful, and we have worked to incorporate these ideas into this bill.

Mr. President, I am committed to the resolution of the fish and wildlife problems in California's central valley. I am committed to the resolution of the water shortage problems faced by urban areas throughout the State. This bill is the beginning of the resolution of those problems.

ADDITIONAL COSPONSORS

S. 474

At the request of Mr. DECONCINI, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 474, a bill to prohibit sports gambling under State law.

S. 487

At the request of Mr. GLENN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 487, a bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare Program.

S. 664

At the request of Mr. INOUYE, his name was withdrawn as a cosponsor of S. 664, a bill to require that health warnings be included in alcoholic beverage advertisements, and for other purposes.

S. 878

At the request of Mr. DODD, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 878, A bill to assist in implementing the Plan of Action adopted by the World Summit for Children, and for other purposes.

S. 1128

At the request of Mr. GLENN, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 1128, a bill to impose sanctions against foreign persons and United States persons that assist foreign countries in acquiring a nuclear explosive device or unsafeguarded special nuclear material, and for other purposes.

S. 1423

At the request of Mr. DODD, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 1423, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

S. 1641

At the request of Mr. BREAUX, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 1641, a bill to amend section 468A of the Internal Revenue Code of 1986 with respect to deductions for decommissioning costs of nuclear powerplants.

S. 1677

At the request of Mr. DASCHLE, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1677, a bill to amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the medicaid program, and for other purposes.

S. 1698

At the request of Mr. SARBANES, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1698, a bill to establish a National Fallen Firefighters Foundation.

S. 1755

At the request of Mr. BUMPERS, the names of the Senator from Wisconsin [Mr. KOHL] and the Senator from Missouri [Mr. DANFORTH] were added as cosponsors of S. 1755, a bill to reform the concessions policies of the National Park Service, and for other purposes.

S. 1774

At the request of Mr. BRYAN, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from California [Mr. CRANSTON], the Senator from North Dakota [Mr. CONRAD], the Senator from Arizona [Mr. DECONCINI], the Senator from Tennessee [Mr. GORE], the Senator from Alabama [Mr. HEFLIN], the Senator from Tennessee [Mr. SASSER], the Senator from New Jersey [Mr. BRADLEY], the Senator from Kentucky [Mr. FORD], the Senator from Oklahoma [Mr. BOREN], the Senator from Georgia [Mr. FOWLER], the Senator from New York [Mr. MOYNIHAN], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1774, a bill to establish a silver congressional commemorative medal for members of the United States Armed Forces who served in a combat zone in connection with the Persian Gulf conflict.

S. 1806

At the request of Mr. BROWN, the names of the Senator from Montana [Mr. BURNS] and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 1806, a bill to amend the Federal Water Project Recreation Act and to authorize the Secretary of the Interior to manage the land resources of Federal reclamation projects and for other purposes.

S. 1817

At the request of Mr. LAUTENBERG, the names of the Senator from Virginia [Mr. ROBB] and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of S. 1817, a bill to amend the Trade Act of 1974 to require the National Trade Estimate include information regarding the impact of Arab boycotts on certain United States businesses.

S. 1830

At the request of Mr. WOFFORD, the names of the Senator from Nebraska [Mr. KERREY] and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of S. 1830, a bill to require Senators and Members of the House of Representatives to pay for medical services provided by the Office of the Attending Physician, and for other purposes.

S. 1884

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 1884, a bill to require the Secretary of Agriculture to conduct inspections of garbage from Canada and to assess fees for such inspections.

S. 1886

At the request of Mr. MCCONNELL, the names of the Senator from Nevada [Mr. BRYAN] and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 1886, a bill to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the medicaid program and to maintain the treatment of

intergovernmental transfers as such a source.

S. 1912

At the request of Mr. DOMENICI, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1912, a bill to amend the Public Health Service Act and the Social Security Act to increase the availability of primary and preventive health care, and for other purposes.

S. 1935

At the request of Mr. SIMPSON, the names of the Senator from California [Mr. SEYMOUR], the Senator from South Dakota [Mr. DASCHLE] and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 1935, a bill to require the Secretary of Agriculture to submit a report on, and establish a system for, lamb price and supply reporting services in the Department of Agriculture, and for other purposes.

S. 1950

At the request of Mr. DANFORTH, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1950, a bill to amend the Internal Revenue Code of 1986 to extend for 1 year certain expiring tax provisions.

S. 1965

At the request of Mr. GORTON, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1965, a bill to amend the Clean Water Act to provide global environmental protection incentives and enhanced competitiveness of domestic business.

S. 1978

At the request of Mr. CHAFEE, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1978, a bill to amend title XVIII of the Social Security Act to remove the payment limitation imposed under such title with respect to the furnishing of psychiatric services in a nursing facility.

SENATE JOINT RESOLUTION 99

At the request of Mr. GLENN, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Tennessee [Mr. SASSER], the Senator from Hawaii [Mr. INOUYE], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Maine [Mr. COHEN], the Senator from Arkansas [Mr. PRYOR], the Senator from New York [Mr. D'AMATO], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Nevada [Mr. BRYAN], the Senator from Iowa [Mr. GRASSLEY], the Senator from Kansas [Mr. DOLE] and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of Senate Joint Resolution 99, a joint resolution designating November 24–30, 1991, and November 22–28, 1992, as "National Family Caregivers Week."

SENATE JOINT RESOLUTION 149

At the request of Mr. ADAMS, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of Senate Joint Resolution 149, a joint resolution to designate May, 1991, as "Older Americans Month."

SENATE JOINT RESOLUTION 226

At the request of Mr. DODD, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from Alabama [Mr. SHELBY], the Senator from Arkansas [Mr. PRYOR], the Senator from Hawaii [Mr. INOUYE], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Joint Resolution 226, a joint resolution designating the week of January 4, 1992, through January 10, 1992, as "Braille Literacy Week."

SENATE JOINT RESOLUTION 229

At the request of Mr. BYRD, the names of the Senator from Georgia [Mr. NUNN] and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Joint Resolution 229, a joint resolution designating the month of May, 1992, as "National Trauma Awareness Month."

SENATE CONCURRENT RESOLUTION 65

At the request of Mr. D'AMATO, the names of the Senator from Arizona [Mr. MCCAIN] and the Senator from Florida [Mr. MACK] were added as cosponsors of Senate Concurrent Resolution 65, a concurrent resolution to express the sense of the Congress that the President should recognize Ukraine's independence.

At the request of Mr. DECONCINI, the names of the Senator from Pennsylvania [Mr. WOFFORD] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Concurrent Resolution 65, supra.

SENATE CONCURRENT RESOLUTION 74

At the request of Mr. DECONCINI, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of Senate Concurrent Resolution 74, a concurrent resolution calling for acceptance and implementation by certain republics of the commitments on human rights, fundamental freedoms, and humanitarian cooperation contained in the Helsinki Final Act and other documents of the Conference on Security and Cooperation in Europe.

SENATE CONCURRENT RESOLUTION 77

At the request of Mr. PELL, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Concurrent Resolution 77, a concurrent resolution condemning the massacre of East Timorese civilians by the Indonesian military.

At the request of Mr. MOYNIHAN, his name was added as a cosponsor of Senate Concurrent Resolution 77, supra.

SENATE RESOLUTION 109

At the request of Mr. RIEGLE, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Hawaii [Mr. INOUYE], the Senator from Hawaii [Mr. AKAKA], the Senator from Georgia [Mr. FOWLER], the Senator from Ohio [Mr. GLENN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Vermont [Mr. LEAHY], the Senator from Illinois [Mr. DIXON], the Senator from Arkansas [Mr. BUMPERS], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Nebraska [Mr. EXON] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Resolution 109, a resolution exercising the right of the Senate to change the rules of the Senate with respect to the "fast track" procedures for trade implementation bills.

SENATE RESOLUTION 213

At the request of Mr. GORE, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of Senate Resolution 213, a resolution expressing the sense of the Senate regarding United States policy toward Yugoslavia.

SENATE RESOLUTION 221

At the request of Mr. COATS, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from Idaho [Mr. CRAIG], the Senator from Idaho [Mr. SYMMS] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of Senate Resolution 221, a resolution to establish a procedure for the appointment of independent counsels to investigate ethics violations in the Senate, transfer to the Committee on Rules and Administration the remaining authority of the Select Committee on Ethics, and abolish the Select Committee on Ethics.

AMENDMENT NO. 1347

At the request of Mr. DODD the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of amendment No. 1347 proposed to S. 543, a bill to reform Federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions.

SENATE CONCURRENT RESOLUTION 78—REGARDING THE UNFAIR IMPRISONMENT AND TRIAL OF DR. NGUYEN DAN QUE BY THE GOVERNMENT OF VIETNAM

Mr. ROBB (for himself and Mr. WARNER) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 78

Whereas the normalization of relations with the Socialist Republic of Vietnam and the potential lifting of the economic embargo depend in part on that nation taking certain steps related to the recognition of certain human rights;

Whereas Dr. Nguyen Dan Que is a nonviolent advocate for human rights and de-

mocracy in the Socialist Republic of Vietnam;

Whereas Dr. Nguyen Dan Que's right to free expression is guaranteed by Article 19 of the Universal Declaration of Human Rights;

Whereas Dr. Nguyen Dan Que has been imprisoned for 12 of the last 13 years and has for 14 years suffered from ill health;

Whereas Dr. Nguyen has finally been charged with treason and trying to overthrow the Vietnamese government;

Whereas Dr. Nguyen is scheduled to go on trial on November 29, 1991; and

Whereas numerous international human rights organizations have called for the release of Dr. Nguyen: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) Dr. Nguyen Dan Que should be accorded a fair and impartial trial as is his right under Articles 10 and 11 of the Universal Declaration of Human Rights;

(2) to ensure fairness and impartiality during his impending trial, international observers should be permitted access to all court proceedings and evidence; and

(3) if Dr. Nguyen is merely guilty of nonviolently expressing his views regarding human rights, he should be released immediately.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the following persons: the Permanent Representative of Vietnam to the United Nations, the Speaker of the Vietnamese National Assembly, the Foreign Minister and the Prime Minister of the Socialist Republic of Vietnam, as well as the Secretary of State and the President of the United States.

Mr. ROBB. Mr. President, we Americans often fail to fully appreciate the rights granted to us by our Constitution. Recently, our colleague, HARRIS WOFFORD, spoke out on the inadequacy of health care in this country, and was elected to the Senate in part because he did so. But in another country, a man who took the same stand on the same issue has been imprisoned for 12 years, and now faces trial for treason.

Dr. Nguyen Dan Que was on the teaching staff of Cho Re Hospital in Ho Chi Minh City, formerly Saigon. After the war, in 1975, he was named director of the hospital. Dr. Nguyen took his job seriously and began to speak out about the shortage of medicines and modern medical standards in his country.

In 1978, Dr. Nguyen was dismissed from his post and arrested for trying to improve the care of his patients. For 10 years, he was deprived of his freedom without charge or trial. In February 1988, Dr. Nguyen was released. Taking the Vietnamese Government's professed political renovation to heart, he again spoke out for nonviolent change in the political social system. But for taking advantage of the official policy of openness, Dr. Nguyen was again arrested, in clear violation of the Universal Declaration of Human Rights. He has been held since June of 1990 without charges.

According to Amnesty International, Dr. Nguyen Dan Que will be brought to trial on November 29, a week from Friday, charged with "activities aimed at overthrowing the people's government," an offense for which he could be put to death.

Mr. President, America was founded by people who spoke unpopular thoughts, They knew the right of free speech was so important that it was the very first amendment added to the Constitution. Free speech is still the fundamental right of democracy from which all of our other freedoms flow.

We cannot stand by and let that right be suppressed elsewhere without at least speaking out on its defense. Therefore, Mr. President, I am introducing a resolution today that would express to representatives of the Vietnamese Government our desire that Dr. Nguyen Dan Que, prisoner of conscience, be released immediately.

Mr. President, like several of our colleagues, I spent more than a year of my life in Vietnam. In part, because of that experience, I am working to help increase cooperation and improve relations between our two countries. Regrettably, the Vietnamese Government's actions in suppressing Dr. Nguyen Dan Que's speech move us in precisely the opposite direction. I hope that Hanoi will come to realize that no nation can advance when the minds of its people are not free. There would be no better way to acknowledge this simple principle than by releasing Dr. Nguyen Dan Que.

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

SENATE CONCURRENT RESOLUTION NO. 79—RELATING TO ZAMBIA'S TRANSITION TO DEMOCRACY

Mr. SIMON submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 79

Whereas the nation of Zambia achieved its independence from British rule in 1964;

Whereas Zambia has been administered under a state-of-emergency decree for the past 26 years and has been subjected to one-party rule for the past 17 years;

Whereas the Zambian economy faced continual decreases in commodity prices and, by 1989, Zambia's per capita income level has fallen to half its mid-1970s level;

Whereas the Zambian economy continues in a steady decline and the Zambian Government now incurs an external debt of $7.5 billion;

Whereas in 1990 the Government of Zambia had begun to institute a macro-economic arrangement with the International Monetary Fund and the International Bank for Reconstruction and Development (also known as the "World Bank");

Whereas in 1991 the Government of Zambia failed to meet its economic reform program with the World Bank and was subsequently suspended from $200 million in international asistance, in addition to a $5 million United States Government assistance program;

Whereas the people of Zambia have ceaselessly expressed their opposition to the Government of Zambia's policies;

Whereas the Zambian Government responded by releasing political detainees, by pardoning political prisoners and by enacting a law in December 1990, that allowed additional parties to participate in elections slated for October 1991;

Whereas on October 31, 1991, President Kenneth Kaunda and the people of Zambia demonstrated great courage and determination by conducting free and fair elections;

Whereas the Movement for Multiparty Democracy (MMD) won nearly 80 percent of the vote and secured 125 seats of the 150-seat Parliament; and

Whereas the elections were found to be free and fair without incidents of violence of corruption. Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the United States Congress—

(1) commends the people of Zambia for their commitment to democracy;

(2) congratulates President Frederick Chiluba on his historic election as Zambia's President;

(3) commends former President Kaunda and the United National Independence Party (UNIP) on their cooperation in allowing open participation in the recent elections;

(4) calls on President Chiluba to restore respect for internationally recognized human rights and to establish a system of governance that fosters open political participation and encourages the development of democratic institutions;

(5) urges President Chiluba to take steps to strengthen Zambia's economy, renew its debt service payments to the International Monetary Fund and restore Zambia's commitment to implementing its economic restructuring obligations with the World Bank;

(6) calls on the President of the United States to take steps to implement a comprehensive assistance program, in coordination with other Western donors, to the newly elected government and its people that support democratic and economic development in Zambia; and

(7) urges the President of the United States to encourage other industrialized nations to participate in supporting Zambia's newly-elected government.

• Mr. SIMON. Mr. President, I would like to submit a concurrent resolution, concurrent with a similar provision in the House, to commend Zambia for its recent free and fair elections. Zambia joins a growing trend, already well underway among Africa's French-speaking nations, toward the establishment of democratically elected leadership. We need to welcome this trend and do what we can to reinforce it by recognizing the achievements of those countries which are successfully democratizing. The resolution also encourages the United States and the international community to work with the new government of President Chiluba to get Zambia back on the road to economic recovery. Declining copper prices and other economic problems have reduced Zambia's per capita income to half of its mid-1970's level, and Zambia's per capita external debt is now the world's highest. These are crucial problems which we need to help address in an assistance program.•

SENATE RESOLUTION 228—RELATIVE TO THE ALBERT EINSTEIN FELLOWSHIP PROGRAM

Mr. HATFIELD submitted the following resolution; which was considered and agreed to:

S. RES. 228

SECTION 1. FELLOWSHIP PROGRAM.

Section 1 of the Senate Resolution entitled "A resolution to establish an Albert Einstein Congressional Fellowship Program" agreed to on August 2, 1991 (hereafter in this resolution referred to as the "Resolution") is amended—

(1) in subsection (a)—

(A) by striking "are" and inserting "is";

(B) by striking "three" and inserting "two"; and

(C) by striking "concurrent"; and

(2) in paragraph (3) of subsection (b), by inserting ", partial compensation" after "administration".

SEC. 2. SELECTION PROCESS.

Section 2 of the Resolution is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking "and" after the semicolon;

(B) in paragraph (3), by striking the period and inserting a semicolon and "and"; and

(C) by inserting at the end the following new paragraph—

"(4) convene a panel of representatives of not less than six scientific and educational societies to select the two recipients of the Senate fellowships.";

(2) by striking subsections (b) and (c);

(3) by inserting after subsection (a) the following new subsection:

"(b) INTERVIEWING.—Each fellowship recipient shall interview with various Senate committees and Senators' offices to determine the best placement for such Senate fellowship recipient.";

(4) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively;

(5) in subsection (c) (as redesignated in paragraph (4)), by striking "Recipients" and inserting "Fellowship recipients";

(6) by amending subsection (d) (as redesignated in paragraph (4)) to read as follows:

"(d) COMPENSATION.—Each Senate fellowship recipient shall receive one-half of the funds made available pursuant to section 6(a) as the Senate contribution to such recipient's compensation. The remainder of such recipient's compensation shall be provided by the Triangle Coalition for Science and Technology Education."; and

(7) in subsection (e) (as redesignated in paragraph (4)), by striking "up to 1 year" and inserting "ten months".

SEC. 3. EVALUATION.

Section 3 of the Resolution is amended by striking "and member of the Senate referred to in section 2(b)" and inserting "or member of the Senate in whose office a Senate fellowship recipient is placed".

SEC. 4. FUNDING.

Subsection (a) of section 4 of the Resolution is amended—

(1) by striking "and 1992" and inserting ", 1992 and 1993";

(2) by striking "1991 and $42,500" and inserting "1991, $42,500"; and

(3) by inserting "and $45,000 for fiscal year 1993" before "for the Senate".

SENATE RESOLUTION 229—AUTHORIZING TESTIMONY BY A FORMER SENATE EMPLOYEE AND REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. LEVIN (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 229

Whereas the New York State Commission of Investigation has requested the testimony of Robert Shapiro, a former Senate employee on the staff of Senator Daniel Patrick Moynihan, in connection with a matter under inquiry by the Commission;

Whereas by the privileges of the Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent present or former employees of the Senate with respect to any subpoena or order relating to their official responsibilities;

Whereas when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Robert Shapiro is authorized to provide testimony to the New York State Commission of Investigation.

SEC. 2. The Senate Legal Counsel is authorized to represent Robert Shapiro in connection with the testimony authorized by section one of this resolution.

AMENDMENTS SUBMITTED

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT

DOMENICI (AND OTHERS) AMENDMENT NO. 1364

(Ordered to lie on the table.)

Mr. DOMENICI (for himself, Mr. MCCONNELL, Mr. SIMPSON, Mr. CRAIG, and Mr. LUGAR) submitted an amendment intended to be proposed by them to the bill (S. 543) to reform federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure related to federally insured depository institutions, as follows:

On page 778, line 13, strike "Except" and insert "(a) IN GENERAL.—Except".

On page 778, line 19, strike the quotation marks and the final period and insert between lines 19 and 20 the following:

"(b) AWARD OF FEES UPON FINAL JUDGMENT.—In any implied private action arising under this title, brought on behalf of a class, where the court enters a final judgment against a party on the basis of a motion to dismiss, motion for summary judgment, or trial on the merits, the court shall, upon motion by the prevailing party, award the prevailing party reasonable fees and other expenses under subsection (b) incurred by that party.

"(c) APPLICATION TO COURT.—A party seeking an award of fees and other expenses under subsection (b) shall, not later than 30 days after a final, nonappealable judgment is rendered in the action, submit an application to the court for fees and other expenses. The application shall verify that the party is entitled to such an award under subsection (b) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed.

"(d) COURT'S DETERMINATION.—The court, in its discretion, may—

"(1) determine whether the amount to be awarded under subsection (b) shall be awarded against the unsuccessful party, its attorney, or both; and

"(2) reduce the amount to be awarded pursuant to this section, or deny the award if—

"(A) the prevailing party, during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; or

"(B) the court determines that, notwithstanding any other provision of this section, the action was substantially justified.

"(e) LIABILITY OF COUNSEL.—Counsel for the party against whom fees are awarded under this section in connection with an action described in subsection (b) shall be personally liable for those fees. Such counsel may enter into an agreement for reimbursement or indemnification of such fees from members of the class on whose behalf the action was brought prior to or at any time during such litigation. All such agreements between the counsel for the class and the class members shall be approved by the district court.

"(f) DISCOVERY MOTIONS.—In any motion for an order compelling discovery made pursuant to an implied private action arising under this title, the court shall award the prevailing party as to the securities action reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorney fees, unless the court finds that special circumstance make an award unjust.

"(g) AWARD OF FEES UPON DISMISSAL PRIOR TO TRIAL.—In any action brought on behalf of a class that alleges a violation of section 10(b) or 14 or the rules issued thereunder, where such action is dismissed prior to trial, the court shall order the nonprevailing party or that party's counsel to pay reasonable attorneys' fees and expenses incurred by any prevailing party if, upon motion to the court, the court finds that the plaintiff has failed to establish that, after reasonable investigation made prior to the commencement of the action, the plaintiff had reasonable grounds to believe and did believe that the action—

"(1) was well grounded in fact; and

"(2) was warranted based upon existing law or upon good faith arguments for the reasonable extension, modification, or reversal of existing law.

"(h) FEE AMOUNTS.—The amount of fees awarded under this section and the reasonable allocation of expenses among multiple parties shall be in the discretion of the court, based upon prevailing legal fees in the district, the prevailing party's legal and other bills, and the pleadings and proceed-

ings in the case, provided that such fees and costs relating to representation at trial or deposition shall not awarded for simultaneous representation of any 1 defendant by more than 1 attorney. The amount recovered shall not include any amounts separately awarded under Rule 11 of the Federal Rules of Civil Procedure.

"(i) DEFINITIONS.—

"(1) FEES AND OTHER EXPENSES.—For purposes of this section, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project that is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses.

"(2) PREVAILING PARTY.—For purposes of applying for an award of fees under this section, the 'prevailing party' shall be considered to be—

"(A) the party that brought the underlying action if such party succeeded on the central issue of the suit by acquiring the primary relief sought; or

"(B) the party defending in the underlying action if such party prevented the plaintiff from acquiring the primary relief sought.".

SEC. . PROPORTIONATE LIABILITY REFORM.

"LIABILITY.—In any implied private action arising under a provision of this Act, the liability for damages of each defendant shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility, as determined under subsection ( ). A separate judgment shall be rendered against each defendant for that amount.

"( ) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact in an action referred to in subsection (b) shall determine the proportion of responsibility assignable to each defendant.

"( ) EXCEPTION.—This section does not apply to any defendant found by the trier of fact in an action referred to in subsection (b) to have acted with actual, subjective intent to deliberately deceive, manipulate, or defraud. Proof that the defendant acted recklessly does not subject the defendant to joint and several liability in any implied private action arising under this Act.".

DOMENICI AMENDMENT NO. 1365

(Ordered to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 543, supra; as follows:

On page 778, line 13, strike "Except" and insert "(a) LIMITATIONS.—Except".

On page 778, line 19, strike the quotation marks and the final period and insert between lines 19 and 20 the following:

"(b) LIABILITY.—In any implied private action arising under a provision of this Act, the liability for damages of each defendant shall be several only and shall not be joint. Each defendant shall be liable only for the amount of damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility, as determined under subsection (c). A separate judgment shall be rendered against each defendant for that amount.

"(c) PROPORTION OF RESPONSIBILITY.—For purposes of this section, the trier of fact in an action referred to in subsection (b) shall determine the proportion of responsibility assignable to each defendant.

"(d) EXCEPTION.—This section does not apply to any defendant found by the trier of fact in an action referred to in subsection (b) to have acted with actual, subjective intent to deliberately deceive, manipulate, or defraud. Proof that the defendant acted recklessly does not subject the defendant to joint and several liability in any implied private action arising under this Act.".

On page 778, line 21, insert "(a)" after "section 36".

On page 778, line 23, insert after the period the following: "Section 36(b) of the Securities Exchange Act of 1934, as added by subsection (a), shall become effective on the date of enactment of this Act and shall apply to all proceedings commenced on or after that date of enactment.".

DOMENICI (AND MCCONNELL) AMENDMENT NOS. 1366 AND 1367

(Ordered to lie on the table.)

Mr. DOMENICI (for himself and Mr. MCCONNELL) submitted two amendments intended to be proposed by them to the bill S. 543, supra, as follows:

AMENDMENT NO. 1366

On page 778, line 13, strike "Except" and insert "(a) IN GENERAL.—Except".

On page 778, line 19, strike the quotation marks and the final period and insert between lines 19 and 20 the following:

"(b) AWARD OF FEES.—In any implied private action arising under this title, where the court enters a final judgment against a party on the basis of a motion to dismiss, motion for summary judgment, or trial on the merits, the court shall, upon motion by the prevailing party, award the prevailing party reasonable fees and other expenses incurred by that party.

"(c) APPLICATION TO COURT.—A party seeking an award of fees and other expenses shall, not later than 30 days after a final, nonappealable judgment is rendered in the action, submit an application to the court for fees and other expenses. The application shall verify that the party is entitled to such an award under subsection (b) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed.

"(d) COURT'S DETERMINATION.—The court, in its discretion, may—

"(1) determine whether the amount to be awarded pursuant to this section shall be awarded against the unsuccessful party, its attorney, or both; and

"(2) reduce the amount to be awarded pursuant to this section, or deny an award if—

"(A) the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; or

"(B) the court determines that, notwithstanding any other provision of this section, the action was substantially justified.

"(e) MOTIONS.—In any motion for an order compelling discovery made pursuant to an implied private action arising under this title, the court shall award the prevailing party as to the securities action reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorney fees, unless the court finds that special circumstances make an award unjust.

"(f) LIABILITY OF COUNSEL.—Counsel for the party against whom fees are awarded under this section in connection with an action described in subsection (b) shall be personally liable for those fees. Such counsel may enter into an agreement for reimbursement or indemnification of such fees from clients prior to or at any time during such litigation. In the case of a class action, all such agreements between the counsel for the class and the class members shall be approved by the district court.

"(g) DEFINITIONS.—

"(1) FEES AND OTHER EXPENSES.—For purposes of this section, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project that is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnishes.

"(2) PREVAILING PARTY.—For purposes of applying for an award of fees under this section, the 'prevailing party' shall be considered to be—

"(A) the party that brought the underlying action if such party succeeded on the central issue of the suit by acquiring the primary relief sought; or

"(B) the party defending in the underlying action if such party prevented the plaintiff from acquiring the primary relief sought.".

On page 778, line 21, insert "(a)" after "section 36".

AMENDMENT NO. 1367

On page 778 line 19 strike the quotation marks and the final period and insert between lines 19 and 20 the following:

SEC. .

( ) RECOVERY BY NAMED PLAINTIFFS IN CLASS ACTIONS.—In any implied private action arising under this Act that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the share of any final judgment or of any settlement that is awarded to any party serving as a representative plaintiff shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the plaintiff class.

( ) PROHIBITION ON CONFLICTS OF INTEREST.—In any implied private action arising under this Act that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the class may not be represented by any attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation. An attorney who knowingly violates this prohibition shall be barred from acting as class counsel in any future action arising under this Act or under the Securities Act of 1933.

( ) PAYMENT OF REFERRAL FEES.—In any implied private action arising under this Act that is certified as a class action pursuant to the Federal Rules of Civil Procedure, an attorney may not represent the class if the attorney has paid or is obligated to pay a fee to a third party who assisted him in obtaining the representation of any member of the class. An attorney who knowingly violates this prohibition shall be barred from acting as class counsel in any future action arising under this Act or under the Securities Act of 1933.

( ) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGMENT FUNDS.—Funds disgorged as a result of any action brought by the Commission in federal court or of any Commission administrative action shall not be distributed as payment for attorney fees or expenses incurred by private

parties seeking a share of the disgorged funds except as such court may order upon a motion of the Commission.

RIEGLE (AND GARN) AMENDMENT NO. 1368

Mr. RIEGLE (for himself and Mr. GARN) proposed an amendment to the bill S. 543, supra; as follows:

Beginning with page 396, line 1, strike all through the end of title IV of the committee amendment.

Beginning with page 669, line 7, strike all through page 676, line 17, and insert the following:

(b) REGULATIONS.—Not later than 210 days after the date of enactment of this Act, the National Credit Union Administration Board shall promulgate final regulations to administer and carry out the purposes of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective immediately upon the effective date of final regulations promulgated under subsection (b), but in no event later than 300 days after the date of enactment of this Act.

SEC. 771. INSURANCE ACTIVITIES OF NATIONAL BANKS.

(a) REPEAL OF OBSOLETE PROVISION.—Chapter 461 of the Act of September 7, 1916 (39 Stat. 753; 12 U.S.C. 92 note), as amended, is further amended by striking "That in addition to the powers vested by law in national banking associations" and all that follows through "filing his application for insurance.".

(b) NEW PROVISION FOR INSURANCE ACTIVITIES OF NATIONAL BANKS.—The Revised Statutes are amended by adding the following new section after section 5136A (12 U.S.C. 24):

"SEC. 5136B. INSURANCE ACTIVITIES OF NATIONAL BANKS.

"(a) IN GENERAL.—A national bank may not provide insurance as agent or broker except pursuant to this section or section 5136 of the Revised Statutes.

"(b) AUTHORITY FOR NATIONAL BANKS TO ENGAGE IN INSURANCE ACTIVITIES PERMITTED FOR STATE BANKS.—

"(1) IN GENERAL.—A national bank or any of its branches may provide insurance as agent or broker in the same manner and to the same extent that a bank chartered in the State in which the national bank or branch is located is permitted to provide insurance as agent or broker.

"(2) SUBSIDIARIES OF NATIONAL BANKS.—A subsidiary of a national bank that is located in the same State as the national bank may provide insurance as agent or broker in the same manner and to the same extent that a subsidiary of a bank chartered in that State is permitted to provide insurance as agent or broker.

"(3) BANK CHARTERED IN THE STATE DEFINED.—For purposes of paragraph (1), the term 'bank chartered in the State' does not include any organization that is excluded from the definition of 'bank' in section 2(c)(2) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)).

"(c) AUTHORITY FOR NATIONAL BANKS TO ENGAGE IN INSURANCE AGENCY ACTIVITIES IN SMALL TOWNS.—

"(1) IN GENERAL.—A national bank may provide insurance as agent or broker in any small town in which the bank or any of its branches is located.

"(2) LIMITATIONS ON PERMISSIBLE CUSTOMERS.—Insurance provided pursuant to paragraph (1) in a small town in which a national bank or branch is located may only be provided to—

"(A) an individual who is a resident of or employed in the small town;

"(B) an individual to whom the bank or branch has provided insurance as agent or broker, without interruption, since such individual ceased to be a resident of, or ceased to be employed in, the small town;

"(C) a person who is engaged in business in the small town and has a business office in such town, so long as such insurance is provided either with respect to—

"(i) an employee (including an owner-employee) who resides in or is principally employed in the small town, or

"(ii) services or products provided in or from the small town; or

"(D) any other person, if the insurance is issued with respect to—

"(i) real property located in the small town; or

"(ii) personal property that is principally located or used in the small town.

"(3) GUARANTEES PROHIBITED.—No national bank that provides insurance pursuant to paragraph (1) may—

"(A) assume or guarantee the payment of any premium on any insurance policy issued through the agency of the bank by the insurance company for which the bank is acting as agent; or

"(B) guarantee the truth of any statement made by an insurance customer in filing such customer's application for insurance.

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.

"(5) SMALL TOWN DEFINED.—For purposes of this subsection (c), the term 'small town' means—

"(A) any place with a population not exceeding 5,000 (as shown by the preceding decennial census); and

"(B) any contiguous rural area, including rural communities, within 7.5 miles of the borders of a place described in subparagraph (A), except to the extent such contiguous rural area includes any part of an incorporated city or town that has a population exceeding 12,500 (as shown by the preceding decennial census).

"(d) AUTHORITY OF NATIONAL BANKS TO CONTINUE CERTAIN AGENCY ACTIVITIES.—

"(1) IN GENERAL.—A national bank or branch providing insurance pursuant to the provision repealed in section 771(a) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 may continue to provide insurance as agent or broker from any place in which the national bank or branch was located on May 1, 1991, if—

"(A) the national bank or branch was actually providing insurance from that place as of May 1, 1991;

"(B) the insurance insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the national bank or branch was actually providing as of May 1, 1991; and

"(C) the insurance is provided only in the contiguous region to the place in which the national bank or branch is located, except that such insurance may not be provided in any county in which the national bank or branch was not actually providing insurance as of May 1, 1991.

"(2) LIMITATIONS ON PERMISSIBLE CUSTOMERS.—Insurance provided in a contiguous region by a national bank or branch pursuant to paragraph (1) may only be provided to—

"(A) an individual who is a resident of or employed in the contiguous region;

"(B) an individual to whom the bank or branch has provided insurance as agent or broker, without interruption, since such individual ceased to be a resident of, or ceased to be employed in, the contiguous region;

"(C) a person who is engaged in business in the contiguous region and has a business office in such contiguous region, so long as such insurance is provided either with respect to—

"(i) an employee (including an owner-employee) who resides in or is principally employed in the contiguous region, or

"(ii) services or products provided in or from the contiguous region; or

"(D) any other person, if the insurance is issued with respect to—

"(i) real property located in the contiguous region; or

"(ii) personal property that is principally located or used in the contiguous region.

"(3) CONTIGUOUS REGION DEFINED.—For purposes of this subsection, the term 'contiguous region' means the county in which the national bank or branch is located and any county bordering on the county in which the national bank or branch is located, except for—

"(A) any incorporated city or town with a population exceeding 30,000 (as shown by the preceding decennial census); or

"(B) any metropolitan area, as determined by the Office of Management and Budget.

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.

"(e) STATE DEFINED.—For purposes of this section, the term 'State' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

(c) NATIONAL BANK INSURANCE ACTIVITIES THAT ARE INCIDENTAL TO BANKING ACTIVITIES.—The paragraph designated the "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)), as redesignated by this section, is amended by adding at the end the following: "A national banking association may engage in activities pursuant to this paragraph that constitute providing insurance as principal, agent, or broker, but only if such activities were lawfully engaged in by one or more national banks before May 1, 1991. For the purposes of the previous sentence, activities were not lawfully engaged in before May 1, 1991, to the extent that they are finally adjudged as unlawful under laws in effect on May 1, 1991. A national banking association providing insurance pursuant to this paragraph shall comply with the laws governing the provision of insurance of the State in which such banking association is located, unless such State law is preempted by Federal law.".

SEC. 772. INTERSTATE INSURANCE AGENCY ACTIVITIES OF BANKING SUBSIDIARIES OF BANK HOLDING COMPANIES.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following new section:

"SEC. 13. INTERSTATE INSURANCE AGENCY ACTIVITIES OF BANKING SUBSIDIARIES.

"(a) IN GENERAL.—No bank holding company may permit any subsidiary bank to

provide insurance as agent or broker beyond the borders of the State in which the subsidiary bank is principally located, unless—

"(1) the statutes of the host State expressly authorize a bank principally located in another State to provide insurance in such host State, by language to that effect and not merely by implication;

"(2) the insurance is provided through a branch of the subsidiary bank, so long as the branch—

"(A) is located in the State in which the insurance is provided;

"(B) is otherwise authorized by State or Federal law to provide such insurance; and

"(C) is engaged primarily in banking activities, not insurance activities;

"(3) the insurance is provided pursuant to subsection (d) of section 5136B of the Revised Statutes, except that such insurance may not be provided—

"(A) in any place in the host State that is more than 7.5 miles from the place in which the national bank or branch is located; or

"(B) any incorporated cities or towns with a population exceeding 12,500 (as shown by the preceding decennial census);

"(4) the insurance—

"(A) insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the subsidiary bank or any subsidiary of that bank was providing as of May 1, 1991, beyond the borders of the State in which the subsidiary bank is principally located, and

"(B) is not provided pursuant to a statute enacted by a State after May 1, 1990;

"(5) the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by the bank holding company and any subsidiary (including the subsidiary bank) in the event of the death, disability, or involuntary unemployment of the debtor; or

"(6) the insurance is placed on real or personal property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

"(b) APPLICATION.—The restrictions of subsection (a) shall not apply to any non-bank subsidiary of a bank.

"(c) DEFINITIONS.—

"(1) PLACE IN WHICH INSURANCE IS PROVIDED.—For purposes of this section, the place in which insurance is provided includes the place in which an individual who purchases such insurance is domiciled.

"(2) PRINCIPALLY LOCATED DEFINED.—For purposes of this section, the State in which a bank is principally located is—

"(A) the State in which the bank is chartered; or

"(B) if the bank is a national bank, the State in which the bank has its main office.

"(3) HOST STATE DEFINED.—For purposes of this section, the term 'host State' means a State in which a bank provides insurance other than the State in which the bank is principally located.

"(d) NO AFFECT ON BANK HOLDING COMPANY INSURANCE ACTIVITIES.—Nothing in this section shall be deemed to affect the ability of a bank holding company to engage, directly or indirectly, in insurance activities that are permissible under sections 4(a)(2) and 4(c)(8).".

SEC. 773. SAFEGUARDS FOR SALE OF INSURANCE.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting the following new section at the appropriate place:

"SEC. ____. SAFEGUARDS FOR SALE OF INSURANCE BY INSURED INSTITUTIONS.

"(a) PROMINENT DISCLOSURE THAT INSURANCE PRODUCTS ARE NOT FEDERALLY INSURED.—Pursuant to regulations issued by the Corporation, an insured depository institution shall prominently disclose in writing to each of its customers that insurance products sold, offered, or recommended by the insured depository institution are not deposits and are not insured by the Corporation, and, to the extent applicable, are neither guaranteed by nor otherwise an obligation of an insured depository institution.

"(b) NO FAVORING OF CAPTIVE AGENTS.—No insured depository institution may, directly or indirectly—

"(1) require as a condition of providing any product or service to any customer, or any renewal of any contract for providing such product or service, that the customer acquire, finance, or negotiate any policy or contract of insurance through a particular insurer, agent, or broker;

"(2) in connection with a loan or extension or credit that requires a borrower to obtain insurance, reject an insurance policy solely because such policy has been issued or underwritten by any person who is not an affiliate of such institution; or

"(3) impose any discriminatory requirement on any insurance agent who is not affiliated with the insured depository institution that is not imposed on any insurance agent that is affiliated with such institution.

"(c) NO SOLICITATION OF CERTAIN INSURANCE BEFORE PROVIDING LOAN COMMITMENTS.—

"(1) IN GENERAL.—No insured depository institution may, directly or indirectly, solicit the purchase of any insurance required under the terms of any proposed loan or extension of credit from such insured depository institution to a customer before the customer has received a written commitment with respect to such loan or extension of credit.

"(2) EXCEPTION FOR INSURANCE REQUIRED FOR CREDIT AGREEMENT.—Nothing in this section shall prevent an insured depository institution from placing insurance on real or personal property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

"(d) RESTRICTIONS ON USE OF NONPUBLIC CUSTOMER INFORMATION.—

"(1) IN GENERAL.—No insured depository institution may use, directly or indirectly, any nonpublic customer information for the purpose of providing insurance, except with the prior written consent of the customer.

"(2) EXCEPTION FOR CREDIT-RELATED INSURANCE.—For purposes of paragraph (1), the term 'insurance' does not include insurance—

"(A) provided to assure the repayment of the outstanding balance due on an extension of credit in the event of the death, disability, or involuntary unemployment of the debtor;

"(B) provided on real or personal property obtained by or on behalf of an insured depository institution in the event a debtor has failed to provide reasonable evidence of required insurance in accordance with an extension of credit; or

"(C) provided to assure the repayment of outstanding balances due in connection with an extension of credit in the event of the loss or damage to property used as collateral on such extension of credit.

"(3) RECORDS OF CUSTOMER CONSENT.—Any insured depository institution that obtains the consent of any customer to disclose nonpublic customer information shall maintain appropriate records or other evidence of such consent.

"(4) DEFINITIONS.—

"(A) CUSTOMER DEFINED.—For purposes of this section, the term 'customer' means any person who, after January 1, 1992, establishes a credit relationship with an insured depository institution.

"(B) NONPUBLIC CUSTOMER INFORMATION DEFINED.—For purposes of this section, the term 'nonpublic customer information' means information obtained from an individual by an insured depository institution in connection with a loan or extension of credit, but does not include—

"(i) customers' names and addresses (unless a customer has specified otherwise);

"(ii) information that could be obtained from unaffiliated credit bureaus or similar companies in the ordinary course of business; or

"(iii) information that is customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by insured depository institutions that do not provide insurance.

"(5) ADDITIONAL RESTRICTIONS.—The Corporation may, by regulation or order, prescribe such additional restrictions and requirements as may be necessary or appropriate to avoid any significant risk to insured depository institutions, protect customers, and avoid conflicts of interest or other abuses.".

SEC. 774. INSURANCE UNDERWRITING IN BANK RESTRICTED.

(a) IN GENERAL.—Section 24 of the Federal Deposit Insurance Act (as added by section 211(a) of the Act) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

"(f) INSURANCE UNDERWRITING.—

"(1) IN GENERAL.—No insured State bank or any of its subsidiaries may provide insurance as principal except to the extent that a national bank may lawfully provide insurance as principal.

"(2) CONTINUATION OF EXISTING ACTIVITIES.—Notwithstanding paragraph (1), an insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on July 15, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

"(3) EXCEPTION FOR CERTAIN FEDERALLY REINSURED CROP INSURANCE.—Notwithstanding paragraph (1), an insured State bank or any of its subsidiaries that provided insurance on or before September 30, 1991, that was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to provide such insurance.".

(b) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—The amendment made by this section shall take effect 90 days after the date of enactment of this Act.

(2) TRANSITION RULE.—An insured State bank or subsidiary of an insured State bank that, as of the date of enactment of this Act, was lawfully engaged in any activity prohibited by this section may continue to engage

in that activity during the period ending one year after that date of enactment.

RIEGLE AMENDMENT NO. 1369

Mr. RIEGLE proposed an amendment to the bill S. 543, supra, as follows:

Beginning with page 778, line 6, strike all through page 779, line 12, and insert the following:

SEC. 1126. LIMITATION ON SECURITIES PRIVATE RIGHTS OF ACTION.

(a) EFFECT ON PENDING CAUSES OF ACTION.—The limitation for any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that commenced on or before June 19, 1991, shall be the limitation provided by the laws applicable in the jurisdiction in which such civil action was commenced, including principles of retroactivity, as such laws existed on June 19, 1991.

(b) EFFECT ON DISMISSED CAUSES OF ACTION.—Any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that commenced on or before June 19, 1991—

(1) which is dismissed as time barred subsequent to June 19, 1991; and

(2) which would have been timely filed under the limitation provided by the laws applicable in the jurisdiction in which such civil action was commenced, including principles of retroactivity, as they existed on June 19, 1991,

may be refiled and reinstated (including any disposition) not later than 60 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

(c) DEFINITIONS.—The terms used in this section shall have the same meanings as in the Securities Exchange Act of 1934.

HATFIELD AMENDMENT NO. 1370

(Ordered to lie on the table.)

Mr. HATFIELD submitted an amendment intended to be proposed by him to the bill S. 543, supra, as follows:

At the appropriate place, add the following new section:

ELEMENTARY SCIENCE FACILITIES

SECTION 1. SHORT TITLE.

This Act may be cited as the "Elementary Science Facilities Act".

SEC. 2. STATEMENT OF PURPOSE.

It is the purpose of this Act to raise the quality of instruction in mathematics and science in the Nation's elementary schools by providing equipment and materials necessary for hands-on instruction through assistance to State and local educational agencies.

SEC. 3. PROGRAM AUTHORIZED.

(a) GRANTS.—The Secretary is authorized to make allotments to State educational agencies under section 4 to enable such agencies to award grants to local educational agencies for the purpose of providing equipment and materials to elementary schools to improve mathematics and science education in such schools.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of fiscal years 1993, 1994, and 1995 to carry out this Act.

SEC. 4. ALLOTMENTS OF FUNDS.

(a) IN GENERAL.—From the amount appropriated under section 3(b) for any fiscal year, the Secretary shall reserve—

(1) not more than ½ of 1 percent for allotment among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau according to their respective needs for assistance under this Act; and

(2) ½ of 1 percent for programs for Indian students served by schools funded by the Secretary of the Interior which are consistent with the purposes of this part.

(b) ALLOTMENT.—From the amount not reserved pursuant to subsection (a), the Secretary shall allot among State educational agencies as follows:

(1) One-half of such remainder shall be distributed among the State educational agencies by allotting to each State educational agency an amount which bears the same ratio to such one-half of such remainder as the number of children aged 5 to 11, inclusive, in the State bears to the number of such children in all States.

(2) One-half of such remainder shall be distributed among the State educational agencies according to each State's share of allocations under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(c) DEFINITIONS.—For the purposes of this Act—

(1) the term "elementary school" has the same meaning given such term in section 1471(8) of the Elementary and Secondary Education Act of 1965;

(2) the term "local educational agency" has the same meaning given such term in section 1471(12) of the Elementary and Secondary Education Act of 1965;

(3) the term "Secretary", unless otherwise specified, means the Secretary of Education;

(4) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(5) the term "State educational agency" has the same meaning given to such term by section 1471(23) of the Elementary and Secondary Education Act of 1965.

(d) DATA.—The number of children aged 5 to 11, inclusive, in the State and in all States shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

SEC. 5. STATE APPLICATION.

(a) APPLICATION.—Each State educational agency desiring to receive an allotment under this Act shall file an application with the Secretary which covers a period of 3 fiscal years. Such application shall be filed at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) CONTENTS OF APPLICATION.—Each application described in subsection (a) shall—

(1) provide assurances that—

(A) the State educational agency shall use the allotment provided under this Act to award grants to local educational agencies within the State to enable such local educational agencies to carry out the purpose of this Act;

(B) the State educational agency will provide such fiscal control and funds accounting as the Secretary may require;

(C) every elementary school in the State is eligible to receive a grant under this Act once over the 3-year duration of the program assisted under this Act;

(D) funds provided under this Act will supplement, not supplant, State and local funds made available for activities authorized under this Act;

(E) during the 3-year period described in the application, the State educational agency will evaluate its standards and programs for teacher preparation and inservice professional development for elementary mathematics and science;

(F) the State educational agency will take into account the needs for greater access to and participation in mathematics and science by students and teachers from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the economically disadvantaged, and individuals with disabilities; and

(G) that the needs of teachers and students in areas with high concentrations of low-income students and sparsely populated areas will be considered in awarding grants under this Act;

(2) provide, if appropriate, a description of how funds paid under this Act will be coordinated with State and local funds and other Federal resources, particularly with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics; and

(3) describe procedures—

(A) for submitting applications for programs described in sections 6 and 7 for distribution of payments under this Act within the State; and

(B) for approval of applications by the State educational agency, including appropriate procedures to assure that such agency will not disapprove an application without notice and opportunity for a hearing.

SEC. 6. LOCAL APPLICATION.

(a) APPLICATION.—A local educational agency that desires to receive a grant under this part shall submit an application to the State educational agency. Each such application shall contain assurances that each school served by the local educational agency shall be eligible for only one grant under this Act.

(b) CONTENTS OF APPLICATION.—Each application described in subsection (a) shall—

(1) describe how the local educational agency plans to set priorities on the use and distribution among schools of grant funds received under this Act to meet the purpose of this Act;

(2) include assurances that the local educational agency shall match on a dollar-for-dollar basis the funds received under this Act;

(3) describe, if applicable, how funds under this Act will be coordinated with State, local, and other Federal resources, especially with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics;

(4) describe the process which will be used to determine different levels of grant amounts to be awarded to schools with different needs.

(c) PRIORITY.—In awarding grants, the State educational agency shall give priority to applications that—

(1) assign highest priority to schools which are most seriously under-equipped;

(2) are attentive to the needs of underrepresented groups in science and mathematics;

(3) demonstrate how science and mathematics equipment will be part of a comprehensive plan of curriculum planning or implementation and teacher training supporting hands-on laboratory activities; and

(4) include plans for dissemination of lessons and activities using grant equipment and materials to teachers in schools not receiving grants.

SEC. 7. PARTICIPATION OF PRIVATE SCHOOLS.

(a) PARTICIPATION OF PRIVATE SCHOOLS.—To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary schools, such State educational agency shall, after consultation with appropriate private school representatives, make provision for providing funds under this Act as will assure the equitable participation of such private schools in the purposes and benefits of this Act.

(b) WAIVER.—If by reason of any provision of State law a local educational agency is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsection (a), or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers.

SEC. 8. PROGRAM REQUIREMENTS.

(a) COORDINATION.—Each State educational agency receiving a grant under this Act shall—

(1) disseminate information to school districts and schools, including private schools, regarding the grant program;

(2) evaluate applications of local educational agencies;

(3) award grants to local educational agencies based on the priorities described in section 6(c); and

(4) evaluate local educational agencies' end-of-year summaries and submit such evaluation to the Secretary.

(b) LIMITATIONS ON USE OF FUNDS.—

(1) IN GENERAL.—Grant funds and matching funds under this Act only shall be used to purchase science equipment, science materials, or mathematical manipulative materials and shall not be used for computers, computer peripherals, software, textbooks, or staff development costs.

(2) CAPITAL IMPROVEMENTS.—Grant funds under this Act may not be used for capital improvements. No more than 50 percent of matching funds provided by the local educational agency may be used for capital improvements of classroom science facilities to support the hands-on instruction that this Act is intended to support, such as the installation of electrical outlets, plumbing, lab tables or counters, or ventilation mechanisms.

SEC. 9. FEDERAL ADMINISTRATION.

(a) TECHNICAL ASSISTANCE AND EVALUATION PROCEDURES.—The Secretary shall provide technical assistance and, in consultation with State and local representatives of the program assisted under this Act, shall develop procedures for State and local evaluations of the programs under this part.

(b) REPORT.—The Secretary shall report to the Congress each year on the program assisted under this Act.

GRAHAM AMENDMENT NO. 1371

Mr. GRAHAM proposed an amendment to the bill S. 543, supra, as follows:

At the end of title II, add the following:

SEC. . TERMS OF ADDITIONAL FUNDING.

(a) DIRECT FUNDING.—

(1) IN GENERAL.—Of the $25,000,000,000 authorized for losses by other provisions of this Act, the Secretary of the Treasury shall make available to the Federal Deposit Insurance Corporation $10,000,000,000 from funds not otherwise appropriated.

(2) LIMITATION.—No sums described in paragraph (1) may be obligated after November 30, 1992.

(b) ADDITIONAL MATCHING FUNDING.—

(1) IN GENERAL.—The Secretary of the Treasury shall make the remaining funds authorized for losses by the other provisions of this Act available to the Federal Deposit Insurance Corporation, from funds not otherwise appropriated, in an amount equal to the amount of cash dividends the Federal Deposit Insurance Corporation receives after September 30, 1991, from receivership estates under its control, that were established on or before September 30, 1991.

(2) LIMITATION.—The matching funds appropriated by paragraph (1) may not exceed $15,000,000,000.

GRAHAM AMENDMENT NO. 1372

Mr. GRAHAM proposed an amendment to the bill S. 543, supra, as follows:

Beginning with page 212, line 6, strike all through page 217, line 4, and insert the following:

SEC. 211. PROHIBITION ON INSURANCE OF BROKERED DEPOSITS.

Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended—

(1) by striking subsections (a) through (e) and inserting the following:

"(a) PROHIBITION ON INSURANCE.—Notwithstanding any other provision of law, deposits obtained, directly or indirectly, by or through a deposit broker are not insured deposits under this Act.";

(2) by redesignating subsection (f) as subsection (b); and

(3) by striking subsection (g).

KASTEN (AND OTHERS) AMENDMENT NO. 1373

Mr. KASTEN (for himself, Mr. MACK, Mr. COATS, Mr. HELMS, Mr. BURNS, Mr. NICKLES, Mr. SMITH, Mr. SEYMOUR, Mr. LOTT, Mr. MITCHELL, Mr. CHAFEE, Mr. DURENBERGER, Mr. SANFORD, Mr. GRAHAM, Mr. PELL, Mr. LAUTENBERG, and Mr. D'AMATO) proposed an amendment to the bill S. 543, supra; as follows:

At the end of the bill add the following new section:

SEC. . SENSE OF THE SENATE REGARDING THE REPEAL OF THE LUXURY EXCISE TAX ON BOATS.

It is the sense of the Senate that—

(1) the luxury excise tax on boats has imposed an unfair burden on boat workers, manufacturers, and retailers;

(2) the luxury excise tax on boats has caused the loss of up to 19,000 jobs in the boat building industry and thousands more in the retailing industry;

(3) middle-class workers and small businesses, not the wealthy, are harmed by the tax;

(4) the luxury excise tax on boats is costing the Government more in lost income tax receipts, payroll tax receipts, additional unemployment compensation, and compliance and enforcement costs than the revenue generated by such tax on boats;

(5) the luxury excise tax forces small business people to become tax collectors and enforcers for the Internal Revenue Service;

(6) the luxury excise tax on boats is harming one of America's strongest domestic industries and aiding our foreign competitors;

(7) the luxury excise tax on boats is contributing to the depth and severity of the recession and helping ensure that economic recovery will be more difficult; and

(8) the Congress should immediately adopt legislation to repeal the luxury excise tax on boats.

D'AMATO AMENDMENT NO. 1374

Mr. D'AMATO proposed an amendment to the bill S. 543, supra, as follows:

On page 131, delete lines 1 through 3, and insert in lieu thereof "to ensure the safety and soundness of the institution.".

CONRAD AMENDMENT NO. 1375

Mr. CONRAD proposed an amendment to the bill S. 543, supra, as follows:

At the end of title II, add the following new section:

SEC. 232. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) The Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) should protect insured depositors of banks and savings and loans at the least possible cost to the American taxpayer;

(2) Two recent studies by Price Waterhouse and Altman & Weil on behalf of the FDIC have concluded that—

(i) the FDIC and RTC may spend more than $1 billion this year on legal fees and expenses yet there is ineffective oversight or management of these expenses;

(ii) outside counsel are generally not selected on a competitive basis;

(iii) the FDIC and RTC have not instituted policies to insure that tasks are assigned to the firm best able to perform them in a cost-effective manner;

(iv) the FDIC generally pays hourly rates rather than arranging less costly fixed rate contracts;

(v) outside attorneys spend significant amounts of time performing tasks which do not require attorneys' skills; and

(vi) the FDIC and RTC have allowed persons and firms whose activities contributed to the decline of the banking and thrift industries to contract with and profit from the activities of the FDIC and RTC; and

(3) These practices undermine the faith of the American taxpayers in the use of taxpayer dollars to finance the cleanup of the banking and thrift industries.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the FDIC and RTC should take immediate steps to ensure that outside counsel are selected competitively on the basis of their ability to perform required tasks at the lowest possible cost to the taxpayer; and

(2) the FDIC and RTC should not contract with persons or firms whose activities contributed to the decline of the banking or thrift industries.

DANFORTH (AND OTHERS) AMENDMENT NO. 1376

Mr. GARN (for Mr. DANFORTH, for himself, Mr. BOND, and Mr. KENNEDY) proposed an amendment to the bill S. 543, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . Section 4001(a)(14) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(14)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end the following new subparagraph:

"(C)(i) notwithstanding any other provision of this title, during any period in which an individual possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an affected air carrier of which he was an accountable owner, whether through the ownership of voting securities, by contract, or otherwise, the affected air carrier shall be considered to be under common control not only with those persons described in subparagraph (B), but also with all related persons; and

"(ii) for purposes of this subparagraph, the term—

"(I) 'affected air carrier' means an air carrier, as defined in section 101(3) of the Federal Aviation Act of 1958, that holds a certificate of public convenience and necessity under section 401 of such Act for route number 147, as of November 12, 1991;

"(II) 'related person' means any person which was under common control (as determined under subparagraph (B)) with an affected air carrier on October 10, 1991, or any successor to such related person;

"(III) 'accountable owner' means any individual who on October 10, 1991, owned directly or indirectly through the application of section 318 of the Internal Revenue Code of 1986 more than 50 percent of the total voting power of the stock of an affected air carrier;

"(IV) 'successor' means any person that acquires, directly or indirectly through the application of section 318 of the Internal Revenue Code of 1986, more than 50 percent of the total voting power of the stock of a related person, more than 50 percent of the total value of the securities (as defined in section 3(20) of this Act) of the related person, more than 50 percent of the total value of the assets of the related person, or any person into which such related person shall be merged or consolidated; and

"(V) 'individual' means a living human being;".

RIEGEL (AND GARN) AMENDMENT NO. 1377

Mr. RIEGLE (for himself and Mr. GARN) proposed an amendment to the bill S. 543, supra; as follows:

On page 109, line 11, strike "or".

On page 109, line 14, strike the period and insert "; or".

On page 109, between lines 14 and 15, insert the following:

"(C) to cover such other costs as may be necessary to meet the Corporation's obligations under this Act.

On page 113, between lines 9 and 10, insert the following:

"(4) REPAYMENT OF BORROWING.—Borrowing under this subsection shall be repaid by the sale of assets of failed institutions. In the event that the proceeds from the sale of assets are insufficient to repay an amount borrowed under this subsection to fund the acquisition of such assets, the amount of the shortfall shall be funded through borrowing under subsection (a), and shall be repaid through semiannual assessments in accordance with section 7(b).".

On page 113, line 10, strike "(4)" and insert "(5)".

On page 114, line 22, before "any other" insert "the expected cost of".

On page 115, line 9, insert "(a) IN GENERAL.—" before "Section".

On page 125, between lines 8 and 9, insert the following:

(b) ASSESSMENT RATE CHANGES.—Section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) is amended by striking clause (iii) and inserting the following:

"(iii) RATE CHANGES.—The Corporation shall notify each insured depository institution of that institution's semiannual assessment. The Corporation may establish and, from time to time, adjust the assessment rates for such institutions.".

On page 130, line 15, after "pledged" insert "to the Corporation's obligation to pay".

On page 130, line 22, insert "appropriate" after "Each".

On page 131, line 5, insert "appropriate" after "Each".

On page 131, strike lines 8 through 11, and insert "standards—

"(A) take adequate account of—

"(i) interest-rate risk;

"(ii) concentration of credit risk; and

"(iii) the risks of nontraditional activities; and

"(B) reflect the actual performance and expected risk of loss of multifamily mortgages.".

On page 131, line 18, insert "appropriate" after "Each".

On page 132, line 2, strike "the terms 'Federal banking agency' and" and insert "the terms 'appropriate Federal banking agency', 'Federal banking agency', and".

On page 134, line 2, strike the quotation marks and the final period and insert the following:

"(4) SECURITIES AND EXCHANGE COMMISSION'S AUTHORITY.—Paragraphs (2) and (3) shall not be construed as affecting the Securities and Exchange Commission's authority under the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934.".

On page 152, lines 14 and 15, strike "by the insured depository institution".

On page 154, line 19, insert "appropriate" after "Each".

On page 155, line 2, insert "appropriate" after "Each".

On page 155, lines 20 and 21, strike "institution's capital falls below that level" and insert "institution becomes critically undercapitalized".

On page 161, lines 15 and 16, strike "insured depository institution that is undercapitalized" and insert "undercapitalized insured depository institution".

On page 161, line 19, strike "offices," and insert "office,".

On page 163, strike lines 8 and 9, and insert the following:

"(A) REQUIRING RECAPITALIZATION.—Doing 1 or more of the following:

On page 163, between lines 15 and 16, insert the following:

"(iii) Requiring the institution to be acquired by a depository institution holding company, or to combine with another insured depository institution, if 1 or more grounds exist for appointing a conservator or receiver for the institution.

On page 166, lines 8 and 9, strike "appropriate Federal banking agency for that company" and insert "agency".

On page 166, line 16, strike "that controls" and insert "having control of".

On page 167, line 2, strike "that controls" and insert "having control of".

On page 167, line 15, strike "shall take" and all that follows through line 21 and insert the following:

"shall take the following actions, unless the agency determines that the actions would not further the purpose of this section:

"(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating to requiring the sale of shares or obligations, or requiring the institution to be acquired by or combine with another institution).

"(B) The action described in paragraph (2)(B)(i) (relating to restricting transactions with affiliates).

"(C) The action described in paragraph (2)(C) (relating to restricting interest rates).

On page 168, lines 11 and 12, strike "ceased to comply with capital standards" and insert "became undercapitalized".

On page 169, line 16, strike "any action" and insert "any 1 or more actions".

On page 173, line 4, strike "80" and insert "60".

On page 173, line 6, before the semicolon, insert ", or the institution has submitted a plan in compliance with the requirements of subsection (e)(2) or section 5(t)(6)(A)(ii) of the Home Owners' Loan Act, the appropriate Federal banking agency has approved the plan, and the institution is in compliance with the plan".

On page 174, line 25, before the period, insert "to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas".

On page 180, line 16, strike "a Federal banking agency" and insert "an appropriate Federal banking agency or the Corporation".

On page 180, lines 19 and 20, strike "the authority of any Federal banking agency or" and insert "any authority of an appropriate Federal banking agency, the Corporation, or".

Beginning with page 181, line 20, strike all through page 182, line 4, and insert the following:

"(A) means any insured depository institution or company with respect to which action is taken under this section, and any company having control of that institution or company; and

"(B) includes any person dismissed pursuant to an order under this section requiring an insured depository institution to dismiss a director or senior executive officer.

On page 184, lines 3 through 5, strike "NEW CAPITAL PLAN NOT REQUIRED FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e)(2) and (f)" and insert "ADDITIONAL FLEXIBILITY FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e)(2), (f), and (h)".

On page 184, line 18, before the first period, insert "or is operating under a written agreement with the appropriate Federal banking agency".

On page 188, line 12, strike "and".

On page 188, between lines 13 and 14, insert:

"(F) compensation, fees, and benefits, in accordance with subsection (c); and".

On page 189, between lines 6 and 7, insert the following new subsection:

"(c) COMPENSATION STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

"(1) standards prohibiting as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that—

"(A) would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees, or benefits; or

"(B) could lead to material financial loss to the institution;

"(2) standards specifying when compensation, fees, or benefits referred to in paragraph (1) are excessive, which shall require the agency to determine whether the amounts are unreasonable or disproportionate to the services actually performed by the individual by considering—

"(A) the combined value of all cash and noncash benefits provided to the individual;

"(B) the compensation history of the individual and other individuals with comparable expertise at the institution;

"(C) the financial condition of the institution;

"(D) comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

"(E) for postemployment benefits, the projected total cost and benefit to the institution;

"(F) any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

"(G) other factors that the agency determines to be relevant; and

"(3) such other standards relating to compensation, fees, and benefits as the agency determines to be appropriate.

On page 189, line 7, strike "(c)" and insert "(d)".

On page 189, line 8, strike "and (b)" and insert ", (b), and (c)".

On page 189, line 10, strike "(d)" and insert "(e)".

On page 189, line 16, strike "or (b)" and insert ", (b), or (c)".

On page 190, line 14, strike "or (b)" and insert ", (b), or (c)".

On page 190, line 18, insert "OR COMPANY" after "IF INSTITUTION".

On page 191, line 18, insert "or company" after "the institution".

On page 192, line 21, strike "(e)" and insert "(f)".

On page 193, line 1, strike "(f)" and insert "(g)".

On page 194, line 8, strike "law" and insert "statute".

On page 195, lines 4 and 5, strike "for replenishment of the institution's capital" and insert "for the institution to become adequately capitalized (as defined in section 37(b))".

On page 195, line 8, strike "that is likely" and all that follows through line 12 and insert "that is likely to—

"(i) cause insolvency or substantial dissipation of assets or earnings;

"(ii) weaken the institution's condition; or

"(iii) otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund.

On page 195, line 14, after "board of directors or its" insert "shareholders or".

On page 198, line 6, strike "(as amended by subsection (a))".

On page 199, lines 18 and 22, strike "affected".

On page 200, strike lines 17 through 19 and insert "consenting in good faith to—

"(A) the appointment of the Corporation or the Resolution Trust Corporation as conservator or receiver for that institution; or

"(B) an acquisition or combination under section 37(f)(2)(A)(iii).

On page 202, line 23, strike "an" and insert "a written".

On page 205, line 4, strike "a Federal" and insert "an appropriate Federal".

On page 205, line 12, insert "appropriate" after "Each".

On page 205, lines 24 and 25, strike "a Federal banking agency" and insert "any of the Federal banking agencies".

On page 207, line 22, after "and" insert "is a type of plan".

On page 208, lines 1 and 2, strike "that was eligible to receive such coverage as of July 15, 1991".

On page 209, line 16, insert "or its agent" after "broker".

On page 217, line 3, strike "July 15, 1991," and insert "that date of enactment".

On page 220, line 21, strike "Section" and insert "(a) IN GENERAL.—Section".

On page 221, lines 13 and 14, strike "not less than 60 days before the beginning of each semiannual period".

On page 221, lines 19 and 20, strike "and the Resolution Funding Corporation under sections 21 and 21B" and insert "under section 21".

On page 221, line 21, strike ", respectively,".

On page 223, line 18, strike "(4)" and insert "(2)(F)".

On page 236, line 1, strike "a Federal banking agency" and insert "any of the Federal banking agencies".

On page 237, line 14, strike "the date" and insert "180 days after the date".

On page 240, lines 24 and 25, strike "meet applicable capital standards;" and insert "are adequately capitalized (as defined in section 37 of the Federal Deposit Insurance Act, as added by section 205);".

On page 258, line 21, before "restrict" insert "prohibit or".

Beginning on page 260, line 13, strike all through page 261, line 2.

On page 261, line 5, strike "or retain".

On page 261, strike lines 11 through 17, and insert the following:

"(A) COMMUNITY DEVELOPMENT INVESTMENTS.—Acquiring or retaining investments designed primarily to promote the public welfare, including low- and moderate-income communities or families (such as by providing housing, services, or jobs).

On page 262, lines 1 and 2, strike "or retaining".

On page 262, line 10, strike "or retaining".

On page 262, between lines 13 and 14, insert the following:

"(E) BANKERS' BANKS.—Acquiring or retaining shares of a depository institution if—

"(i) the institution engages only in activities permissible for national banks;

"(ii) the institution is subject to examination and regulation by a State bank supervisor;

"(iii) 20 or more depository institutions own shares of the institution, and none of those institutions owns more than 15 percent of the institution's shares; and

"(iv) the institution's shares (other than directors' qualifying shares or shares held under or initially acquired through a plan established for the benefit of the institution's officers and employees) are owned only by the institution.".

On page 262, strike lines 14 through 19.

On page 263, between lines 4 and 5, insert the following:

"(3) EXCEPTION.—Paragraphs (1) and (2) do not apply with respect to any corporate debt security acquired outside of the United States to the extent permitted by regulation or order of the Board of Governors of the Federal Reserve System under section 25 or 25A of the Federal Reserve Act.

On page 263, line 5, strike "(3)" and insert "(4)".

On page 263, between lines 7 and 8, insert the following:

"(e) ACTIVITY DEFINED.—For purposes of this section, the term 'activity' includes acquiring any investment.

On page 263, line 8, strike "(e)" and insert "(f)".

On page 263, line 9, strike "a Federal" and insert "an appropriate Federal".

On page 265, between lines 20 and 21, insert the following:

(d) SAVINGS BANK LIFE INSURANCE GRANDFATHER RIGHTS.—Section 5(i)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(i)(4)) is amended by adding at the end the following:

"(C) Any Federal savings association that acquires, or that results from the conversion of, a savings bank chartered by a State that by State law authorizes its State chartered savings banks to sell or underwrite savings bank life insurance may sell or underwrite such insurance to the same extent that any savings bank chartered by that State may do so under State law.".

On page 279, between lines 10 and 11, insert the following:

(o) REPORTING OF CREDIT BY EXECUTIVE OFFICERS AND DIRECTORS.—An executive officer or director of an insured depository institution, a bank holding company, or a savings and loan holding company, the shares of which are not publicly traded, shall report annually to the board of directors of the institution or holding company the outstanding amount of any credit that was extended to such executive officer or director and that is secured by shares of the institution or holding company.

On page 281, line 8, insert "or" after the semicolon.

On page 281, strike lines 9 through 18.

On page 281, strike "(H)" and insert "(G)".

On page 292, lines 8 and 9, strike "or licensed under Federal or State law" and insert "under Federal law".

On page 295, between lines 9 and 10, insert the following:

"(B) FOREGONE TAX REVENUES.—The Corporation shall treat Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, as if they were revenues foregone by the affected deposit insurance fund.

On page 296, line 11, strike "repay advances" and insert "recover the loss to the insurance fund, less any loss recovered through a special assessment on foreign deposits, arising from advances with respect to an insured depository institution".

On page 298, strike lines 9 through 12.

On page 300, line 4, strike "payments" and insert "payment".

On page 300, line 6, strike the quotation marks and the final period.

On page 300, between lines 6 and 7, insert the following:

"(7) DISCRETIONARY DETERMINATIONS.—Any determination under this subsection shall be in the sole discretion of the Corporation or the Secretary of the Treasury, as the case may be. No court shall have jurisdiction to stay, enjoin, restrain, or otherwise delay action taken under this subsection or jurisdiction over any claim relating to any act or omission of the Corporation or the Secretary with respect to any determination under this subsection.".

(b) STUDY AND REPORT ON FDIC PAYMENTS ON UNINSURED DEPOSITS AND NONDEPOSIT LIABILITIES.—

(1) STUDY.—The Director of the Congressional Budget Office (hereafter referred to as the "Director") shall conduct a study on the effects of a reduction in payments by the Federal Deposit Insurance Corporation used

to satisfy the obligations of depository institutions on the uninsured deposits of such institutions and to creditors of such institutions other than depositors. The study shall—

(A) include consideration of—

(i) any estimated savings accruing to the Federal deposit insurance funds as a result of such reduction;

(ii) the long-term benefits to insured depository institutions and the Federal deposit insurance funds of increased market discipline as a result of such reduction; and

(iii) any other relevant information on the effects of such reduction; and

(B) include an estimate of the total savings that would have accrued to the Federal deposit insurance funds during the years 1988 through 1991 if such payments by the Federal Deposit Insurance Corporation had been reduced by 10 percent.

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Director shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on the Director's findings and conclusions resulting from the study conducted under paragraph (1).

On page 303, line 3, strike "LIMITATION" and insert "LIMITATIONS".

On page 313, line 18, strike the quotation marks and the final period.

On page 313, between lines 18 and 19, insert the following:

"(13) PRESUMPTIVE SAFE HARBOR FOR CERTAIN PARTIALLY OWNED SUBSIDIARIES.—Except as otherwise provided by the Corporation, no subsidiary of an insured depository institution shall be liable under this subsection if the insured depository institution and its affiliates do not, in the aggregate, directly or indirectly control more of the subsidiary's voting shares, or have a greater aggregate ownership interest in the subsidiary, than does any 1 company not affiliated with the insured depository institution.

"(14) INSURED DEPOSITORY INSTITUTION SUBSIDIARIES.—For purposes of this subsection, other than paragraph (1)(A) the term 'insured depository institution' includes any subsidiary of an insured depository institution.".

On page 317, lines 17 and 18, strike "liability to" and insert "rights of".

On page 317, between lines 20 and 21, insert the following:

(d) CLARIFYING GENERAL APPLICATION OF DEFINITIONS OF AFFILIATE AND SUBSIDIARY.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (w)—

(A) by striking paragraphs (4) and (5); and

(B) by redesignating paragraph (6) as paragraph (5); and

(2) by adding at the end the following new subsections:

"(aa) SUBSIDIARY.—The term 'subsidiary'—

"(1) means any company that is owned or controlled directly or indirectly by another company; and

"(2) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

"(bb) AFFILIATE.—The term 'control' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.".

Beginning with page 317, line 22, strike all through page 321, line 13, and insert the following:

(a) IN GENERAL.—Section 4 of the Federal Deposit Insurance Act (12 U.S.C. 1814) is amended to read as follows:

"SEC. 4. ATTAINING INSURED STATUS.

"(a) INSURANCE PURSUANT TO CERTIFICATION BY OTHER FEDERAL BANKING AGENCY.—

"(1) IN GENERAL.—Any eligible depository institution shall become an insured depository institution when all of the following subparagraphs are satisfied:

"(A) APPLICATION.—The Corporation receives an application from the institution.

"(B) CERTIFICATE.—The Corporation receives from the certifying agency a certificate stating that—

"(i) the institution—

"(I) is authorized to transact the business of banking, in the case of a national member bank;

"(II) is a member of the Federal Reserve System, in the case of a bank described in subclause (II) or (III) of paragraph (2)(A)(ii); or

"(III) is authorized to transact business as a savings association, in the case of a Federal savings association; and

"(ii) the certifying agency has considered the factors enumerated in section 6, and determined that insuring the institution's deposits under this Act is in the public interest.

"(C) NO DENIAL.—Either—

"(i) any period for denying insurance referred to in paragraph (3)(D) expires; or

"(ii) the Corporation notifies the institution or the certifying agency in writing that the Board of Directors will not deny insurance under paragraph (3).

"(2) DENIAL OF INSURANCE BY CORPORATION.—

"(A) IN GENERAL.—The Board of Directors may, upon a vote of a majority of all members, deny insurance to any eligible depository institution if the Board determines that insuring the institution's deposits under this Act is not in the public interest.

"(B) STANDARD APPLICABLE.—In determining whether to deny insurance under subparagraph (A), the Corporation—

"(i) shall consider the factors described in paragraphs (1) through (6) of section 6; and

"(ii) shall give due deference to the certifying agency's determination with respect to those factors.

"(C) NOTICE REQUIRED.—If the Board of Directors denies insurance under subparagraph (A), the Corporation shall promptly notify the certifying agency, giving specific reasons for the denial.

"(D) DEADLINE FOR DENIAL.—The Board of Directors may deny insurance under subparagraph (A) only during the 120-day period beginning on the date on which subparagraphs (A) and (B) of paragraph (1) are satisfied, or such additional periods as the Corporation may prescribe by order.

"(3) DEFINITIONS.—For purposes of this subsection:

"(A) ELIGIBLE DEPOSITORY INSTITUTION.—The term 'eligible depository institution' means any depository institution that—

"(i) is engaged in the business of receiving deposits, other than trust funds; and

"(ii) is described in any of the following subclauses:

"(I) A national bank that is authorized to transact the business of banking.

"(II) A noninsured national nonmember bank that becomes a member of the Federal Reserve System.

"(III) A noninsured State bank that becomes a member of the Federal Reserve System (whether as a State bank or a national bank), except pursuant to section 9B of the Federal Reserve Act.

"(IV) A Federal savings association that is authorized to transact business as a savings association.

"(B) CERTIFYING AGENCY DEFINED.—The term 'certifying agency' means—

"(i) the Comptroller of the Currency, in the case of a national bank;

"(ii) the Board of Governors of the Federal Reserve System, in the case of a depository institution described in subclause (II) or (III) of subparagraph (A)(ii); and

"(iii) the Director of the Office of Thrift Supervision, in the case of a Federal savings association.

"(b) INSURANCE FOR INTERIM DEPOSITORY INSTITUTIONS.—

"(1) INTERIM FEDERAL DEPOSITORY INSTITUTIONS.—Any interim Federal depository institution that will not open for business shall become an insured depository institution when the appropriate Federal banking agency issues the interim Federal depository institution's charter.

"(2) INTERIM STATE DEPOSITORY INSTITUTIONS.—Any interim State depository institution that will not open for business shall become an insured depository institution upon approval by the appropriate Federal banking agency.

"(c) CONTINUATION OF INSURANCE.—

"(1) IN GENERAL.—Any depository institution that was an insured depository institution on the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 shall continue to be an insured depository institution after that date of enactment.

"(2) CHARTER CONVERSION.—Any depository institution that results from any of the following transactions shall continue to be an insured depository institution:

"(A) The conversion of an insured Federal depository institution to—

"(i) a State depository institution; or

"(ii) a Federal depository institution.

"(B) The conversion of an insured State depository institution to—

"(i) a Federal depository institution; or

"(ii) a State depository institution.

"(3) MERGER OR CONSOLIDATION.—Any depository institution that results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a noninsured depository institution with an insured depository institution, shall continue to be an insured depository institution.

"(4) FEDERAL RESERVE MEMBERSHIP.—Any insured depository institution that becomes a member of the Federal Reserve System, or any insured State bank that becomes a national member bank, shall continue to be an insured depository institution.".

(b) CONFORMING AMENDMENTS.—

(1) SECTION 5.—Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) is amended—

(A) in subsection (a)(1), by striking "(1) NATIONAL AND STATE NONMEMBER BANKS; STATE SAVINGS ASSOCIATIONS.—";

(B) in subsection (a), by striking paragraphs (2) through (7);

(C) in subsection (b)(6), by adding "and" at the end; and

(D) in subsection (b)(7), by striking "and" at the end; and

(E) in subsection (b), by redesignating paragraphs (6) and (7) as paragraphs (7) and (6), respectively.

(2) SECTION 6.—Section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (6), respectively.

On page 323, line 13, strike "pursuant to" and insert "under".

On page 324, line 23, insert "of the" after "Each".

On page 326, line 12, strike "March" and insert "June".

On page 327, line 21, before the semicolon, insert ", and Federal Reserve System membership status".

On page 328, line 6, strike "banks" and insert "institutions".

On page 328, move lines 16 through 18 2 ems to the left.

On page 328, after line 23, insert the following:

(f) ADDITIONAL REPORTS.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by adding at the end the following new subsection:

"(h) ADDITIONAL REPORTS.—

"(1) IN GENERAL.—In addition to the reports required under subsections (a), (b), and (c) of this section, the Corporation shall submit to the Congress not later than October 31 of each year, the annual report on the activities and efforts of the Corporation.

"(2) CONTENTS OF REPORT.—Each annual report required under paragraph (1) shall include the following information with respect to the Corporation's assets and liabilities and to the assets and liabilities of institutions for which the Corporation serves as a receiver or conservator:

"(A) A statement of the total book value of all assets held or managed by the Corporation at the beginning and end of the reporting period.

"(B) A statement of the total book value of such assets which are under contract to be managed by private persons and entities at the beginning and end of the reporting period.

"(C) The number of employees of the Corporation at the beginning and end of the reporting period.

"(D) The total amounts expended on employee wages, salaries, and overhead, during such period which are attributable to—

"(i) contracting with, supervising, or reviewing the performance of private contractors, or

"(ii) managing or disposing of such assets.

"(E) A statement of the total amount expended on private contractors for the management of such assets.

"(F) A statement of the efforts of the Corporation to maximize the efficient utilization of the resources of the private sector during the reporting period and in future reporting periods and a description of the policies and procedures adopted to ensure adequate competition and fair and consistent treatment of qualified third parties seeking to provide services to the Corporation.".

On page 330, line 19, after "oversight" insert "of insured depository institutions".

On page 330, line 22, strike "depository".

Beginning with page 334, line 3, strike all through page 337, line 17, and insert the following:

SEC. 227. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURER; DISCLOSURE BY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 40. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

"(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

"(1) AUDIT REQUIRED.—Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing procedures and generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

"(2) PROVIDING COPIES OF AUDIT REPORT.—

"(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

"(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

"(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

"(B) DEPOSITORY INSTITUTION.—Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

"(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

"(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

"(2) ADVERTISING; PREMISES.—Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.

"(3) ACKNOWLEDGMENT OF RISK.—Receive deposits only for the account of persons who have signed a written acknowledgment that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that they will get back their money.

"(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section.

"(d) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

"(e) ELIGIBILITY FOR FEDERAL DEPOSIT INSURANCE.—

"(1) IN GENERAL.—Except as permitted by the Federal Trade Commission, in consultation with the Federal Deposit Insurance Corporation, no depository institution (other than a bank including an unincorporated bank) lacking Federal deposit insurance may use the mails or any instrumentality of interstate commerce to receive or facilitate receiving deposits, unless the appropriate supervisor of the State in which the institution is chartered has determined that the institution meets all eligibility requirements for Federal deposit insurance, including—

"(A) in the case of an institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act, all eligibility requirements set forth in the Federal Credit Union Act and regulations of the National Credit Union Administration; and

"(B) in the case of any other institution, all eligibility requirements set forth in this Act and regulations of the Corporation.

"(2) AUTHORITY OF FDIC AND NCUA NOT AFFECTED.—No determination under paragraph (1) shall bind, or otherwise affect the authority of, the National Credit Union Administration or the Corporation.

"(f) DEFINITIONS.—For purposes of this section:

"(1) APPROPRIATE SUPERVISOR.—The 'appropriate supervisor' of a depository institution means the agency primarily responsible for supervising the institution.

"(2) DEPOSITORY INSTITUTION.—The term 'depository institution' includes—

"(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

"(B) any entity that, as determined by the Federal Trade Commission—

"(i) is engaged in the business of receiving deposits; and

"(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

"(3) LACKING FEDERAL DEPOSIT INSURANCE.—A depository institution lacks Federal deposit insurance if the institution is not either—

"(A) an insured depository institution; or

"(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

"(4) PRIVATE DEPOSIT INSURER.—The term 'private deposit insurer' means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

"(g) ENFORCEMENT.—Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.".

(2) EFFECTIVE DATES.—Section 40 of the Federal Deposit Insurance Act (as added by paragraph (1)) shall become effective on the date of enactment of this Act, except that—

(A) paragraphs (1) and (2) of subsection (b) shall become effective 1 year after the date of enactment of this Act;

(B) during the period beginning 1 year after that date of enactment of this Act and ending 30 months after that date of enactment, subsection (b)(1) shall apply with ", and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money" omitted;

(C) subsection (e) shall become effective 2 years after that date of enactment; and

(D) subsection (b)(3) shall become effective 30 months after that date of enactment.

(3) CONFORMING AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Effective 1 year after the date of enactment of this Act, section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(A) by striking subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

(b) VIABILITY OF PRIVATE DEPOSIT INSURERS.—

(1) DEADLINE FOR INITIAL INDEPENDENT AUDIT.—The initial annual audit under section 40(a)(1) of the Federal Deposit Insurance Act (as added by subsection (a)) shall be completed not later than 120 days after the date of enactment of this Act.

(2) BUSINESS PLAN REQUIRED.—Not later than 240 days after the date of enactment of

this Act, any private deposit insurer shall provide a business plan to each appropriate supervisor of each State in which deposits are received by any depository institution lacking Federal deposit insurance the deposits of which are insured by a private deposit insurer. The business plan shall explain in detail why the private deposit insurer is viable, and shall, at a minimum—

(A) describe the insurer's—

(i) underwriting standards;

(ii) resources, including trends in and forecasts of assets, income, and expenses;

(iii) risk-management program, including examination and supervision, problem case resolution, and remedies; and

(B) include, for the preceding 5 years, copies of annual audits, annual reports, and annual meeting agendas and minutes.

(3) DEFINITIONS.—For purposes of this subsection, the terms "appropriate supervisor", "deposit", "depository institution", and "lacking Federal deposit insurance" have the same meaning as in section 40(f) of the Federal Deposit Insurance Act (as added by subsection (a)).

On page 362, between lines 6 and 7, insert the following:

SEC. 231. DISCLOSURE OF CERTAIN INFORMATION.

(a) PUBLIC AVAILABILITY OF EXAMINATION INFORMATION.—

(1) IN GENERAL.—Each appropriate banking agency shall make available to the public copies of reports of all examinations of each failed depository institution that received funds, as defined in subsection (e), or of a holding company of such institution, that was performed by that banking agency or its predecessor, during the 5-year period preceding the transfer, failure, or receipt of funds. Each appropriate banking agency other than the National Credit Union Administration Board shall consult with the Federal Deposit Insurance Corporation or the Resolution Trust Corporation prior to making such reports available to the public.

(2) DELAY OF PUBLICATION.—

(A) THREATS TO SAFETY OR SOUNDNESS OF INSTITUTION.—If the appropriate banking agency makes a determination in writing that release of an examination report would seriously threaten the safety or soundness of an insured depository institution, such agency may initially delay release of the examination report for a reasonable period of time, not to exceed 12 months from the date of the transfer, failure, or receipt of funds described in subsection (e). Such determination may be renewed on an annual basis.

(B) ONGOING INVESTIGATIONS.—If the appropriate banking agency or the Resolution Trust Corporation determines in writing that release of a portion of an examination report would hinder an ongoing investigation of alleged negligence, or of other activity that would give rise to either administrative or civil proceedings, the portion of the examination report directly pertaining to the alleged negligence or other activity, may be withheld from release during the investigation, until a notice of charges is issued, a complaint is filed, or for a period not to exceed 24 months from the date of the transfer, failure, or receipt of funds described in subsection (e), whichever is earlier.

(C) DELAY PENDING CRIMINAL INVESTIGATION.—If the appropriate banking agency and the Attorney General of the United States or the attorney general of a State, in the case of a State-chartered depository institution, jointly determine that release of a portion of an examination report would hinder an ongoing investigation of alleged criminal activity, the portion of the examination report directly pertaining to the alleged crime may be withheld from release until the termination of such investigation, the issuance of an indictment, or for a period of not to exceed 5 years from the date of the transfer, failure or receipt of funds described in subsection (e), whichever is earlier. The Attorney General of the United States or of a State shall provide the Comptroller General of the United States with access to information regarding any such criminal investigation, and shall identify any law enforcement agencies or resources assigned to the investigation.

(3) EXCLUSION OF OPEN INSTITUTIONS.—

(A) OPEN INSTITUTIONS.—This subsection shall not apply to any open insured depository institution and shall not be construed to require disclosure to the public of any report of examination of any open insured depository institution.

(B) AFFILIATED SOLVENT INSTITUTIONS.—In connection with the release of an examination report of a holding company of a failed institution, nothing in this subsection shall be construed as requiring the release of any examination report information regarding any solvent depository institution that is also a subsidiary of such holding company.

(b) PROHIBITION OF CONFIDENTIAL SETTLEMENTS.—Notwithstanding any other provision of law or any rule, regulation, or order issued thereunder, all agreements or settlements of claims between the Resolution Trust Corporation or the Federal Deposit Insurance Corporation and any other party, where such agreement or claim relates to an institution described in subsection (e) shall be made available to the public.

(c) APPLICABILITY.—The requirements of subsection (a) shall apply—

(1) to any insured depository institution that has had its assets or liabilities, or any part thereof, transferred to the FSLIC Resolution Fund or the Resolution Trust Corporation;

(2) to any member of the Bank Insurance Fund that has failed and received funds, if during either the fiscal year in which the institution failed or the fiscal year in which the institution received funds, as defined in subsection (e), the Bank Insurance Fund—

(A) had outstanding loans, or had otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) had a negative fund balance;

(3) to any member of the Savings Association Insurance Fund that has failed and received funds, if during either the fiscal year in which the institution failed or the fiscal year in which the institution received funds, as defined in subsection (e), the Savings Association Insurance Fund—

(A) had outstanding loans, or had otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) had a negative fund balance; and

(4) to any insured credit union that has failed and received funds, if during either the fiscal year in which the credit union failed or the fiscal year in which the credit union received funds, as defined in subsection (e), the National Credit Union Share Insurance Fund—

(A) had outstanding loans, or had otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) had a negative fund balance.

(d) REMOVAL OF CUSTOMER INFORMATION FROM EXAMINATION REPORTS.—In making available reports of examinations under subsection (a), the appropriate Federal banking agency shall excise the following:

(1) NONINSTITUTION-AFFILIATED PARTIES.—The names and all other identifying information for all persons who are not institution-affiliated parties of an insured depository institution.

(2) INSTITUTION-AFFILIATED PARTIES.—The names and any information related to an institution-affiliated party that is not relevant to the relationship between the insured depository institution and the institution-affiliated party.

(3) OPEN INSTITUTIONS.—The names and all other identifying information pertaining to open insured depository institutions.

(4) EXAMINERS.—Any reference to the examiners and other banking agency employees involved in the examination of the insured depository institution.

(5) WHISTLEBLOWERS.—All references to persons or entities that have provided information in confidence to a banking agency which may be utilized to pursue a civil or criminal action.

(e) DEFINITIONS.—For purposes of this section—

(1) an insured depository institution has "failed" if the Federal Deposit Insurance Corporation, Resolution Trust Corporation, or National Credit Union Administration Board—

(A) has been appointed as receiver or liquidator for such institution; or

(B) has exercised the power to provide assistance under section 13(c)(2) of the Federal Deposit Insurance Act or the analogous powers under section 21A of the Federal Home Loan Bank Act.

(2) an insured depository institution has "received funds" if the institution, its holding company, or an acquiring institution receives cash or other valuable consideration from the National Credit Union Administration Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any Federal Reserve bank that lends for more than 30 days while the insured depository institution is critically undercapitalized within the 1-year period prior to the failure of the insured depository institution whether in the form of a loan, a payment to depositors or other creditors, the assumption of liabilities, or otherwise;

(3) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that such term includes an insured credit union, as defined in section 101 of the Federal Credit Union Act; and

(4) the term "appropriate banking agency" means the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration Board, and, in the case of a State-chartered depository institution, the appropriate State depository institution regulatory agency.

(f) ADDITIONAL DISCLOSURES BY FDIC, NCUA AND RTC.—

(1) BORROWERS.—Within 6 months after being appointed receiver or liquidator for any failed institution that received funds, as defined in subsection (e), the Federal Deposit Insurance Corporation, National Credit Union Administration, or the Resolution Trust Corporation, as appropriate, shall make available to the public the name and loan balance of any borrower who—

(A) was an executive officer, director, or principal shareholder of the institution, or a related interest of any such person, as such

terms are defined in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b); and

(B) at the time that the receiver was appointed, was more than 90 days delinquent on a loan.

(2) TRANSACTIONS.—Within 12 months after being appointed receiver or liquidator for any failed institution that received funds, as defined in subsection (e), the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, or the Resolution Trust Corporation shall make available, and update periodically thereafter, a list of pending and settled lawsuits brought by such agency involving transactions (other than those listed in paragraph (1)), that caused a material loss to such institution or to the deposit insurance fund.

(g) GAO AUDITS.—The Comptroller General shall selectively audit examination reports made available to the public by the appropriate Federal banking agencies under subsection (a), and disclosures made by the Federal Deposit Insurance Corporation, National Credit Union Administration, and Resolution Trust Corporation under subsection (f), to assess compliance with the requirements of those subsections. The Comptroller General shall determine the nature, scope, and terms and conditions of audits conducted under this subsection.

SEC. 232. UTILIZING PRIVATE SECTOR.

Section 11(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(2)) is amended by adding at the end the following:

"(K) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management of and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, auction marketing, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services are practical, efficient and cost effective recognizing all of the costs inherent in such contracts.".

On page 395, after line 25, insert the following new section:

SEC. 308. ATTORNEY GENERAL'S DETERMINATION ON COMPETITIVE FACTORS.

(a) ATTORNEY GENERAL'S REPORT.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended by adding at the end the following: "In every case, before acting on any application described in subsection (a), the Board shall give notice of the application to the Attorney General. The Attorney General shall provide a report on any application that presents significant issues regarding competitive factors. The Board shall consider any report by the Attorney General on the competitive factors involved in the transaction, unless the Board finds that it must act immediately in order to prevent the probable failure of the institutions involved in the transaction that is the subject of the application. Any report shall be furnished not later than 30 calendar days after the date on which it is requested, or not later than 10 calendar days after such date if the Board advises the Attorney General that an emergency exists requiring executive action.

(b) BANK HOLDING COMPANY ACT AMENDMENT.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

"(i) REPORT TO THE CONGRESS ON APPROVALS OF ANTICOMPETITIVE TRANSACTIONS.—The Board shall submit a report to the Congress on the day on which any merger or transaction is approved under this section that includes a justification for approving any merger or acquisition, or any portion thereof, that the Attorney General has determined in the report required under subsection (c) may have an anticompetitive effect in any market or for any product. The Board's justification shall include the information, data, facts, assumptions, and other factors upon which the Board relied in approving the merger or acquisition notwithstanding the determination of the Attorney General.".

(c) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following new paragraph:

"(12) REPORT TO THE CONGRESS ON APPROVALS OF ANTICOMPETITIVE TRANSACTIONS.—The responsible agency shall submit a report to the Congress on the day on which any merger or transaction is approved under this subsection that includes a justification for approving any merger or acquisition, or any portion thereof, that the Attorney General has determined in the report required under paragraph (4) may have an anticompetitive effect in any market or for any product. The responsible agency's justification shall include the information, data, facts, assumptions, and other factors upon which the Board relied in approving the merger or acquisition notwithstanding the determination of the Attorney General.".

At the appropriate place in title III, insert the following new section:

SEC. 3____. REGULATIONS TO PROHIBIT BRANCHING FOR DEPOSIT PRODUCTION.

Not later than 180 days after the date of enactment of this Act, the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) shall promulgate regulations to prohibit any person from using any authority to engage in interstate branching primarily for the purpose of deposit production.

On page 475, lines 11 and 12, strike "authorized" and insert "unauthorized".

On page 492, between lines 21 and 22, insert the following:

"(6) CRITERIA RELATING TO FOREIGN SUPERVISION.—Not later than 1 year after the date of enactment of this subsection, the Board, in consultation with the Secretary of the Treasury, shall develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board shall allow reasonable opportunity for public review and comment.

On page 509, line 15, strike "Except as provided in subsection (d), the" and insert "The".

On page 510, strike lines 9 through 15.

On page 520, before line 1, insert the following:

SEC. 611. STANDARDS AND FACTORS IN THE HOME OWNERS' LOAN ACT.

Section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)) is amended—

(1) in paragraph (1), by inserting after subparagraph (B) the following:

"Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.";

(2) in paragraph (2)—

(A) by inserting after the second sentence "Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.";

(B) by striking "or" at the end of subparagraph (A);

(C) by striking the period at the end of subparagraph (B) and inserting a comma; and

(D) by inserting after subparagraph (B) the following new subparagraphs:

"(C) if the company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as the Director determines to be appropriate to determine and enforce compliance with this Act, or

"(D) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.".

On page 520, line 1, strike "**611**" and insert "**612**".

On page 532, line 1, strike "**612**" and insert "**613**".

Beginning with page 532, line 14, strike all through page 537, line 13, and insert the following:

Subtitle B—Regulation of Foreign Banks and Subsidiaries

SEC. 621. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) SECTION 5.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by adding at the end the following new subsection:

"(d) STATE NOT REQUIRED TO LICENSE BRANCHES AND AGENCIES OF FOREIGN BANKS.—Nothing in this Act shall be construed to require a State to maintain laws or procedures for the establishment or operation of a State branch or a State agency by a foreign bank.".

(b) SECTION 6.—Section 6 of the International Banking Act of 1978 (12 U.S.C. 3104) is amended—

(1) by redesignating subsection (b) as subsection (b)(1);

(2) by designating the last undesignated paragraph as paragraph (2); and

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

"(c) RETAIL DEPOSIT-TAKING BY FOREIGN BANKS.—

"(1) IN GENERAL.—After the date of enactment of this subsection, notwithstanding any other provision of this Act or any provision of the Federal Deposit Insurance Act, in order to accept or maintain deposit accounts having balances of less than $100,000, a foreign bank shall—

"(A) establish 1 or more banking subsidies in the United States for that purpose; and

"(B) obtain Federal deposit insurance for any such subsidiary in accordance with the Federal Deposit Insurance Act.

"(2) EXCEPTION.—Deposit accounts with balances of less than $100,000 may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on the date of the enactment of this subsection.".

(c) SECTION 7.—Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by adding at the end the following new subsection:

"(j) GUIDELINES ON EQUIVALENCE OF FOREIGN BANK CAPITAL.—Not later than 180 days

after enactment of this subsection, the Board and the Secretary of the Treasury shall jointly publish in the Federal Register and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report—

"(1) analyzing the capital standards contained in the framework for measurement of capital adequacy established by the Supervisory committee of the Bank for International Settlements, foreign regulatory capital standards that apply to foreign banks conducting banking operations in the United States, and the relationship of the Basle and foreign standards to risk-based capital and leverage requirements for United States banks; and

"(2) establishing guidelines for the adjustments to be used by the Board in converting data on the capital of such foreign banks to the equivalent risk-based capital and leverage requirements for United States banks for purposes of determining whether a foreign bank's capital level is equivalent to that imposed on United States banks for purposes of determinations under section 5(a), subsection (k), and this subsection.

An update shall be prepared annually explaining any changes in the analysis under paragraph (1) and resulting changes in the guidelines pursuant to paragraph (2).

"(k) EQUIVALENT CAPITAL AND OTHER FINANCIAL REQUIREMENTS.—

"(1) APPROVAL REQUIRED.—No foreign bank may engage in the activities described in section 5(a)(5) without obtaining the prior approval of the Board.

"(2) DETERMINATION REQUIRED.—The Board shall disapprove an application under paragraph (1) unless it determines that the financial resources of such bank or company, including the capital level, are equivalent to those of a domestic bank holding company that would be permitted to engage in such activities in accordance with section 3(d) of the Bank Holding Company Act of 1956, after consultation with the Secretary of the Treasury regarding capital equivalency.

"(3) CRITERIA FOR DETERMINATION.—In making the determination in paragraph (1), the Board shall—

"(A) take into account differences in domestic and foreign accounting standards; and

"(B) assure that competitive equivalence between domestic and foreign banks is maintained.

"(4) REQUIREMENT FOR A SEPARATE SUBSIDIARY.—If the Board, taking into account differing regulatory or accounting standards, finds that adherence to capital requirements equivalent to those imposed on a domestic bank holding company under section 3(d) of the Bank Holding Company Act of 1956 can be verified only if banking activities are carried out in a domestic banking subsidiary within the United States, it may only approve an application under paragraph (1) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.".

Redesignate section 547 of the bill as section 559 and relocate appropriately.

Redesignate sections 548 and 549 of the bill as sections 547 and 548, respectively and relocate appropriately.

On page 555, line 6, strike "and" and insert "or".

On page 671, between lines 14 and 15, insert the following:

(g) PROHIBITION ON MISREPRESENTATION AND NOTICE TO CUSTOMERS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(t) MISREPRESENTATION OF GUARANTEES AND CUSTOMER DISCLOSURE.—

"(1) MISREPRESENTATION OF GUARANTEES.—It shall be unlawful for any person selling or offering to sell insurance in accordance with section 771 of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 or other authority to represent or imply in any manner whatsoever that such insurance—

"(A) is guaranteed or approved by the United States or any agency or officer thereof; or

"(B) is insured under this Act.

"(2) CUSTOMER DISCLOSURE.—

"(A) IN GENERAL.—An insured depository institution shall prominently disclose in writing to the institution's customers pursuant to regulations prescribed by the appropriate Federal banking agency, that insurance products offered, recommended, sponsored, or sold by the institution—

"(i) are not deposits;

"(ii) are not insured under this Act;

"(iii) are not guaranteed by the insured depository institution; and

"(iv) are not otherwise the obligation of the insured depository institution.

"(B) PROHIBITION ON JOINT MARKETING ACTIVITIES.—No insurance products may be offered, recommended, or sold on the premises of an insured depository institution or to customers of the institution as part of joint marketing activities unless the person marketing such insurance products prominently discloses to its customers in writing, in addition to the disclosures required in subparagraph (A), that such person is not an insured depository institution and is separate and distinct from the insured depository institution with which it shares marketing activities.

"(3) ENFORCEMENT.—The provisions of this subsection shall be enforced in accordance with section 8.

"(4) REGULATIONS.—The appropriate Federal banking agencies shall promulgate regulations to implement this subsection not later than 1 year after the date of enactment of this subsection.".

On page 682, line 16, "insert "that is adequately capitalized (as defined in section 37 of the Federal Deposit Insurance Act)" before "may convert".

On page 685, lines 16 and 17, strike ", exclusive of a savings bank".

On page 685, between lines 17 and 18, insert the following:

(c) SAFEGUARDS ON CERTAIN SAVINGS BANKS.—

(1) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(t) SAFEGUARDS ON CERTAIN SAVINGS BANKS.—The following provisions shall apply to any insured savings bank resulting from a conversion under section 5(i)(5) of the Home Owners' Loan Act and any savings bank that is a direct or indirect successor to that savings bank:

"(1) RISKY ACTIVITIES.—Section 28 shall apply to the savings bank in the same manner and to the same extent as if the savings bank were a savings association.

"(2) LOANS TO ONE BORROWER.—Section 5200 of the Revised Statutes shall apply to the savings bank in the same manner and to the same extent as if the savings bank were a national bank.

"(3) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

"(A) IN GENERAL.—In determining compliance with any applicable capital standards, all of the savings bank's investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank shall be deducted from the savings bank's capital.

"(B) EXCEPTIONS.—

"(i) AGENCY ACTIVITIES.—Subparagraph (A) does not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the Corporation, in its sole discretion, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

"(ii) MORTGAGE BANKING SUBSIDIARIES.—Subparagraph (A) does not apply with respect to the savings bank's investments in and extensions of credit to a subsidiary engaged solely in mortgage banking activities.

"(C) TRANSITIONAL RULE.—

"(i) INCLUSION IN CAPITAL.—Notwithstanding subparagraph (A), if a savings bank's subsidiary was, as of April 12, 1989, engaged in activities not permissible for a national bank, the savings bank may include in calculating capital the applicable percentage (set forth in clause (ii)) of the lesser of—

"(I) the savings bank's investments in and extensions of credit to the subsidiary on April 12, 1989; or

"(II) the savings bank's investments in and extensions of credit to the subsidiary on the date as of which the savings bank's capital is being determined.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is as follows:

"For the following period:	The acceptable percentage is:
Prior to July 1, 1995	75
July 1, 1992–June 30, 1993.	60
July 1, 1993–June 30, 1994.	40
Thereafter	0.

"(iii) FDIC'S DISCRETION TO PRESCRIBE LESSER PERCENTAGE.—The Corporation may prescribe, by order, with respect to a particular savings bank, an applicable percentage that is less than the percentage prescribed by clause (ii) if the Corporation determines, in its sole discretion, that the use of the greater percentage would, under the circumstances, constitute an unsafe or unsound practice or be likely to result in the bank's being in an unsafe or unsound condition.

"(4) TRANSACTIONS WITH AFFILIATES.—The savings bank may not engage in any transaction that would be prohibited under section 11(a)(1) of the Home Owners' Loan Act if the savings bank were a savings association.

"(5) PARENT COMPANY SUBJECT TO BANK HOLDING COMPANY ACT OF 1956.—Section 10(*l*)(1) of the Home Owners' Loan Act does not apply with respect to the savings bank.".

(2) CONFORMING AMENDMENT TO HOME OWNERS' LOAN ACT.—Section 10(*l*)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(*l*)(1)) is amended by striking "other provision of law," and inserting "provision of the Bank Holding Company Act of 1956, but subject to section 18(t)(5) of the Federal Deposit Insurance Act,".

On page 688, line 20, insert ", a Federal branch, or a Federal agency" after "bank".

On page 689, line 7, insert ", Federal branch, or Federal agency" after "bank".

On page 689, line 10, insert ", Federal branch, or Federal agency" after "bank".

On page 689, line 12, insert ", a Federal branch, or a Federal agency" after "bank".

On page 689, line 17, insert ", Federal branch, or Federal agency" after "bank".

On page 689, line 19, insert ", Federal branch, or Federal agency" after "bank".

On page 690, line 11, insert ", Federal branch, or Federal agency" after "bank".

On page 690, line 17, insert ", Federal branch, or Federal agency" after "bank".

On page 691, line 5, insert ", a Federal branch, or a Federal agency" after "bank".

On page 691, line 18, insert "or Federal agency (as those terms are defined under section 1(b) of the International Banking Act of 1978)" after "branch".

On page 695, line 8 through line 13, strike "If the savings association" and all that follows through "States." on line 13.

On page 701, lines 22 and 23, strike "the Office of the Comptroller of the Currency or".

On page 716, line 14, strike "(e)" and insert "(f)".

On page 716, line 23, insert "punishable under" after "or".

On page 717, line 13, strike "1992" and insert "1993".

On page 722, line 1, strike "1991" and insert "1992".

On page 724, line 14, strike "or prosecutive".

On page 725, between lines 14 and 15, insert the following:

"(3) LIABILITY FOR DISCLOSURES.—Any financial institution not subject to the provisions of section 1103(c) of the Right to Financial Privacy Act of 1978, or officer, employee, or agent thereof, that makes a voluntary disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

On page 724, line 15, insert "and other financial crimes" after "laundering".

On page 727, line 14, strike "are" and insert "is".

On page 731, between lines 11 and 12, insert the following:

Subtitle C—Money Laundering Improvements

SEC. 941. JURISDICTION IN CIVIL FORFEITURE CASES.

Section 1355 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The district"; and

(2) by adding at the end the following new subsections:

"(b)(1) A forfeiture action or proceeding may be brought in—

"(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

"(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

"(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court for the District of Columbia.

"(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.".

SEC. 942. CIVIL FORFEITURE OF FUNGIBLE PROPERTY.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 984. Civil forfeiture of fungible property

"(a) This section shall apply to any action for forfeiture brought by the United States.

"(b)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or other fungible property, it shall not be—

"(A) necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture;

"(B) a defense that the property involved in such an offense has been removed and replaced by identical property.

"(2) Except as provided in subsection (c), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

"(c) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 2 years from the date of the offense.

"(d) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against funds deposited by a financial institution (as defined in section 20 of this title) into an account with another financial institution unless the depositing institution knowingly engaged in the offense that is the basis for the forfeiture.".

(b) RETROACTIVE APPLICATION.—The amendments made by this section shall apply retroactively.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"984. Civil forfeiture of fungible property.".

SEC. 943. ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 985. Administrative subpoenas

"(a) For the purpose of conducting a civil investigation in contemplation of a civil forfeiture proceeding under this title or the Controlled Substances Act, the Attorney General may—

"(1) administer oaths and affirmations;

"(2) take evidence; and

"(3) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records that the Attorney General deems relevant or material to the inquiry.

A subpoena issued pursuant to subsection (a) may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

"(b) The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18, United States Code, apply with respect to a subpoena issued under this section. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

"(c) In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under subsection (b) not later than 5 days after the date of service.

"(d) A subpoena may be issued pursuant to this subsection at any time up to the commencement of a judicial proceeding under this section.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code is amended by adding at the end the following:

"985. Administrative subpoenas.".

SEC. 944. PROCEDURE FOR SUBPOENAING BANK RECORDS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 986. Subpoenas for bank records

"(a) At any time after the commencement of any action for forfeiture brought by the United States under this title or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

"(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

"(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"986. Subpoenas for bank records.".

SEC. 945. DELETION OF REDUNDANT AND INADVERTENTLY LIMITING PROVISION IN 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking "section 1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution, section 1344 (relating to bank fraud),"; and

(2) by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857)" and inserting

"section 422 of the Controlled Substances Act".

SEC. 946. STRUCTURING TRANSACTIONS TO EVADE CMIR REQUIREMENT.

(a) IN GENERAL.—Section 5324 of title 31, United States Code, is amended—

(1) by inserting "(a)" before "No person"; and

(2) by adding at the end the following:

"(b) No person shall, for the purpose of evading the reporting requirements of section 5316—

"(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

"(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.".

(b) CONFORMING AMENDMENT.—Section 5321(a)(4)(C) of title 31, United States Code, is amended by striking "under section 5317(d)".

(c) FORFEITURE.—

(1) TITLE 18.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "5324" and inserting "5324(a)".

(2) TITLE 31.—Section 5317(c) of title 31, United States Code, is amended by inserting after the first sentence "Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government.".

SEC. 947. CLARIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.

(a) SECTION 1956.—Section 1956(c)(6) of title 18, United States Code, is amended by striking "and the regulations" and inserting "or the regulations".

(b) SECTION 1957.—Section 1957(f)(1) of title 18, United States Code, is amended by striking "financial institution (as defined in section 5312 of title 31)" and inserting "financial institution (as defined in section 1956 of this title)".

SEC. 948. DEFINITION OF FINANCIAL TRANSACTION.

(a) SECTION 1956.—Section 1956(c) of title 18, United States Code, is amended—

(1) in paragraph (4)(A)—

(A) by inserting "or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft," after "monetary instruments,";

(B) by striking "which in any way or degree affects interstate or foreign commerce,"; and

(C) by inserting "which in any way or degree affects interstate or foreign commerce" after "(A) a transaction"; and

(2) in paragraph (3), by inserting "use of a safe deposit box," before "or any other payment".

(b) SECTION 1957.—Section 1957(f)(1) of title 18, United States Code, is amended by inserting ", including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title," before "but such term does not include".

SEC. 949. OBSTRUCTING A MONEY LAUNDERING INVESTIGATION.

Section 1510(b)(3)(B)(i) of title 18, United States Code, is amended by striking "or 1344" and inserting "1344, 1956, 1957, or chapter 53 of title 31".

SEC. 950. AWARDS IN MONEY LAUNDERING CASES.

Section 524(c)(1)(B) of title 28, United States Code, is amended by inserting "or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of title 26, United States Code" after "criminal drug laws of the United States".

SEC. 951. PENALTY FOR MONEY LAUNDERING CONSPIRACIES.

Section 1956 of title 18, United States Code, is amended by inserting at the end the following new subsection:

"(g) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 952. TECHNICAL AND CONFORMING AMENDMENTS TO MONEY LAUNDERING PROVISION.

(a) TRANSPORTATION.—Subsections (a)(2) and (b) of section 1956 of title 18, United States Code, are amended by striking "transportation" each time such term appears and inserting "transportation, transmission, or transfer".

(b) TECHNICAL CORRECTION.—Section 1956(a)(3) of title 18, United States Code, is amended by striking "represented by a law enforcement officer" and inserting "represented".

SEC. 953. PRECLUSION OF NOTICE TO POSSIBLE SUSPECTS OF EXISTENCE OF A GRAND JURY SUBPOENA FOR BANK RECORDS IN MONEY LAUNDERING AND CONTROLLED SUBSTANCE INVESTIGATIONS.

Section 1120(b)(1)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420(b)(1)(A)) is amended by inserting before the semicolon "or crime involving a violation of the Controlled Substance Act, the Controlled Substances Import and Export Act, section 1956 or 1957 of title 18, sections 5313, 5316, and 5324 of title 31, or section 6050I of title 26, United States Code".

SEC. 954. DEFINITION OF PROPERTY FOR CRIMINAL FORFEITURE.

Section 982(b)(1)(A) of title 18, United States Code, is amended by striking "(c)" and inserting "(b), (c),".

SEC. 955. EXPANSION OF MONEY LAUNDERING AND FORFEITURE LAWS TO COVER PROCEEDS OF CERTAIN FOREIGN CRIMES.

(a) IN GENERAL.—Sections 981(a)(1)(B) and 1956(c)(7)(B) of title 18, United States Code, are amended by—

(1) inserting "(i)" after "against a foreign nation involving"; and

(2) inserting "(ii) kidnaping, robbery, or extortion, or (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978" after "Controlled Substances Act)".

(b) RETROACTIVE APPLICATION.—All amendments to the civil forfeiture statute, section 981 of title 18, United States Code, made by this section and elsewhere in this Act shall apply retroactively.

SEC. 956. ELIMINATION OF RESTRICTION ON DISPOSAL OF JUDICIALLY FORFEITED PROPERTY BY THE TREASURY DEPARTMENT AND THE POSTAL SERVICE.

Section 981(e) of title 18, United States Code, is amended by striking "The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited.".

SEC. 957. NEW MONEY LAUNDERING PREDICATE OFFENSES.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking "or" before "section 16";

(2) by inserting "section 1708 (theft from the mail)," before "section 2113"; and

(3) by inserting before the semicolon; ", any felony violation of section 9(c) of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act".

SEC. 958. AMENDMENTS TO THE BANK SECRECY ACT.

(a) TITLE 31.—Title 31, United States Code, is amended—

(1) in section 5324, by inserting ", section 5325, or the regulations issued thereunder" after "section 5313(a)" each place such term appears;

(2) in section 5321(a)(5)(A), by inserting "or any person willfully causing" after "willfully violates".

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 21(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(j)(1)) is amended by inserting ", or any person who willfully causes such a violation," after "gross negligence violates".

(c) RECORDKEEPING.—Public Law 91-508 (12 U.S.C. 1951 et seq.) is amended—

(1) in section 125(a), by inserting "or any person willfully causing a violation of the regulation," after "applies,"; and

(2) in section 127, by inserting ", or willfully causes a violation of" after "Whoever willfully violates".

Beginning with page 731, line 12, strike all through page 744, line 17, and insert the following:

TITLE X—ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the "Asset Conservation and Deposit Insurance Protection Act of 1991".

SEC. 1002. ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION.

(a) CERCLA AMENDMENTS.—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by inserting after section 126 the following new section:

"SEC. 127. ASSET CONSERVATION.

"(a) LIABILITY LIMITATIONS.—

"(1) IN GENERAL.—The liability of an insured depository institution or mortgage lender under this Act or subtitle I of the Solid Waste Disposal Act for the release or threatened release of petroleum or a hazardous substance at, from, or in connection with property—

"(A) acquired through foreclosure;

"(B) held, directly or indirectly, in a fiduciary capacity;

"(C) held by a lessor pursuant to the terms of an extension of credit; or

"(D) subject to financial control or financial oversight pursuant to the terms of an extension of credit,

shall be limited to the actual benefit conferred on such institution or such mortgage lender by a removal, remedial, or other response action undertaken by another party.

"(2) SAFE HARBOR.— An insured depository institution or mortgage lender shall not be liable under this Act or subtitle I of the Solid Waste Disposal Act and shall not be deemed to have participated in management, as described in section 101(20)(A), based solely on the fact that the institution or lender—

"(A) holds a security interest or abandons or releases its security interest in the collateral before foreclosure;

"(B) has the unexercised capacity to influence operations at or on property in which it has a security interest;

"(C) includes in the terms of its extension of credit covenants, warranties, or other terms and conditions that relate to the borrower's compliance with environmental laws;

"(D) monitors or enforces the terms and conditions of the extension of credit;

"(E) monitors or undertakes one or more inspections of the property;

"(F) requires the borrower to cleanup the property prior to or during the term of the extension of credit;

"(G) provides financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

"(H) restructures, renegotiates, or otherwise agrees to alter the terms and conditions of the extension of credit;

"(I) exercises whatever other remedies at law or in equity may be available under applicable law for the borrower's breach of any term or condition of the extension of credit; or

"(J) declines to take any of the actions described in this paragraph.

"(b) ACTUAL BENEFIT.—For the purpose of this section, the actual benefit conferred on an institution or lender by a removal, remedial, or other response action shall be equal to the net gain, if any, realized by such institution or lender due to such action. For purposes of this subsection, the 'net gain' shall not exceed the amount realized by the institution or lender on the sale of property.

"(c) EXCLUSION.—The limitations on liability provided under subsection (a)(1) and (a)(2) shall not apply to any person that has caused or significantly and materially contributed to the release of petroleum or a hazardous substance that forms the basis for liability described in subsection (a)(1) and (a)(2).

"(d) ENVIRONMENTAL ASSESSMENTS.—

"(1) DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Corporation, in consultation with the Administrator of the Environmental Protection Agency, shall promulgate regulations to implement this section. Such regulations shall include requirements for insured depository institutions to develop and implement adequate procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit that involves a security interest in such property. The regulations may provide for different types of environmental assessments in order to account for different levels of risk that may be posed by different classes of collateral. Failure to comply with the environmental assessment regulations promulgated under this subsection shall be deemed to be a violation of a regulation promulgated under the Federal Deposit Insurance Act.

"(2) MORTGAGE LENDERS.—The Federal Deposit Insurance Corporation, in consultation with the Administrator of the Environmental Protection Agency, shall promulgate regulations that are substantially similar to those promulgated under paragraph (1) to assure that mortgage lenders develop and implement procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The regulations may provide for different types of environmental assessments in order to take into account the level of risk that may be posed by particular classes of collateral.

"(3) FINAL REGULATIONS.—Final regulations required to be promulgated pursuant to paragraph (1) shall be issued within 180 days after the date of enactment of this section.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'property acquired through foreclosure' or 'acquires property through foreclosure' means property acquired, or the act of acquiring property, from a nonaffiliated party by an insured depository institution or mortgage lender—

"(A) through purchase at sales under judgment or decree, power of sales, nonjudicial foreclosure sales, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(B) through conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(C) through any other formal or informal manner by which the insured depository institution or mortgage lender temporarily acquires, for subsequent disposition, possession of collateral in order to protect its security interest.

Property is not acquired through foreclosure if the insured depository institution or mortgage lender does not seek to sell or otherwise divest such property at the earliest practical, commercially reasonable time, taking into account market conditions and legal and regulatory requirements.

"(2) The term 'mortgage lender' means—

"(A) a company (other than an insured depository institution) that—

"(i) is regularly engaged in the business of making extensions of credit secured, in whole or in part, by property to nonaffiliated parties, and

"(ii) substantially and materially complies with the environmental assessment requirements imposed under subsection (d), after final regulations under that subsection become effective;

"(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or other entity that is regularly engaged in the business of buying and selling mortgage loans or interests therein, if such Association, Corporation, or entity requires institutions from which it purchases mortgages (or other obligations) to comply substantially and materially with the requirements of subsection (d), after final regulations under that subsection become effective; and

"(C) any person regularly engaged in the business of insuring or guaranteeing against a default in the payment of an extension of credit to nonaffiliated parties, secured in whole or in part by real property, and extended by a mortgage lender (as such term is defined in subparagraph (A) of this paragraph), or an insured depository institution.

"(3) The term 'fiduciary capacity' means acting for the benefit of a nonaffiliated person as a bona fide—

"(A) trustee;

"(B) executor;

"(C) administrator;

"(D) custodian;

"(E) guardian of estates;

"(F) receiver;

"(G) conservator;

"(H) committee of estates of lunatics; or

"(I) any similar capacity.

"(4) The term 'extension of credit' includes lease transactions that are functionally equivalent to a secured loan.

"(5) The term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act, and shall also include—

"(A) a federally insured credit union;

"(B) a bank or association chartered under the Farm Credit Act of 1971; and

"(C) a leasing company that is an affiliate of an insured depository institution (as such term is defined in this paragraph).

"(6) The term 'release' has the same meaning as in section 101(22), and also includes the threatened release, use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(7) The term 'hazardous substance' has the same meaning as in section 101(14).

"(8) The term 'security interest' includes rights under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, lease, or any other right accruing to a creditor under the terms of an extension of credit to secure the repayment of money, the performance of a duty or some other obligation.

"(f) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party subject to the provisions of this section. Nothing in this section shall be construed to create any liability for any party.

"(g) EFFECTIVE DATE.—This section shall become effective upon the date of its enactment, except that it shall not affect any administrative or judicial claims that have been formally filed as of such date.".

(b) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 42. ASSET CONSERVATION.

"(a) GOVERNMENTAL ENTITIES.—

"(1) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (2), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of petroleum or a hazardous substance at or from property (including any right or interest therein) acquired—

"(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries;

"(B) in connection with the provision of loans, discounts, advances, guarantees, insurance or other financial assistance; or

"(C) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(2) APPLICATION OF STATE LAW.—Nothing in this section shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, except that liability under State law shall not exceed the value of the agency's interest in the asset giving rise to such liability.

"(3) LIMITATION.—The immunity provided by paragraph (1) shall not apply to any entity that has caused or significantly and materially contributed to the release of petroleum or a hazardous substance that forms the basis for liability described in paragraph (1).

"(4) SUBSEQUENT PURCHASER.—The immunity provided by paragraph (1) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(A) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(B) is or was affiliated with or related to a party described in subparagraph (A);

"(C) fails to agree to take reasonable steps necessary to remedy the release or threat-

ened release in a manner consistent with the purposes of applicable environmental laws; or

"(D) causes or materially and significantly contributes to any additional release or threatened release on the property.

"(5) FEDERAL OR STATE ACTION.—Notwithstanding paragraph (4), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in paragraph (4)(C), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. However, any such reimbursement shall not exceed the full fair market value of the property following completion of the remedial action.

"(b) LIEN EXEMPTION.—Any property transferred pursuant to subsection (a)(4) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of petroleum or a hazardous substance known to exist at the time of the transfer.

"(c) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in subsection (a)(1).

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'Federal banking or lending agency' means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank, a Federal Home Loan Bank, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, and the Small Business Administration, in any of their capacities, and their agents;

"(2) the term 'hazardous substance' has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; and

"(3) the term 'release' has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and also includes the threatened release, use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(e) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party subject to the provisions of this section. Nothing in this section shall be construed to create any liability for any party.".

On page 746, strike lines 3 through 11, and insert the following:

(5) a Presidential commission should be established to carry out the duties described in section 1104.

Beginning with page 746, line 16, strike all through page 748, line 5, and insert the following:

SEC. 1104. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall assess the condition of the property and casualty insurance, life insurance, and reinsurance industries, including consideration of—

(1) the present and long-term financial health of the companies in such industries and the importance of that financial health to other aspects of the national economy, including the impact on other financial institutions;

(2) the effect of the decline of real estate values and noninvestment grade bond holdings on the financial health of the companies in such industries;

(3) the effect of current and projected guaranty fund assessments, under different insolvency scenarios, on the financial health of the companies in such industries;

(4) the effect of residual markets on the competitiveness of voluntary insurance markets and on the financial health of the companies in such industries;

(5) the causes of company insolvencies in the last 5 years;

(6) the effect of State and Federal liability systems, including with respect to long-term liability, on insurance industry solvency and the appropriateness of the present allocation of Federal and State responsibilities in the underlying liability systems;

(7) the effect of State regulation of companies in such industries with respect to—

(A) solvency (including the quality and consistency of regulation and the adequacy of insurance regulatory resources);

(B) consumer protection and competition (including pricing, product development, the adequacy of information to consumers, the transfer by companies of the policies of individual policyholders between companies, and any other relevant matters);

(C) reinsurance (including the authority of State regulators to regulate offshore reinsurers doing business in the United States); and

(D) the appropriateness of the present allocation of Federal and State responsibilities in regulating insurance;

(8) the efficiency of the present system for liquidation of insolvent insurance companies;

(9) the adequacy of State and Federal civil and criminal enforcement authority and activity; and whether any State law or regulatory action inhibits competition or efficiency or impairs insurer solvency;

(10) the condition of current State guaranty funds, including consideration of—

(A) the adequacy of assured payout to policyholders, including an assessment of the sufficiency of existing State guaranty associations to guarantee all policyholders payments, up to the limits of coverage under the funds, under a variety of industry insolvency scenarios;

(B) the effect of proposed changes in these funds by the National Association of Insurance Commissioners, including consideration of the timeliness with which such changes are likely to be adopted and implemented;

(C) the capability of a post-insolvency assessment system to meet large insolvencies in a timely manner;

(D) the effect on policyholders of differences in the amount of liability coverage offered by the funds from State to State and of differences in eligibility rules from State to State; and

(E) the appropriateness of the extent of protection provided to individual policyholders and corporate policyholders;

(11) the effect of Federal, State, and local taxes on the solvency of companies in such industries, and the effect of State tax-offsets for guaranty fund assessments on taxpayers under a variety of industry insolvency scenarios; and

(12) whether there are some forms of catastrophic risks that deserve special insurance treatment.

(b) REPORT.—On the basis of the Commission's findings under subsection (a), the Commission shall submit the report required by section 1108.

On page 748, strike lines 7 through 25, and insert the following:

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 25 members, including—

(1) the Secretary of the Treasury;

(2) the Secretary of Labor;

(3) the Secretary of Transportation;

(4) the Secretary of Commerce;

(5) the Chairman of the Federal Trade Commission;

(6) the Attorney General of the United States;

(7) 5 Members of the United States House of Representatives appointed by the Speaker of the House of Representatives from the committees of appropriate jurisdiction, of which 3 shall be appointed upon the recommendation of the Chairmen of such committees and 2 shall be appointed upon the recommendation of the Minority Leader;

(8) 5 Members of the United States Senate appointed by the President pro tempore of the Senate, of which 3 shall be appointed upon the recommendation of the Chairmen of the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary, and 2 shall be appointed upon the recommendation of the Minority Leader; and

(9) 9 members, who are not Federal employees, who have expertise in insurance, financial services, antitrust, liability law and consumer issues, at least 1 of whom has expertise in State regulation of insurance, at least 2 of whom has expertise in the business of insurance and at least 2 of whom have expertise in consumer issues, to be appointed by the President.

(b) DESIGNEES.—An appropriate designee of any member described in paragraphs (1) through (8) of subsection (a) may serve on the Commission in the place of such member and under the same terms and conditions as such member.

On page 749, line 15, strike "or any State government".

On page 756, line 26, after "pledged" insert "to the obligation to pay".

On page 771, strike line 23 and all that follows through page 776, line 3 and insert the following:

"(1) IN GENERAL.—It shall be unlawful for any broker or dealer required to be registered under this Act, or for any person associated with such broker or dealer (other than a natural person or financial institution), to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security by any customer in contravention of the rules and regulations prescribed under this subsection.

"(2) DISCLOSURE RULES.—The Commission shall, by rule, set forth standards for the disclosure by brokers and dealers required to be registered under this Act, and persons associated with such brokers or dealers (other than a natural person or financial institution), to customers of information concerning coverage under the Securities Investor Protection Act of 1970 (hereafter referred to as 'SIPA'). The rules of the Commission shall require every broker or dealer required to be registered under this Act,

"(A) to provide each customer with a written notification of SIPA coverage that discloses—

"(i) the current Securities Investor Protection Corporation (hereafter referred to as

'SIPC') membership status of such person; and

"(ii) a general description, prescribed by SIPC, of the operation of SIPA, the method and extent of customer protection provided under SIPA, the property that is protected under SIPA, and a statement indicating that SIPA does not protect against a decline in the market value of securities; and

"(B) to include conspicuously in any periodic statement sent to a customer regarding a securities transaction—

"(i) a clear statement as to the current SIPC membership status of such person; and

"(ii) any other information regarding SIPA coverage that the Commission finds necessary or appropriate in the public interest or for the protection of investors.

"(3) EXEMPTIONS.—The Commission, as it determines consistent with the public interest and the protection of investors, may exempt, by rule or order, any person or class of persons, or any transaction or class of transactions from the requirements of this subsection.

"(4) DEFINITIONS.—The Commission shall, by rule, define the terms used in this subsection, except that—

"(A) the term 'customer' shall not include a broker, a dealer, a municipal securities dealer, or other such persons as the Commission shall provide in such rule; and

"(B) the term 'security', for purposes of and as used in this subsection, shall not include any security as the Commission shall provide in such rule.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the earlier of 1 year after the date of enactment of this Act or the effective date of rules and regulations prescribed by the Commission to implement the amendment made by subsection (a).

Beginning with page 778, line 9, strike all through page 779, line 12, and insert the following:

SEC. 1126. LIMITATION ON SECURITIES PRIVATE RIGHTS OF ACTION.

(a) EFFECT ON PENDING CAUSES OF ACTION.—The limitation for any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that commenced on or before June 19, 1991, shall be the limitation provided by the laws applicable in the jurisdiction in which such civil action was commenced, including principles of retroactivity, as such laws existed on June 19, 1991.

(b) EFFECT ON DISMISSED CAUSES OF ACTION.—Any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that commenced on or before June 19, 1991—

(1) which was dismissed as time barred subsequent to June 19, 1991; and

(2) which would have been timely filed under the limitation provided by the laws applicable in the jurisdiction in which such civil action was commenced, including principles of retroactivity, as they existed on June 19, 1991,

may be refiled and reinstated (including any disposition) not later than 60 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

(c) DEFINITIONS.—The terms used in this section shall have the same meanings as in the Securities Exchange Act of 1934.

On page 779, between lines 16 and 17, insert the following:

(1) in clause (i), by striking "deposits of each" and inserting "deposits of the transferor".

On page 779, line 17, strike "(1)" and insert "(2)".

On page 779, line 18, strike "(2)" and insert "(3)".

On page 779, line 20, strike "(3)" and insert "(4)".

On page 780, between lines 18 and 19, insert the following:

(c) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—Section 5(c) of the Home Owners' Loan Act (12 U.S.C. 1464(c)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

"(A) IN GENERAL.—If, under section 5(d)(2)(C) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank that is a member of the Bank Insurance Fund, the Director may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

"(B) EXTENSION.—The Director may extend the 2-year period described in subparagraph (A) for not more than 1 year at a time and not more than 2 years in the aggregate, if the Director determines that the extension is consistent with the purposes of this Act.".

On page 782, between lines 7 and 8, insert the following:

(f) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—Section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) is amended by adding at the end the following new paragraph:

"(8) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

"(A) IN GENERAL.—For purposes of this subsection, if, under section 5(d)(2)(C) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank that is a member of the Bank Insurance Fund, any asset acquired from the bank that is not a qualified thrift investment shall not be treated as a portfolio asset of the savings association during the 2-year period beginning on the date of the acquisition.

"(B) EXTENSION.—The Director may, with respect to not more than 30 percent of the total assets acquired from the bank that are not qualified thrift investments, extend the 2-year period described in subparagraph (A) for not more than 1 year if the Director determines that the extension if consistent with the purposes of this Act.".

On page 791, line 16, strike "regarding action taken by a foreign government" and insert "arising from events (described in section 25(11) of the Federal Reserve Act, as added by subsection (a)) that occurred".

On page 796, immediately after line 17, insert the following new sections:

SEC. 1138. ACT NOT TO AFFECT APPLICATION OF INTERNAL REVENUE CODE.

Any reference in the Internal Revenue Code of 1986 to a bank holding company shall not include any bank holding company that—

(1) engages (directly or indirectly) in any activity that was not permitted, and that the Board of Governors of the Federal Reserve System could not have permitted, under the Bank Holding Company Act of 1956 as in effect on the day before the date of enactment of this Act; or

(2) owns or controls (directly or indirectly) shares of any company if the holding of those shares was not permitted, and could not have been permitted by the Board of Governors of the Federal Reserve System, under the Bank Holding Company Act of 1956 as in effect on the day before the date of enactment of this Act.

SEC. 1139. COMMUNITY DEVELOPMENT AUTHORITY OF NATIONAL BANKS.

Section 5136 of the Revised Statutes (12 U.S.C. 24), as amended by section 716, is further amended by adding at the end of subsection (a) the following new paragraph:

"(10) COMMUNITY DEVELOPMENT.—To make investments designed primarily to promote the public welfare, including low- and moderate-income communities or families (such as by providing housing, services, or jobs). The national bank may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. The Comptroller shall limit a bank's investments in any 1 project and a bank's aggregate investments under this paragraph. In no case shall a bank's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the bank's capital stock actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.".

SEC. 1140. IMMUNITY.

Section 6001(1) of title 18, United States Code, is amended by inserting "the Board of Governors of the Federal Reserve System," after "the Atomic Energy Commission,".

SEC. 1141. CREDITABILITY OF SERVICE.

(a) CHAPTER 83.—Section 8332 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(n) Any employee who—

"(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

"(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.".

(b) CHAPTER 84.—Section 8411 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(g) Any employee who—

"(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

"(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service

are transferred from such retirement system to the Fund.".

(c) APPLICABILITY.—The amendment made by this section shall apply with respect to any individual who transfers to a position in which he or she is subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, on or after October 1, 1991.

SEC. 1142. DELEGATED PROCESSING.

(Section 328(a) of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1713, note) is amended in the first sentence, by inserting before the period "or other individuals and entities expressly approved by the Department of Housing and Urban Development".

SEC. 1143. LOW-INCOME HOUSING COVENANTS.

Section 515(p)(4) of the Housing Act of 1949 (42 U.S.C. 1485(p)(4)) is amended by adding at the end "The preceding sentence shall not be interpreted as authorizing the Secretary to—

"(A) limit the ability of a housing credit agency to require an owner of housing, in order to receive a low-income housing tax credit, to enter into a restrictive covenant, in such form and for such period as the housing credit agency deems appropriate, to maintain the occupancy characteristics of the project as specified in such covenant described in subparagraph (B) of section 42(h)(6) of the Internal Revenue Code of 1986; or

"(B) deny or delay approval of financing under this section by reason of the existence, or occupancy terms, of any such restrictive covenant.".

SEC. 1144. EXAMINATION AND SUPERVISION FEES FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—Section 5240 of the Revised Statutes (12 U.S.C. 482) is amended—

(1) by striking the fourth undesignated paragraph and inserting the following:

"The Comptroller of the Currency is authorized to impose and collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of his or her office. Such assessments, fees, and other charges shall be set to meet the Comptroller's expenses in carrying out authorized activities.";

(2) by striking "In addition to the expense of examination" and all that follows through "to cover the expenses thereof.".

(b) TECHNICAL AMENDMENT.—Section 5240 of the Revised Statues is amended in the second undesignated paragraph (12 U.S.C. 481)—

(1) by striking the second sentence;

(2) by striking the third sentence and inserting "If any affiliate of a national bank refuses to pay any assessments, fees, or other charges imposed by the Comptroller of the Currency pursuant to this section or fails to make such payment not later than 60 days after the date on which they are imposed, the Comptroller of the Currency may impose such assessments, fees, or charges against the affiliated national bank, and such assessments, fees, or charges shall be paid by such national bank. If the affiliation is with 2 or more national banks, such assessments, fees, or charges may be imposed on, and collected from, any or all of such national banks in such proportions as the Comptroller of the Currency may prescribe.";

(3) in the fourth sentence, by inserting "or from other fees or charges imposed pursuant to this section" after "assessments on banks or affiliates thereof"; and

(4) in the fifth sentence—

(A) by inserting ", fees, or charges" before "may be deposited"; and

(B) by inserting "or of other fees or charges imposed pursuant to this section" before the period.

(c) ASSESSMENT AUTHORITY OF THE OFFICE OF THRIFT SUPERVISION.—Section 9 of the Home Owners' Loan Act (12 U.S.C. 1467) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

"(a) EXAMINATION OF SAVINGS ASSOCIATIONS.—The cost of conducting examinations of savings associations pursuant to section 5(d) shall be assessed by the Director against each such savings association as the Director deems necessary or appropriate.

"(b) EXAMINATION OF AFFILIATES.—The cost of conducting examinations of affiliates of savings associations pursuant to this Act may be assessed by the Director against each affiliate that is examined as the Director deems necessary or appropriate.";

(2) by amending subsection (k) to read as follows:

"(k) FEES FOR EXAMINATIONS AND SUPERVISORY ACTIVITIES.—The Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, fees to fund the direct and indirect expenses of the Office as the Director deems necessary or appropriate. The fees may be imposed more frequently than annually at the discretion of the Director.".

SEC. 1145. INTERAGENCY SHARING OF INFORMATION.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following new subsection:

"(s) PRIVILEGES.—

"(1) IN GENERAL.—The transfer or use of any information by, between, or among—

"(A) any appropriate Federal banking agency;

"(B) the Resolution Trust Corporation;

"(C) the Farm Credit Administration;

"(D) the Farm Credit System Insurance Corporation; or

"(E) the National Credit Union Administration,

and any other agency of the Federal Government, in any capacity, shall not constitute a waiver of any privilege applicable to such information.

"(2) DEFINITION OF PRIVILEGE.—For purposes of this subsection—

"(A) the term 'agency of the Federal Government' has the same meaning as in section 6 of title 18, United States Code; and

"(B) the term 'privilege' includes any work product, attorney-client, or other privilege recognized under Federal or State law that is available to an agency of the Federal Government.".

SEC. 1146. APPLICATION OF STATE LAW FOR INSURANCE PURPOSES.

Section 5136A(c)(4) of the Revised Statutes, as added by section 771, is amended to read as follows:

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch and any State bank or branches providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.".

SEC. 1147. ADDITIONAL WHISTLEBLOWER PROTECTIONS.

(a) ADDITIONAL COVERAGE ESTABLISHED UNDER FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 33(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(a)) is amended to read as follows:

"(a) IN GENERAL.—

"(1) EMPLOYEES OF DEPOSITORY INSTITUTIONS.—No insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding any possible violation of any law or regulation by the depository institution.

"(2) EMPLOYEES OF BANKING AGENCIES.—No Federal banking agency, Federal home loan bank, or Federal Reserve bank may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any such agency or bank or to the Attorney General regarding any possible violation of any law or regulation by—

"(A) any depository institution or any such bank or agency;

"(B) any director, officer, or employee of any depository institution or any such bank; or

"(C) any officer or employee of the agency that employs such employee.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 33(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(c)) is amended by inserting ", Federal home loan bank, Federal Reserve bank, or Federal banking agency" after "depository institution".

(3) DEFINITION.—Section 33 of the Federal Deposit Insurance Act (12 U.S.C. 1831j) is amended by adding at the end the following new subsection:

"(e) FEDERAL BANKING AGENCY DEFINED.—For purposes of subsection (a) and (c), the term 'Federal banking agency' means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Comptroller of the Currency, and the Office of Thrift Supervision.".

(b) ADDITIONAL COVERAGE ESTABLISHED UNDER FEDERAL CREDIT UNION ACT.—

(1) IN GENERAL.—Section 213(a) of the Federal Credit Union Act (12 U.S.C. 1790b(a)) is amended to read as follows:

"(a) IN GENERAL.—

"(1) EMPLOYEES OF CREDIT UNIONS.—No insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or the Attorney General regarding any possible violation of any law or regulation by the credit union or any director, officer, or employee of the credit union.

"(2) EMPLOYEES OF THE ADMINISTRATION.—The Administration may not discharge or otherwise discriminate against any employee (including any employee of the National Credit Union Central Liquidity Facility) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Administration or the Attorney General regarding any possible violation of any law or regulation by—

"(A) any credit union or the Administration;

"(B) any director, officer, or employee of any credit union; or

"(C) any officer or employee of the Administration.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 213(c) of the Federal Credit Union Act (12 U.S.C. 1790b(c)) is amended by inserting "or the Administration" after "credit union".

(c) COVERAGE FOR EMPLOYEES OF RTC AND RTC CONTRACTORS.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(q) RTC AND RTC CONTRACTOR EMPLOYEE PROTECTION REMEDY.—

"(1) PROHIBITION AGAINST DISCRIMINATION.—The Corporation and any person who is performing, directly or indirectly, any function or service on behalf of the Corporation may not discharge or otherwise discriminate against any employee (including any employee of the Federal Deposit Insurance Corporation in such corporation's capacity as manager of the Corporation or any personnel referred to in subsection (b)(9)(B)(ii)) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Corporation, the Attorney General, or any appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) regarding any possible violation of any law or regulation by the Corporation or such person or any director, officer, or employee of the Corporation or the person.

"(2) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of paragraph (1) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

"(3) REMEDIES.—If the district court determines that a violation has occurred, the court may order the Corporation or the person that committed the violation to—

"(A) reinstate the employee to the employee's former position;

"(B) pay compensatory damages; or

"(C) take other appropriate actions to remedy any past discrimination.

"(4) LIMITATION.—The protections of this section shall not apply to any employee who—

"(A) deliberately causes or participates in the alleged violation of law or regulation; or

"(B) knowingly or recklessly provides substantially false information to the Corporation, the Attorney General, or any appropriate Federal banking agency.".

SEC. 1148. REAL ESTATE LOAN PORTFOLIOS.

No Federal financial regulatory agency shall criticize an investment or a loan made by a federally insured depository institution or consider the loan to be nonperforming solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless the loan or investment may affect the institution's safety and soundness.

SEC. 1149. SENSE OF THE CONGRESS REGARDING THE CREDIT CRUNCH.

(a) FINDINGS.—The Congress finds that—

(1) during the past year and a half a credit crunch of crisis proportions has taken hold of the economy and grown increasingly severe, particularly for real estate;

(2) to date, the credit crisis has shown no sign of improvement with its effects being felt broadly throughout the Nation as business failures soar, financial institutions weaken, real estate values decline, and State and local property tax bases further erode;

(3) approximately $200,000,000,000 of the nearly $400,000,000,000 in commercial real estate loans now held by commercial banks are coming due within the next 2 years;

(4) banks for a variety of reasons, are reluctant to renew these maturing real estate loans;

(5) both pension funds in the United States, with assets of nearly $2,000,000,000,000, and a stronger and more active secondary market for commercial real estate debt and equity could play a more significant role in providing liquidity and credit to the real estate and banking sectors of the economy;

(6) many regulatory practices encourage banks to reduce their real estate lending without regard to long-term historical risk; and

(7) the stability of real estate has suffered during the past decade from dramatic changes in tax rules.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) immediate and carefully coordinated action should be taken by the Congress and the President to arrest the credit crisis referred to in subsection (a) and provide a healthy and efficient marketplace that works for owners, lenders, and investors, and

(2) that efforts should be undertaken to explore measures that—

(A) modernize and simplify the rules that apply to pension investment in real estate to remove unnecessary barriers to pension funds seeking to invest in real estate;

(B) strengthen the secondary market for commercial real estate bad debt and equity by removing arbitrary obstacles to private forms of credit enhancement;

(C) foster a balanced regulatory environment among supervisors and examiners in the field with respect to commercial, multifamily and single-family real estate by ending market-to-market, liquidation-based, appraisals; encouraging loan renewals; and, fully communicating the supervisory policy to bank examiners in the field; and

(D) promote a rational tax system for real estate owners and operators.

SEC. 1150. REPORTS OF INFORMATION REGARDING SAFETY AND SOUNDNESS OF DEPOSITORY INSTITUTIONS.

(a) REPORTS TO APPROPRIATE FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall report to the appropriate Federal banking agency any information regarding any matter that could have a significant effect on the safety or soundness of any depository institution doing business in the United States.

(2) EXCEPTIONS.—

(A) INTELLIGENCE INFORMATION.—

(i) IN GENERAL.—The Director of Central Intelligence shall report to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury shall report the intelligence information to the appropriate Federal banking agency.

(ii) PROCEDURES FOR RECEIPT OF INTELLIGENCE INFORMATION.—Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for the receipt of intelligence information that are adequate to protect the intelligence information.

(B) CRIMINAL INVESTIGATIONS; SAFETY OF GOVERNMENT INVESTIGATORS.—If the Attorney General or his designee determines that the reporting of a particular item of information pursuant to paragraph (1) might jeopardize a pending criminal investigation or the safety of Government investigators, the Attorney General shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation or the safety of the investigators; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) GRAND JURY INVESTIGATIONS; CRIMINAL PROCEDURE.—Paragraph (1) shall not—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) PROCEDURES FOR RECEIPT OF REPORTS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, each appropriate Federal banking agency shall establish procedures for receipt of a report by an agency or instrumentality made in accordance with subsection (a)(1). The procedures established in accordance with this subsection shall ensure adequate protection of information contained in a report, including access control and information accountability.

(2) PROCEDURES RELATED TO EACH REPORT.—Upon receipt of a report in accordance with subsection (a)(1), the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that furnished the report regarding the adequacy of the procedures established pursuant to paragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information contained in the report.

(c) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 1151. TECHNICAL CORRECTIONS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3(q)(2)(E), by striking "Depository Institutions Supervisory Act" and inserting "Financial Institutions Supervisory Act of 1966";

(2) in section 7(a)(8), by striking "the the" and inserting "the";

(3) in section 7(*l*)(7), by striking "the value of";

(4) in section 7(m)(5)(A), by striking "institution" the second time it appears;

(5) in the third sentence of section 8(a)(7), by striking "the period" the first time it appears;

(6) in paragraphs (3) and (4) of section 8(b), by striking "subsection (u)" and inserting "subsections (u) and (v)";

(7) in section 8(b)(6)(F), by inserting "appropriate" before "banking";

(8) in section 8(c)(2), by striking "injuction" and inserting "injunction";

(9) in section 8(g)(2), by striking "depository institution" each time it appears and inserting "bank".

(10) in section 8(o), by striking "board of directors" each time it appears and inserting "Board of Directors";

(11) in section 8(r)(2), by striking "therof" and inserting "thereof";

(12) in section 11(a)(2), by striking the designation "(b)" and inserting the designation "(B)";

(13) in section 11(c)(6)(B), by striking "Owner's" and inserting "Owners'";

(14) in section 11(d)(2)(B)(iii), by striking "is" and inserting "are";

(15) in section 11(d)(8)(B)(ii), by inserting "provide" after "disallowed,";

(16) in section 11(d)(16)(B)(iv), by striking "dispositions" and inserting "disposition";

(17) in section 11(e)(12)(B), by striking "directors or officers" and inserting "directors' or officers'";

(18) in section 11(i)(3)(A), by striking "or" the last time it appears and inserting "of";

(19) in section 11(q)(1), by striking "decided" in the second sentence and inserting "held";

(20) in section 13(f)(6)(A), by striking "has in default" and inserting "is in default";

(21) in section 13(i), by redesignating paragraphs (11) and (13) as paragraphs (10) and (11), respectively;

(22) in section 18(k)(4)(C)(ii), by striking "Board" and inserting "Corporation";

(23) in section 30(e)(1)(A), by striking "venders" and inserting "vendors";

(24) in section 31(b)(1), by striking "Board of Directors" and inserting "board of directors"; and

(25) in section 34(a)(1)(A)(iii), by striking "and" and inserting "or".

SEC. . DISCRIMINATION AGAINST REORGANIZED DEBTORS.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following new paragraph:

"(9) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a transaction with a corporation as a highly leveraged transaction solely because such corporation is or has been a debtor or bankrupt under title 11, United States Code, if, after confirmation of a plan or reorganization, such corporation would not otherwise be highly leveraged.".

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

SEC. . REAL ESTATE APPRAISAL PROCEDURES.

(a) EXTENSION OF EFFECTIVE DATE.—Section 1119(a)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(1)) is amended.—

(1) by striking "July 1, 1991" and inserting "January 1, 1993"; and

(2) by striking paragraph (2) and inserting the following:

"(2) STATE REQUIREMENTS.—No State may require that appraisals in connection with federally related transactions be conducted by State certified or licensed appraisers prior to the date contained in paragraph (1).".

(b) WAIVER BASED ON SHORTAGE OF APPRAISERS.—Section 1119(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by inserting "(1) IN GENERAL.—" before "Subject to the approval of the Council";

(2) by inserting at the end of the first sentence the following: "or that there are other relevant reasons for such action";

(3) by striking the last sentence and inserting the following: "A waiver may be granted upon the motion of the State, a Federal agency, or a unit of general local government."; and

(4) by adding at the end the following:

"(2) TIMING.—The Appraisal Subcommittee shall determine whether to grant a request by an agency, State, or unit of general local government for a waiver under paragraph (1) not later than 60 days after such request is submitted.

"(3) DURATION.—A waiver granted under this subsection shall remain in effect for a period of 1 year.

"(4) DUPLICATIVE REQUESTS FOR WAIVER.—If a State is granted a waiver under this subsection, the Appraisal Subcommittee is not required to consider similar requests by units of general local government.

"(5) REGULATIONS RELATING TO WAIVERS.—The Appraisal Subcommittee shall promulgate and implement regulations to carry out this subsection not later than March 31, 1992.".

(c) DE MINIMUS EXCEPTION.—

(1) IN GENERAL.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(A) by inserting "(a) IN GENERAL.—" before "In determining"; and

(B) by adding at the end the following:

"(b) DE MINIMUS EXCEPTION.—The Federal financial institutions regulatory agencies shall exempt from the requirement for an appraisal by a State certified or by a State licensed appraiser—

"(1) any 1- to 4-unit single family residential transaction having a value of $100,000 or less; and

"(2) any other transaction having a value of $200,000, or less;

except that such agencies may establish a different value for the purposes of paragraph (1) or (2) if such agencies determine that unique economic conditions, geographic considerations, or other factors make such action appropriate.

"(c) HOME EQUITY LOANS.—The Federal financial institutions regulatory agencies shall establish and implement a separate de minimus standard applicable to home equity loans not later than 6 months after the date of enactment of this subsection.".

At the end of S. 543, add the following three titles:

TITLE—

SECTION 1. TITLE.

This Title may be cited as the "World Cup USA 1994 Commemorative Coin Act".

SEC. 2. DENOMINATIONS.

(a) FIVE DOLLAR GOLD COINS.—The Secretary of the Treasury (hereafter in this Act referred to as the "Secretary") shall issue not more than 750,000 five dollar coins which shall weigh 8.359 grams, have a diameter of 0.850 inches, and shall contain 90 percent gold and 10 percent alloy.

(b) ONE DOLLAR SILVER COINS.—The Secretary shall issue not more than 5,000,000 one dollar coins which shall weigh 26.73 grams, have a diameter of 1.500 inches, and shall contain 90 percent silver and 10 percent copper.

(c) HALF DOLLAR CLAD COINS.—The Secretary shall issue not more than 5,000,000 half dollar coins which shall be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.

(d) LEGAL TENDER.—The coins issued under this Act shall be legal tender as provided in section 5103 of title 31, United States Code.

(e) NUMISMATIC ITEMS.—For purposes of section 5132(a)(1) of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 3. SOURCES OF BULLION.

(a) GOLD.—The Secretary shall obtain gold for the coins minted under this Act pursuant to the authority of the Secretary under existing law.

(b) SILVER.—The Secretary shall obtain silver for the coins minted under this Act from stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).

SEC. 4. DESIGN.

(a) DESIGN REQUIREMENTS.—The design of each coin authorized hereunder shall include the official 1994 World Cup logo adopted by World Cup USA 1994, Inc., the organizing committee for the event (hereafter referred to as the "Organizing Committee") and shall reflect the unique appeal of soccer. On each coin authorized hereunder there shall be a designation on the value of the coin, and inscriptions of the words "United States of America", "E Pluribus Unum", "In God We Trust", "Liberty" and "World Cup USA 1994".

(d) DESIGN COMPETITION.—The Director of the United States Mint shall sponsor a nationwide open competition for the design of each coin authorized hereunder beginning not later than 3 months and concluding not later than 9 months after the date of the enactment of this Act. The Director of the United States Mint shall select 10 designs for each coin to be submitted to the Secretary, who shall select the final design for each such coin in consultation with the Organizing Committee.

SEC. 5. SALE OF COINS.

(a) SALE PRICE.—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, marketing and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount.

(c) PREPARED ORDERS AT A DISCOUNT.—The Secretary shall accept prepaid orders for the coins prior to the issuance of such coins. Sales under this subsection shall be at a reasonable discount.

(d) SURCHARGE REQUIRED.—All sales shall include a surcharge of $35 per coin for the five dollar coins, $7 per coin for the one dollar coins, and $1 for the half dollar coins.

(e) WORLD CUP COMMUNITIES.—The Secretary shall use best efforts to market World Cup coins in the United States with particular focus on communities in which World Cup games are held.

(f) INTERNATIONAL SALES.—The Secretary, in cooperation with the Organizing Committee, shall develop an International Marketing Program to promote and sell coins outside the United States.

SEC. 6. ISSUANCE OF THE COINS.

(a) PERIOD FOR ISSUANCE.—The coins authorized under this Act shall be minted and available for issue no later than January 3, 1994, but shall be issued only during 1994.

(b) PROOF AND UNCIRCULATED COINS.—The coins authorized under this Act shall be issued in uncirculated and proof qualities.

(c) BUREAU OF THE MINT.—Not more than one facility of the Bureau of the Mint may be used to strike any particular combination of denomination and quality.

SEC. 7. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this Act. Nothing in this section shall relieve any per-

son entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

SEC. 8. DISTRIBUTION OF SURCHARGES.

All surcharges which are received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Organizing Committee. Such amounts shall be used by the Organizing Committee for purposes of organizing and staging the 1994 World Cup, with ten percent of such funds to be made available through the United States Soccer Federation Foundation, Inc. for distribution to institutions providing scholastic scholarships to qualified students.

SEC. 9. AUDITS.

The Comptroller General shall have the right to examine such books, records, documents and other data of the Organizing Committee as may be related to the expenditure of amounts paid under section 8.

SEC. 10. COINAGE PROFIT FUND.

Notwithstanding any other provision of law—

(1) all amounts received from the sale of coins issued under this Act shall be deposited in the coinage profit fund;

(2) the Secretary shall pay the amounts authorized under this Act from the coinage profit fund to the Organizing Committee; and

(3) the Secretary shall charge the coinage profit fund with all expenditures under this Act.

SEC. 11. FINANCIAL ASSURANCES.

(a) NOT NET COST.—The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 2 shall not result in any net cost to the Federal Government.

(b) PAYMENT ASSURANCES.—No coin shall be issued under this act unless the Secretary has received—

(1) full payment therefore;

(2) security satisfactory to the Secretary to indemnify the United States for full payment;

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

SECTION 1. TITLE.

This Title may be cited as the "James Madison-Bill of Rights Commemorative Coin Act".

SEC. 2. COIN SPECIFICATIONS.

(a) FIVE DOLLAR GOLD COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereafter in this Act referred to as the "Secretary") shall mint and issue not more than 300,000 five dollar coins each of which shall—

(A) weigh 8.359 grams;

(B) have a diameter of .850 inches; and

(C) be composed of 90 percent gold and 10 percent alloy.

(2) DESIGN.—The design of the five dollar coins shall be emblematic of the first ten Amendments of the Constitution of the United States, known as the Bill of Rights. The Director of the United States Mint shall sponsor a nationwide open competition for the design of the five dollar coin beginning not later than 3 months after the date of the enactment of this Act. The Director of the United States Mint shall convene the Design Panel established under subsection (e) which shall select 10 designs to be submitted to the Secretary who shall select the final design.

(b) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall mint and issue not more than 900,000 one dollar coins each of which shall

(A) weigh 26.73 grams;

(B) have a diameter of 1.5 inches; and

(C) be composed of 90 percent silver and 10 percent copper.

(2) DESIGN.—The obverse design of the one dollar coins shall be emblematic of James Madison, the fourth President of the United States. The reverse design shall be emblematic of James Madison's home, Montpelier, between the years 1751 and 1836. The Director of the United States Mint shall sponsor a nationwide open competition for the design of the one dollar coin beginning not later than 3 months after the date of the enactment of this Act. The Director of the United States Mint shall convene the Design Panel established under subsection (e) which shall select 10 designs to be submitted to the Secretary who shall select the final design.

(c) HALF DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall mint and issue not more than 1,000,000 half dollar coins each of which shall—

(A) weigh 12.50 grams;

(B) have a diameter of 30.61 millimeters; and

(C) be composed of 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of the half dollar silver coins shall be emblematic of first ten Amendments of the Constitution of the United States, known as the Bill of Rights. The Director of the United States Mint shall sponsor a nationwide open competition for the design of the half dollar coin beginning not later than 3 months after the date of the enactment of the Act. The Director of the United States Mint shall convene the Design Panel established under subsection (e) which shall select 10 designs to be submitted to the Secretary who shall select the final design.

(d) INSCRIPTIONS.—all coins minted and issued under this Act shall bear a designation of the value of the coin, an inscription of the year of issue and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(e) DESIGN PANEL.—The Design Panel referred to in subsections (a), (b), and (c) shall consist of the following members:

(1) The Chairperson of the Commission of Fine Arts.

(2) The president of the James Madison Memorial Fellowship Foundation.

(3) The Executive Director, National Numismatic Collection, the Smithsonian Institution.

(4) A representative member of the American Numismatic Association.

(5) A representative member of a national sculpture society or association.

(6) Two representatives of the United States Mint selected by the Director of the United States Mint.

The Secretary shall reimburse the members of the Design Panel for per diem expenses and other official expenses from the revenues received from the sale of the coins. The Design Panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.), and shall terminate following the selection process set forth in subsections (a), (b), and (c).

(f) LEGAL TENDER.—The coins issued under this Act shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. 3. SOURCES OF BULLION.

(a) GOLD.—The Secretary shall obtain gold for minting coins under this Act pursuant to the authority of the Secretary under existing law.

(b) SILVER.—The Secretary shall obtain silver for minting coins under this Act only from stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.)

SEC. 4. ISSUANCE OF COINS

(a) FIVE DOLLAR COINS.—The five dollar coins minted under this Act may be issued in uncirculated and proof qualities and shall be struck at the United States Mint at West Point, New York.

(b) ONE DOLLAR COINS AND HALF DOLLAR COINS.—The one dollar and half dollar coins minted under this Act may be issued in uncirculated and proof qualities, except that not more than one facility of the United States Mint may be used to strike any particular combination of denomination and quality.

(c) COMMENCEMENT OF ISSUANCE.—The coins authorized and minted under this Act may be issued beginning on January 1, 1993.

(d) TERMINATION OF AUTHORITY.—Coins may not be minted under this Act after December 31, 1993.

SEC. 5. SALE OF COINS.

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this Act at a price at least equal to the face value, plus the cost of minting and issuing the coins (including labor, materials, overhead, distribution, and promotional expenses).

(b) BULK SALES.—The Secretary shall make any bulk sales of the coins minted under this Act as a reasonable discount.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins minted under this Act prior to the issuance of such coins. Sale prices with respect to such prepaid orders shall be at a reasonable discount.

(d) SURCHARGES.—All sales of coins minted under this Act shall include a surcharge of $30 per coin for the five dollar coins, $6 coin for the one dollar coins, and $3 per coin for the half dollar coins.

SEC. 6. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

(c) REPORTS TO CONGRESS.—Not later than fifteen days after the last day of each month, the Secretary shall transmit to the committee on Banking, Finance, and Urban Affairs of the House of Representatives and the committee on Banking, Housing, and Urban Affairs of the Senate a report detailing activities carried out under this Act during such month. The report shall include a review of all marketing activities and a financial statement which details sources of funds, surcharges generated, and expenses incurred for manufacturing, materials, overhead, packaging, marketing, and shipping. No report shall be required after January 15, 1994. All remaining funds from the sale of the coins authorized under this Act shall be deemed as surcharges and promptly be transmitted according to section 7 of this Act.

SEC. 7. DISTRIBUTION OF SURCHARGES.

The surcharges received by the Secretary shall be transmitted promptly to the James Madison Memorial Fellowship Trust Fund established in 1986 by the James Madison Memorial Fellowship Act (20 U.S.C. 4501 et seq.). Such transmitted amounts shall qualify under section 811(a)(2) of that Act as funds contributed from private sources. In accordance with the purposes of the James Madison Fellowship Program, the funds transmitted to the Trust Fund shall be used to encourage teaching and graduate study of the Constitution of the United States, its roots, its formation, its principles, and its development.

SEC. 8. AUDITS.

The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data as may be related to the expenditure of amounts transmitted under section 7 of this Act. The expenditures and audit of surcharge funds deposited in the James Madison Memorial Fellowship Trust Fund under section 7 of this Act shall be done in accordance with section 812 of the James Madison Memorial Fellowship Act (20 U.S.C. 4511). Annual reports shall be submitted by the Chairman of the James Madison Memorial Fellowship Foundation to both Houses of Congress on all expenditures of surcharge funds.

SEC. 9. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this Act.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

TITLE —

SECTION 1. TITLE.

This Title may be cited as the "White House Commemorative Coin Act of 1991".

SEC. 2. COIN SPECIFICATIONS.

(a) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereafter referred to as the "Secretary") shall issue not more than 500,000 one dollar coins which shall weigh 26.73 grams, have a diameter of 1.500 inches, and contain 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of such dollar coins shall be emblematic of the 200th anniversary of the laying of the cornerstone of the White House. On each such one dollar coin there shall be a designation of the value of the coin, an inscription of the year "1992", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b) LEGAL TENDER.—The coins issued under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

SEC. 3. SOURCES OF BULLION.

The Secretary shall obtain silver for the coins minted under this Act only from stockpiles established under the strategic and Critical Minerals Stock Piling Act (50 U.S.C. 98 et seq.).

SEC. 4. SELECTION OF DESIGN.

The design for each coin authorized by this Act shall be selected by the Secretary after consultation with the Curator of the White House, the Commission of Fine Arts, and the White House Historical Association.

SEC. 5. SALE OF COINS.

(a) SALE OF COINS.—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount.

(c) PREPAID ORDERS AT A DISCOUNT.—The Secretary shall accept prepaid orders for the coins prior to their issuance. Sales under this subsection shall be at a reasonable discount.

(c) SURCHARGE REQUIRED.—All sales shall include a surcharge of $10 per coin.

SEC. 6. ISSUANCE OF COINS.

(A) PERIOD FOR ISSUANCE.—The coins authorized under this Act—

(1) shall be issued beginning not later than May 1, 1992; and

(2) may not be issued after November 1, 1993.

(b) PROOF AND UNCIRCULATED QUALITIES.—The coins authorized under this Act shall be issued in uncirculated and proof qualities, except that not more than 1 facility of the Bureau of the Mint may be used to strike any particular quality.

SEC. 7. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out this Act. Nothing in this section relieves any person entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

SEC. 8. DISTRIBUTION OF SURCHARGES.

The total surcharges received by the Secretary from the sale of the coins in accordance with section 5 shall be promptly paid by the Secretary to the White House Endowment Fund (hereafter referred to as the "Fund")—

(1) to supplement the Fund for an endowment to be used as a permanent source of support for the White House collection of fine art and historic furnishings; and

(2) to be used for the maintenance of the historic public rooms of the White House.

SEC. 9. AUDITS.

The Comptroller General shall have the right to examine such books, records, documents, and other data of the Fund as may be related to the expenditure of amounts paid under section 8.

SEC. 10. COINAGE PROFIT FUND.

Notwithstanding any other provision of law—

(1) all amounts received from the sale of coins issued under this Act shall be deposited in the coinage profit fund;

(2) the Secretary shall pay the amounts authorized to be paid to the Fund under section 8 from the coinage profit fund; and

(3) the Secretary shall charge the coinage profit fund with all expenditures under this Act.

SEC. 11. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 2 shall not result in any net cost to the Federal Government.

(b) ADEQUATE SECURITY FOR PAYMENT REQUIRED.—No coin shall be issued under this Act unless the Secretary has received—

(1) full payment therefore;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured under the Federal Deposit Insurance Act or the National Credit Union Act.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

At the appropriate place in title XI of the bill, insert the following new sections:

SEC. 11—SENSE OF THE CONGRESS REGARDING COMPETITIVE SOLICITATION OF RESOLUTION PROPOSALS.

(a) IN GENERAL.—It is the sense of the Congress that in order to minimize the cost to the insurance fund, the FDIC when resolving troubled insured depository institutions, should vigorously solicit competing proposals from a wide spectrum of potentially interested acquirers and investors and, in so doing, should use a competitive bidding framework that affords a fair and impartial opportunity for participation by qualified and interested acquirers and investors and that is designed to produce the lowest-cost transaction with respect to each particular institution.

(c) DOCUMENTATION—The FDIC should document its evaluation of proposals by qualified acquirers or investors. Such documentation should include, but is not limited to,

(1) Reducing all last offers to comparables;

(2) Comparing all last offers using the same principles;

(3) Describing the assumptions used to compare, accept and/or reject any offer or last offer;

(4) Stating the reason(s) for cessation of negotiations with any potential acquirer or investor, if any; and

(5) Stating why the final agreement is the best obtainable by the FDIC.

Amendment intended to be proposed by Mr. Dodd:

At page 778, after line 5, insert the following:

"(c) EFFECTIVENESS OF AMENDMENTS.—The authority provided under subsections (a) and (b) of this section may be exercised at any time following the expiration of 180 days from the date of enactment, provided that the Chairman of the Commission shall in connection with such exercise certify in writing, with explanation, to the President and the Congress, after consultation with the Director of the Office of Personnel Management, that:

(1) the Securities and Exchange Commission, with the assistance of the Office of Personnel Management, has attempted to solve the Commission's difficulties in recruitment and/or retention of high-quality personnel through use of the flexibilities provided by the Federal Employees Pay Comparability Act of 1990; and

(2) despite such attempt, the Securities and Exchange Commission is faced with continuing or serious difficulties in recruitment and/or retention of high-quality personnel.

HELMS (AND SMITH) AMENDMENT NOS. 1378 AND 1379

Mr. HELMS (for himself and Mr. SMITH) proposed two amendments to the bill S. 543, supra, as follows:

AMENDMENT NO. 1378

At the end, add the following:

"SEC. . SANCTION FOR FINANCING CHINESE SLAVE LABOR.

(a) SANCTION.—A foreign person which is a bank, financial institution, or insurer, and

any parent, subsidiary, affiliate and successor entity of that foreign person, shall be prohibited from conducting business in the United States if the President determines that on, or after the date of enactment, the foreign person has knowingly and materially contributed to the efforts of the People's Republic of China, to develop, produce, market, transport, or sell goods produced by forced or prison labor within the meaning of Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307).

(b) TERMINATION OF SANCTION.—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a) has ceased to aid or abet efforts by the People's Republic of China to develop, produce, market, transport, or sell goods produced by forced or prison labor.

(c) WAIVER.—

(1) The President may waive the application of a sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which the sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(d) DEFINITION.—For purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.".

AMENDMENT NO. 1379

At the end of title XI of the bill, insert the following:

SEC. 1138. SANCTION FOR FINANCING THE USE OR ACQUISITION OF CHEMICAL OR BIOLOGICAL WEAPONS.

Section 81 of the Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended by amending subsection (c)(1) to read as follows:

"(c) SANCTIONS.—

"(1) DESCRIPTION OF SANCTION.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, that—

"(A) the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3); and

"(B) the foreign person is prohibited from conducting business in the United States if the foreign person is a bank, financial institution, or insurer, or any subsidiary thereof, and if the President determines that the foreign person knowingly and materially contributed to the efforts of any foreign country, project, or entity described in subsection (a)(2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.".

D'AMATO AMENDMENT NO. 1380

Mr. GARN. (for Mr. D'AMATO) proposed an amendment to the bill S. 543, supra, as follows:

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

SEC. . SPECIAL INSURED DEPOSITS.

For purposes of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the deposits of the Freedom National Bank of New York that—

(1) were deposited by a charitable organization, as such term is defined by New York State law; and

(2) were deposits of such bank on the date of its closure by the Office of the Comptroller of the Currency,

shall be considered to have been insured deposits, as such term is defined in section 3 of the Federal Deposit Insurance Act.

BRYAN (AND SMITH) AMENDMENT NO. 1381

Mr. RIEGLE (for Mr. BRYAN, for himself and Mr. SMITH) proposed an amendment to the bill S. 543, supra, as follows:

The Senate believes that the responsibility to establish national banking policy would rest with the Congress and not Federal financial regulatory agencies;

The Senate believes that this responsibility is especially true with regard to whether insured depository institutions, in particular, bank holding companies, should be permitted to engage in real estate brokerage; and

The Federal Reserve Board may, pursuant to section 4(c)(8) of the Bank Holding Company of 1956 (12 U.S.C. 1843(c)(8)), permit bank holding companies to engage in those non-banking activities which are "reasonably related to the business of banking or are a proper incident thereto;" and

The Senate believes that real estate, activities, other than those expressly approved for national banks pursuant to the National Bank Act, may not be directly related to the business of banking or incidental to banking, for purposes of the Bank Holding Company Act; and

Congress believes that Congress, not the regulatory avenue should determine whether or not bank holding companies should be permitted to engage in real estate brokerage.

Now, Therefore, it is the sense of the Senate that Congress, not the Federal Reserve Board should determine whether or not real estate brokerage is "closely related to banking" section 4(c)(8) of the Bank Holding Company Act of 1956.

KERRY AMENDMENT NO. 1382

Mr. RIEGLE (for Mr. KERRY) proposed an amendment to the bill S. 543, supra, as follows:

On page 262, between lines 13 and 14, insert the following new subparagraph:

"(E) CORPORATE EQUITY SECURITIES.—Acquiring common and preferred shares listed on a national securities exchange and shares of an investment company registered under the Investment Company Act of 1940, in an aggregate amount not exceeding 50 percent of the bank's capital, if the bank was engaged in investing in such securities as of September 30, 1991. A bank shall not acquire common or preferred shares of any issuer (other than a registered investment company) if, after the acquisition, the bank's investment in shares of that issuer would exceed 10 percent of the bank's capital.

GRASSLEY (AND HARKIN) AMENDMENT NO. 1383

Mr. GRASSLEY (for himself and Mr. HARKIN) proposed an amendment to the bill S. 543, supra, as follows:

Section 11 of the Federal Deposit Insurance Act is amended by adding a new paragraph (14) to subsection (e) as follows:

(14) CREDIT CARD SALES.—

(A) NOTIFICATION.—Any insured depository institution shall notify the Corporation in writing prior to entering into any agreement relating to the sale of credit card receivables, if the institution is:

(i) not in compliance with the minimum applicable core capital requirements; or

(ii) not adequately capitalized as defined in section 205 of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

(B) WAIVER BY THE CORPORATION.—After receipt of the written notice required in subparagraph (A), the Corporation, in its sole discretion and upon such terms and conditions as it may prescribe, may waive its right to repudiate the agreement if the Corporation determines that such a waiver is in the best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the ability of the Corporation to otherwise waive its rights to repudiate any agreement or lease under this section.

(D) NO BREACH OF DUTY.—In granting any waiver of its right to repudiate a contract or lease, including any waiver granted under subparagraph (B), the Corporation, in any capacity, shall not be liable to any person for any damages as a result of such action nor shall any court have jurisdiction to enjoin, restrain or affect the exercise of such powers by the Corporation.

(E) EFFECT OF WAIVER ON SUCCESSORS.—Where the Corporation has waived its right to repudiate pursuant to subparagraph (B), any restriction contained or incorporated by reference in a sales agreement on the manner in which any customer or any list of customers of the selling institution may be solicited or otherwise dealt with shall be binding upon a receiver or conservator of the institution and the Corporation shall require any entity which subsequently purchases or acquires such selling institution, or substantially all of the assets or liabilities of such institution, to assume, and agree to be bound by, such restrictions on the manner in which any such customer or lists of customers of the selling institution may be solicited or otherwise dealt with, as if the acquiring entity were the selling institution; provided however, that nothing herein shall be read to inhibit or restrict such subsequently acquiring entity's ability to offer any service or product to any group of prospective customers as identified without use of or reference to any such prior customer status or list, or to require such entity to discontinue or restrict any of its preexisting customer relationships. Nothing herein shall apply to a transaction in which the Corporation arranges for a depository institution to purchase only insured deposits.

(F) CREDIT CARD CUSTOMER LIST.—Notwithstanding any other provision of this paragraph (14), if any consummated agreement reached at arms length relating to the sale

or transfer of credit card receivables by an insured depository institution provides for the sale of the exclusive use of any credit card customer list of the selling institution, the Corporation shall prohibit the use of such list by any person other than as provided by the terms of such previous agreement as part of any transaction undertaken pursuant to sections 11 or 13 of this Act.

(G) FRAUDULENT TRANSACTIONS EXCLUDED.—No provision of this paragraph shall be construed to interfere with the Corporation's rights to repudiate any contract undertaken with the intent to hinder, delay or defraud the institution, the creditors of such institution or the Corporation.

SUMMARY

This language amends subsection (e) of section 11 of the Federal Deposit Insurance Act to provide a mechanism for parties to credit card sale transactions to obtain a waiver of the ability of the FDIC to repudiate these transactions where the selling bank does not meet specified capital requirements. Subparagraph (C) clarifies that this amendment is not intended to prohibit the Corporation from granting waivers for other types of contracts.

Subparagrah (D) is intended to protect the Corporation from allegations that as conservator or receiver it has violated its fiduciary duty to all creditors by granting such a waiver prior to the failure of the insured depository institution. Without the protection afforded by subparagraph (D), the ability of the Corporation to grant such pre-closing waivers would be unduly hampered by risk of potential litigation claims.

Subparagraph (E) provides certain protections to purchasers of credit card receivables when the FDIC waives its rights to repudiate such agreement by effectively passing through to the successor of any failed institution any previously agreed to restrictions on the seller relating to its customers.

Subparagraph (F) would require the FDIC to prohibit the use of any credit card customer list of a failed institution if that list had previously been sold or transferred in an arms length transaction to another entity.

Subparagrpah (G) protects the Corporation from any agreements that are designed to hinder, delay or defraud the depository institution, its creditors, or the Corporation.

GORE (AND DECONCINI) AMENDMENT NO. 1384

Mr. GORE (for himself and Mr. DECONCINI) proposed an amendment to the bill S. 543, supra, as follows:

Expressing the sense of the Senate regarding United States policy toward Yugoslavia.

Since attacks against the people and territory of the Republic of Croatia by armed forces responding to direction from the Republic of Serbia are continuing despite numerous cease-fire agreements negotiated under the auspices of the European Community;

Since losses of life, property, and displacement of persons have already reached grievous levels and are continuing to rise as the result of continued violation of cease-fires;

Since attacks against the Republic of Croatia represent an effort to change postwar borders by force; and

Since it is a fundamental principle essential for the future peace of Europe that borders not be changed by force: therefore, it is the sense of the Senate that, if the Croatian government adheres in good faith to the terms of cease-fires negotiated by the European Community, and if those parties now conducting military operations against the Republic of Croatia refuse to comply immediately with the terms of such cease-fires, the policy of the United States should be—

(1) to consult promptly with the EC, with other countries on a bilateral basis, and with the United Nations on the question of recognizing, upon request, those Republics such as Slovenia and Croatia that have declared their sovereignty and independence and have agreed to cooperate with EC efforts;

(2) to take whatever steps are needed under existing legal authorities to bring the United States into conformity with sanctions and other punitive measures agreed to by the EC for its own members and recommended by them for others, and to take action parallel to those proposed by the EC for applying "positive compensatory measures" to be applied to those parties that "cooperate in a peaceful way towards a comprehensive political solution on the basis of EC proposals;"

(3) to offer humanitarian assistance to those republics that require such assistance on an emergency basis in light of conflict taking place on their territories;

(4) to place the Republic of Serbia on notice that continued military action will cause the United States to support EC efforts to call for mandatory U.N. Security Council measures as a response to an act of aggression;

(5) to require of all authorities a clear and binding commitment to protect the rights of minorities living within the borders mutually recognized by the republics and provinces of Yugoslavia in 1974 and to seek formal commitment on their part to accept international inspection and, if necessary, arbitration, to protect those rights; and

(6) to lend strong support to all EC and other international activities aimed at bringing about a restoration of peace and respect for the principle that territorial disputes shall not be settled by the use of violence.

NATIONAL ACADEMIC REPORT CARD ACT

HATFIELD AMENDMENT NO. 1385

Mr. HATFIELD proposed an amendment to the bill (S. 2) to promote the achievement of National Education Goals, to establish a National Council on Educational Goals and an Academic Report Card to measure progress on the goals, and to promote literacy in the United States, and for other purposes, as follows:

On page 56, between lines 19 and 20, insert the following:

TITLE III—ELEMENTARY SCIENCE FACILITIES PROGRAM

SEC. 301. SHORT TITLE.

This title may be cited as the "Elementary Science Facilities Act".

SEC. 302. STATEMENT OF PURPOSE.

It is the purpose of this title to raise the quality of instruction in mathematics and science in the Nation's elementary schools by providing equipment and materials necessary for hands-on instruction through assistance to State and local educational agencies.

SEC. 303. PROGRAM AUTHORIZED.

The Secretary is authorized to make allotments to state educational agencies under section 304 to enable such agencies to award grants to local educational agencies for the purpose of providing equipment and materials to elementary schools to improve mathematics and science education in such schools.

SEC. 304. ALLOTMENTS OF FUNDS.

(a) IN GENERAL.—From the amount appropriated under section 310 for any fiscal year, the Secretary shall reserve—

(1) not more than ½ of 1 percent for allotment among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau according to their respective needs for assistance under this title; and

(2) ½ of 1 percent for programs for Indian students served by schools funded by the Secretary of the Interior which are consistent with the purposes of this title.

(b) ALLOTMENT.—From the amount not reserved pursuant to subsection (a), the Secretary shall allot among State educational agencies as follows:

(1) One-half of such remainder shall be distributed among the State educational agencies by allotting to each State educational agency an amount which bears the same ratio to such one-half of such remainder as the number of children aged 5 to 11, inclusive, in the State bears to the number of such children in all States.

(2) One-half of such remainder shall be distributed among the State educational agencies according to each State's share of allocations under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(c) DEFINITIONS.—For the purposes of this title the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) DATA.—The number of children aged 5 to 11, inclusive, in the State and in all States shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

SEC. 305. STATE APPLICATION.

(a) APPLICATION.—Each State educational agency desiring to receive an allotment under this title shall file an application with the Secretary which covers a period of 3 fiscal years. Such application shall be filed at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) CONTENT OF APPLICATION.—Each application described in subsection (a) shall—

(1) provide assurances that—

(A) the State educational agency shall use the allotment provided under this title to award grants to local educational agencies within the State to enable such local educational agencies to carry out the purpose of this title;

(B) the State educational agency will provide such fiscal control and funds accounting as the Secretary may require;

(C) every elementary school in the State is eligible to receive a grant under this title once over the 3-year duration of the program assisted under this title;

(D) funds provided under this title will supplement, not supplant, State and local funds made available for activities authorized under this title;

(E) during the 3-year period described in the application, the State educational agency will evaluate its standards and programs for teacher preparation and inservice professional development for elementary mathematics and science;

(F) the State educational agency will take into account the needs for greater access to

and participation in mathematics and science by students and teachers from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the economically disadvantaged, and individuals with disabilities; and

(G) that the needs of teachers and students in areas with high concentrations of low-income students and sparsely populated areas will be considered in awarding grants under this title;

(2) provide, if appropriate, a description of how funds paid under this title will be coordinated with State and local funds and other Federal resources, particularly with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics; and

(3) describe procedures—

(A) for submitting applications for programs described in sections 306 and 307 for distribution of payments under this title within the State; and

(B) for approval of applicants by the State educational agency, including appropriate procedures to assure that such agency will not disapprove an application without notice and opportunity for a hearing.

SEC. 306. LOCAL APPLICATION.

(a) APPLICATION.—A local educational agency that desires to receive a grant under this title shall submit an application to the State educational agency. Each such application shall contain assurances that each school served by the local educational agency shall be eligible for only one grant under this title.

(b) CONTENTS OF APPLICATION.—Each application described in subsection (a) shall—

(1) describe how the local educational agency plans to set priorities on the use and distribution among schools of grant funds received under this title to meet the purpose of this title;

(2) include assurances that the local educational agency shall match on a dollar-for-dollar basis the funds received under this title;

(3) describe, if applicable, how funds under this title will be coordinated with State, local, and other Federal resources, especially with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics;

(4) describe the process which will be used to determine different levels of grant amounts to be awarded to schools with different needs.

(c) PRIORITY.—In awarding grants, the State educational agency shall give priority to applications that—

(1) assign highest priority to schools which are most seriously under-equipped;

(2) are attentive to the needs of underrepresented groups in science and mathematics;

(3) demonstrate how science and mathematics equipment will be part of a comprehensive plan of curriculum planning of implementation and teacher training support hands-on laboratory activities; and

(4) include plans for dissemination of lessons and activities using grant equipment and materials to teachers in schools not receiving grants.

SEC. 307. PARTICIPATION OF PRIVATE SCHOOLS.

(a) PARTICIPATION OF PRIVATE SCHOOLS.—To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary schools, such State educational agency shall, after consultation with appropriate private school representatives, make provision for providing funds under this title as will assure the equitable participation of such private schools in the purposes and benefits of this title.

(b) WAIVER.—If by reason of any provision of State law of local educational agency is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsection (a), or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers.

SEC. 308. PROGRAM REQUIREMENTS.

(a) COORDINATION.—Each State educational agency receiving a grant under this title shall—

(1) disseminate information to school districts and schools, including private schools, regarding the grant program;

(2) evaluate applications of local educational agencies;

(3) award grants to local educational agencies based on the priorities described in section 306(c); and

(4) evaluate local educational agencies' end-of-year summaries and submit such evaluation to the Secretary.

(b) LIMITATIONS ON USE OF FUNDS.—

(1) IN GENERAL.—Grant funds and matching funds under this title only shall be used to purchase science equipment, science materials, or mathematical manipulative materials and shall not be used for computers, computer peripherals, software, text-books, or staff development costs.

(2) CAPITAL IMPROVEMENTS.—Grant funds under this title may not be used for capital improvements. No more than 50 percent of matching funds provided by the local educational agency may be used for capital improvements of classroom science facilities to support the hands-on instruction that this title is intended to support, such as the installation of electrical outlets, plumbing, lab tables or counters, or ventilation mechanisms.

SEC. 309. FEDERAL ADMINISTRATION.

(a) TECHNICAL ASSISTANCE AND EVALUATION PROCEDURES.—The Secretary shall provide technical assistance and, in consultation with State and local representatives of the program assisted under this title, shall develop procedures for State and local evaluations of the programs under this title.

(b) REPORT.—The Secretary shall report to the Congress each year on the program assisted under this title.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $30,000,000 for each of fiscal years 1993, 1994 and 1995 to carry out this title.

On page 2, after the item relating to section 212, insert the following:

TITLE III—ELEMENTARY SCIENCE FACILITIES PROGRAM

Sec. 301. Short title.
Sec. 302. Statement of purpose.
Sec. 303. Program authorized.
Sec. 304. Allotments of funds.
Sec. 305. State application.
Sec. 306. Local application.
Sec. 307. Participation of private schools.
Sec. 308. Program requirements.
Sec. 309. Federal administration.
Sec. 310. Authorization of appropriations.

On page 2, redesignate the item relating to "TITLE III" as the item relating to "TITLE IV".

On page 2, redesignate the item relating to section "301" as the item relating to section "401".

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY ACT

DECONCINI AMENDMENT NO. 1386

Mr. LEVIN (for Mr. DECONCINI) proposed an amendment to the bill (S. 1176) to establish the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and for other purpose; as follows:

On page 2, line 8, strike "and".

On page 2, between lines 8 and 9, insert the following:

(3) Congressman Morris K. Udall has been a champion of the rights of Native Americans and Alaska Natives and has used his leadership in the Congress to strengthen tribal self-governance; and

On page 2, line 9, strike "(3)" and insert "(4)".

On page 4, strike lines 15 through 19, and insert the following:

who have shown leadership and interest in—

(A) the continued use, enjoyment, education, and exploration of our Nation's rich and bountiful natural resources, such as presidents of major foundations involved with the environment; and

(B) in the improvement of the health status of Native Americans and Alaska Natives in strengthening tribal self-governance, such as tribal leaders involved in health and public policy development affecting Native American and Alaska Native communities.

On page 7, line 17, strike "and" after the semicolon.

On page 7, line 19, strike the period and insert a semicolon and "and".

On page 7, between lines 19 and 20, insert the following:

(7) develop resources to properly train Native American and Alaska Native professionals in health care and public policy.

On page 8, line 14, insert "and Native American and Alaska Native health care and tribal public policy" before the period.

On page 8, line 20, insert "and to outstanding Native American and Alaska Native undergraduate students who intend to pursue careers in health care and tribal public policy" before the period.

On page 9, line 19, insert "and to outstanding Native American and Alaska Native graduate students who intend to pursue advanced degrees in health care and tribal public policy," after "environment".

On page 10, line 1, strike "Deserving" and insert "deserving".

On page 10, line 4, strike the period and insert a semicolon and "and".

On page 10, between lines 4 and 5, insert the following:

(B) deserving and qualified Native American and Alaska Native individuals to participate in internships in Federal, State and local agencies or in offices of major public health or public policy organizations pursuant to section 5.

On page 10, line 11, strike "and".

On page 10, between lines 11 and 12, insert the following:

(C) to conduct research on Native American and Alaska Native health care issues and tribal public policy issues.

On page 10, line 12, strike "(C)" and insert "(D)".

COAST GUARD AUTHORIZATION ACT

HOLLINGS (AND STEVENS) AMENDMENT NO. 1387

Mr. LEVIN (for Mr. HOLLINGS, for himself and Mr. Stevens) proposed an amendment to the bill (S. 1297) to authorize appropriations for the Coast Guard for fiscal years 1992 and 1993, and for other purposes, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Coast Guard Authorization Act of 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) AUTHORIZATIONS FOR FISCAL YEAR 1992.—Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1992, as follows:

(1) For the operation and maintenance of the Coast Guard, $2,569,500,000; of which $31,054,000 shall be derived from the Oil Spill Liability Trust Fund; of which not more than $1,900,000 shall be used for annual obligations of membership in the International Maritime Organization for calendar year 1992, notwithstanding section 2 of the Act of September 21, 1950 (22 U.S.C. 262a); and of which $35,000,000 shall be expended from the Boat Safety Account.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $452,000,000, to remain available until expended, of which $29,000,000 shall be used to acquire a new command and control aircraft and of which $26,752,000 shall be derived from the Oil Spill Liability Trust Fund.

(3) For research, development, test, and evaluation, $28,800,000, to remain available until expended.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $487,700,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $10,200,000.

(6) For environmental compliance and restoration at Coast Guard facilities, $25,100,000, to remain available until expended.

(b) AUTHORIZATIONS FOR FISCAL YEAR 1993.—Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1993, as follows:

(1) For the operation and maintenance of the Coast Guard, $2,569,500,000, of which $31,054,000 shall be derived from the Oil Spill Liability Trust Fund and of which $35,000,000 shall be expended from the Boat Safety Account.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $423,000,000, to remain available until expended, of which $26,752,000 shall be derived from the Oil Spill Liability Trust Fund.

(3) For research, development, test, and evaluation, $28,800,000, to remain available until expended.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $519,000,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $10,200,000.

(6) For environmental compliance and restoration at Coast Guard facilities, $25,100,000, to remain available until expended.

(c) ACQUISITION OF OIL RECOVERY SYSTEMS.—Funds authorized to be appropriated under subsection (a)(2) or (b)(2) for the construction of any new seagoing buoy tender (WLB) may not be expended for the acquisition of oil recovery systems unless those systems are manufactured in the United States and only pursuant to competitive bidding based on performance specification and cost.

(d) COMMAND AND CONTROL AIRCRAFT ACQUISITION.—(1) Notwithstanding any other provision of law, the Secretary of the department in which the Coast Guard is operating (hereinafter referred to as the "Secretary") may submit a request for reprogramming of funds in order to purchase, lease, or lease with option to purchase a replacement command and control aircraft for the Coast Guard during fiscal year 1992. The request shall be in accordance with the existing procedures for congressional review of appropriations reprogramming requests. Subject to such reprogramming procedures—

(A) the Coast Guard may enter into a multiyear lease agreement for a replacement aircraft and may utilize operating expenses for the multiyear lease but not for the purchase of aircraft; and

(B) funds may be reprogrammed, pursuant to the request, from any subaccount of the acquisition, construction, and improvements appropriation.

(2) The Coast Guard may transfer the current command and control aircraft to the vendor of any replacement aircraft in exchange for an equitable reduction in the cash price of an aircraft to be acquired, or in lieu of exchange, the current aircraft may be sold and the proceeds applied toward such purchase, lease, or lease with option to purchase.

AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1992

SEC. 3.(a) ACTIVE DUTY PERSONNEL STRENGTH.—As of September 30, 1992, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,559. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) MILITARY TRAINING STUDENT LOADS.—For fiscal year 1992, the Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,653 student years.

(2) For flight training, 110 student years.

(3) For professional training in military and civilian institutions, 362 student years.

(4) For officer acquisition, 878 student years.

AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1993

SEC. 4.(a) ACTIVE DUTY PERSONNEL STRENGTH.—As of September 30, 1993, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,559. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) MILITARY TRAINING STUDENT LOADS.—For fiscal year 1993, the Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,653 student years.

(2) For flight training, 110 student years.

(3) For professional training in military and civilian institutions, 362 student years.

(4) For officer acquisition, 878 student years.

RETIREMENT OF REAR ADMIRALS

SEC. 5.(a) IN GENERAL.—Section 290 of title 14, United States Code, is amended—

(1) in subsection (e) by striking "June 30 of" and inserting in lieu thereof "July 1 of the promotion year immediately following"; and

(2) by striking subsections (f) and (g) and inserting in lieu thereof the following new subsections:

"(f)(1) Unless retired under some other provision of law, each officer who is continued on active duty under this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes seven years of combined service in the grades of rear admiral (lower half) and rear admiral, unless that officer is selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy.

"(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy, or retired under some other provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.

"(g)(1) Unless retired under some other provision of law, an officer subject to this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes a total of thirty-six years of active commissioned service unless selected for or serving in the grade of admiral.

"(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or retired under some other provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.".

(b) TECHNICAL AMENDMENTS.—(1) Section 290(a) of title 14, United States Code, is amended by striking "he" and inserting in lieu thereof "that officer".

(2) Section 290(d) of title 14, United States Code, is amended by striking "his" each place it appears.

ENLISTED PERSONNEL BOARDS

SEC. 6.(a) IN GENERAL.—Section 357 of title 14, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a) Enlisted Personnel Boards shall be convened at such times as the Commandant may prescribe to review the records of enlisted members who have 20 or more years of active military service.";

(2) in subsection (b), by striking "retired from active duty by the Commandant pursuant to the action of an Enlisted Personnel Board" and inserting in lieu thereof "involuntarily retired by the Commandant";

(3) by redesignating subsections (b) and (c) as subsections (h) and (i), respectively; and

(4) by inserting immediately after subsection (a) the following new subsections:

"(b) Enlisted members who have 20 or more years of active military service may be considered by the Commandant for involuntary retirement and may be retired upon recommendation of a Board—

"(1) because the member's performance is below the standards prescribed by the Commandant, or

"(2) because of moral or professional dereliction.

"(c) Each enlisted member considered for involuntary retirement shall be—

"(1) notified in writing of the reasons for which the member is being considered for involuntary retirement;

"(2) allowed 30 days to submit any matters in rebuttal;

"(3) provided counsel, certified in accordance with section 827(b) of title 10, to assist with the preparation of the rebuttal submitted pursuant to paragraph (2); and

"(4) allowed full access to and furnished copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted pursuant to paragraph (2).

"(d) A Board convened under this section shall consist of at least three commissioned officers, at least one of whom shall be of the grade of Commander or above.

"(e) A Board convened under this section shall recommend to the Commandant enlisted members who have 20 or more years of active service and have been considered for involuntary retirement who, in its discretion, it determines should be involuntarily retired.

"(f) If the Commandant approves the recommendation of the Board, the enlisted member shall be notified of the decision of the Commandant and shall be retired from the service within 90 days after such notification.

"(g) This section is not applicable to reductions in force ordered by the Secretary.".

(b) TECHNICAL AMENDMENTS.—(1) The catchline to section 357 of title 14, United States Code, is amended by striking "Enlisted Personnel Board" and inserting in lieu thereof "Involuntary retirement of enlisted members".

(2) The item relating to section 357 in the analysis of chapter 11 of title 14, United States Code, is amended to read as follows:

"357. Involuntary retirement of enlisted members.".

AUTHORITY TO ACCEPT COURT-ORDERED COMMUNITY SERVICE

SEC. 7. Section 93 of title 14, United States Code, is amended—

(1) by striking "and" at the end of subsection (q);

(2) by striking the period at the end of the first subsection (r) and inserting in lieu thereof "; and";

(3) by striking the second subsection (r); and

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

"(s) accept and utilize, under such terms and conditions as are deemed advisable by the Commandant, services of individuals performing community service under the order of a Federal, State, or municipal court.".

HOUSING UNIT LEASE AUTHORITY

SEC. 8.(a) SITE ACQUISITION LEASE.—(1) The Coast Guard may enter into a lease, for a term in excess of 1 fiscal year, to acquire a site at the Massachusetts Military Reservation on Cape Cod, Massachusetts, for construction or renovation of housing units, or both.

(2) Any lease authorized under paragraph (1) is effective only to the extent that amounts are provided for in advance in appropriations Acts.

(b) EXPENDITURES ON CONSTRUCTION AND RENOVATION OF HOUSING UNITS.—Beginning in fiscal year 1991 the Coast Guard may spend appropriated amounts for the construction or renovation (or both) of housing units at the site of such Massachusetts Military Reservation.

AIR FACILITIES LEASE AUTHORITY

SEC. 9.(a) SITE ACQUISITION LEASE.—(1) The Coast Guard may enter into a lease, for a term in excess of 1 fiscal year, to acquire a site at Charleston, South Carolina, for construction of a permanent air facility.

(2) Any lease authorized under paragraph (1) is effective only to the extent that amounts are provided for in advance in appropriation Acts.

(b) EXPENDITURES ON CONSTRUCTION OF FACILITY.—Beginning in fiscal year 1991, the Coast Guard may spend appropriated amounts for the construction of a permanent air facility on the site at Charleston, South Carolina.

COAST GUARD HOUSING STUDY

SEC. 10. Not later than 6 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on Coast Guard housing. The report shall examine the current housing problems of the Coast Guard, the long term housing needs of the Coast Guard, and estimates of projected housing costs needed to relieve the current problems.

COAST GUARD ACADEMY ADVISORY COMMITTEE

SEC. 11. Section 193 of title 14, United States Code, is amended by striking "September 30, 1992" and inserting in lieu thereof "September 30, 1994".

JOHN F. LIMEHOUSE MEMORIAL BRIDGE

SEC. 12. Notwithstanding any other law, the John F. Limehouse Memorial Bridge across the Atlantic Intracoastal Waterway in Charleston County, South Carolina, is deemed an unreasonable obstruction to navigation.

NATIONAL BOATING SAFETY ADVISORY COUNCIL

SEC. 13. Section 13110(e) of title 46, United States Code, is amended by striking "September 30, 1991" and inserting in lieu thereof "September 30, 1996".

EMERGENCY RECALL OF RESERVISTS

SEC. 14. Section 712(a) of title 14, United States Code, is amended to read as follows:

"(a) Notwithstanding any other law, and for the emergency augmentation of the Regular Coast Guard forces during a time of serious natural or manmade disaster, accident, or catastrophe, the Secretary may, without the consent of the member affected, order to active duty of not more than 30 days in any four-month period and not more than sixty days in any two-year period from the Coast Guard Ready Reserve an organized training unit, a member thereof, or a member not assigned to a unit organized to serve as a unit.".

RECALL OF RETIRED OFFICERS

SEC. 15.(a) INCREASE IN PERCENTAGE LIMITATION.—Section 332(b) of title 14, United States Code, is amended by striking "1" and inserting in lieu thereof "2".

(b) TECHNICAL AMENDMENTS.—Section 332(a) of title 14, United States Code, is amended by striking "his" and inserting in lieu thereof "that officer's" and by striking "he" and inserting in lieu thereof "that officer".

AMENDMENT OF INLAND NAVIGATIONAL RULES

SEC. 16. Section 2 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001 et seq.) is amended—

(1) in Rule 1(e) (33 U.S.C. 2001(e)), by striking "without interfering with the special function of the vessel,"; and

(2) in Rule 8 (33 U.S.C. 2008), by inserting immediately after paragraph (e) the following new paragraph:

"(f)(i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

"(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

"(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two vessels are approaching one another so as to involve risk of collision.".

REQUIREMENTS FOR CERTAIN VESSELS

SEC. 17. Section 3503 of title 46, United States Code, is amended—

(1) in subsection (a) by striking "November 1, 1993" and inserting in lieu thereof "November 1, 1998"; and

(2) in subsection (b)(1)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) the owner or managing operator of the vessel shall notify the Coast Guard of structural alterations to the vessel, and with regard to those alterations shall comply with any noncombustible material requirements (which shall be consistent with preservation of the historic integrity of the vessel in areas carrying or accessible to passengers or generally visible to the public) that the coast Guard prescribes for nonpublic spaces.".

STUDY OF JOINT ENFORCEMENT OF MARINE SANCTUARY REGULATIONS

SEC. 18. Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a joint report describing methods by which Coast Guard enforcement efforts under the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) may be enhanced

and coordinated with those of the National Oceanic and Atmospheric Administration. The report shall—

(1) evaluate the ability of the Coast Guard to address key enforcement problems, which the Secretary of Commerce shall identify, for each national marine sanctuary;

(2) propose procedures by which the Coast Guard and the National Oceanic and Atmospheric Administration may coordinate their efforts in order to improve and maximize effective enforcement of marine sanctuary regulations; and

(3) recommend appropriate levels of Coast Guard participation in such efforts.

CONVEYANCE OF CAPE MAY POINT LIGHTHOUSE

SEC. 19. (a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary may convey to the State of New Jersey, by any appropriate means of conveyance, all rights, title, and interest of the United States in and to property comprising the Cape May Point Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all rights, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property, or any part thereof, ceases to be used as a nonprofit center for public benefit for the interpretation and preservation of the material culture of the Coast Guard and the maritime history of Cape May, New Jersey.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) the light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the State of New Jersey may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property without notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property.

(4) The State of New Jersey shall not have any obligation to maintain any active aid-to-navigation equipment on property conveyed pursuant to this section.

(d) DEFINITION.—For purposes of this section, the term "Cape May Point Lighthouse" means the Coast Guard lighthouse located at Cape May, New Jersey, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such land as may be necessary to enable the State of New Jersey to operate at that lighthouse a nonprofit center for public benefit for the interpretation and preservation of the material culture of the Coast Guard and the maritime history of Cape May, New Jersey.

CONVEYANCE OF PORTLAND HEAD LIGHTHOUSE

SEC. 20. (a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary shall convey to the Town of Cape Elizabeth, Maine, by any appropriate means of conveyance, all rights, title, and interest of the United States in and to property comprising the Portland Head Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all rights, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property so conveyed ceases to be used as a nonprofit center for public benefit. In connection therewith, the property may be used for educational, historic, recreational, and cultural programs open to and for the benefit of the general public. Theme displays, museum, gift shop, open exhibits, meeting rooms, and an office and quarters for personnel in connection with security and administration of the property and the adjacent Fort Williams Park, owned and operated by the Town of Cape Elizabeth, are expressly authorized. Other uses not inconsistent with the foregoing uses are permitted unless the Secretary shall reasonably determine that such uses are incompatible with the historic nature of the property or with other provisions of this section.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) any light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the Town of Cape Elizabeth may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property with notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property.

(4) The Town of Cape Elizabeth shall not have any obligation to maintain any active aid-to-navigation equipment on property conveyed pursuant to this section.

(c) DEFINITION.—For purposes of this section, the term "Portland Head Lighthouse" means the Coast Guard lighthouse located at Cape Elizabeth, Maine, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such lands as may be necessary to enable the Town of Cape Elizabeth to operate at that lighthouse a nonprofit center for public benefit.

OREGON OIL SPILL RESPONSE STUDY

SEC. 21. Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report examining the adequacy of pre-positioned oil spill response equipment to respond to potential damage caused by spills upriver on the Columbia River where commercial and government marine vessel activity takes place.

COAST GUARD CUTTER MACKINAW RENOVATION

SEC. 22. Before October 1, 1992, the Secretary shall use such funds as may be necessary, up to $14,000,000, to begin and actively pursue the renovation project to extend the useful life of the Coast Guard Cutter *Mackinaw*.

EXTENSION OF FISHING VESSEL ADVISORY COMMITTEE

SEC. 23. Section 4508(e)(1) of title 46, United States Code, is amended by striking "1992" and inserting in lieu thereof "1994".

DECLARATION OF NONNAVIGABILITY WITH RESPECT TO APPOMATTOX RIVER, VIRGINIA

SEC. 24. The portion of the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia, extending 500 feet upstream and downstream from the Brasfield Dam (at 37 degrees 13 minutes 14 seconds north latitude, 77 degrees 31 minutes 31 seconds west longitude) is declared not to be navigable water within the meaning of the Constitution and laws of the United States, and not to be water affecting navigable waters of the United States or interstate or foreign commerce, except for purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

BRIDGE ACROSS WAPPINGER CREEK, NEW YORK

SEC. 25. Notwithstanding any other provision of law, the railroad bridge across Wappinger Creek, mile 0.0. at New Hamburg, New York, is hereby determined to provide for the reasonable needs of navigation under the Act of March 3, 1899 (33 U.S.C. 401); section 1 of the Act of March 23, 1906 (33 U.S.C. 491), and section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)), at the closed position and need not be maintained as a movable structure.

VESSEL SAFETY NEAR STRAIT OF JUAN DE FUCA

SEC. 26. The Secretary, through the Secretary of State, is directed to enter into discussions with their appropriate Canadian counterparts to examine alternatives to improve commercial vessel traffic safety off the entrance to the Strait of Juan de Fuca.

TRANSFER OF CERTAIN PROPERTY AT FOLLY BEACH, SOUTH CAROLINA

SEC. 27.(2) TRANSFER OF PROPERTY.—Notwithstanding any other law, the Secretary shall transfer without consideration to the County of Charleston all rights, title, and interest of the United States in Coast Guard property located at Folly Island, Charleston County, South Carolina, described in subsection (b), subject to existing easements and restrictions of record. The transferee shall pay for all conveyance costs.

(b) DESCRIPTION.—The property to be transferred under subsection (a) is described as commencing at a point in the center of United States Army Observation Steel Tower (32 degrees 41 minutes 13.590 seconds north latitude, 79 degrees 53 minutes 16.783 seconds west longitude), and running from there due

south 261.75 feet to a point at 32 degrees 41 minutes 11 seconds north latitude, 79 degrees 53 minutes 16.783 seconds west longitude, for a point of beginning; running from there, due east along north latitude 32 degrees 41 minutes 11 seconds 854 feet, more or less, to a point in the low water line; from there, running southerly and southwesterly along the meanderings of such low water line 4650 feet, more or less, to the intersection of such low water line with west longitude 79 degrees 53 minutes 30 seconds; from there, running due north along such longitude 3380 feet, more or less, to the intersection of such longitude with north latitude 32 degrees 41 minutes 11 seconds; from there, running due east along such latitude 1129.64 feet to the point of beginning, containing 143 acres, more or less (part high and part submerged lands); together with the 2300 volt power line, and all power line rights of way connected therewith, extending from the Government's property at the east end of Folly Island to such power line's connection with the South Carolina Power Company's power line at Folly Beach.

REQUIREMENT TO REPORT ON CERTAIN POLLUTION INCIDENTS

SEC. 28. Section 7 of the Act to Prevent Pollution from Ships (33 U.S.C. 1906) is amended to read as follows:

"SEC. 7.(a) The master, person in charge, owner, charterer, manager, or operator of a ship involved in an incident shall report the incident in the manner prescribed by Article 8 of the Convention in accordance with regulations promulgated by the Secretary for that purpose.

"(b) The master or person in charge of—

"(1) a ship of United States registry or nationality, or operated under the authority of the United States, wherever located;

"(2) another ship while in the navigable waters of the United States; or

"(3) a sea port or oil handling facility subject to the jurisdiction of the United States,

shall report a discharge, probable discharge, or presence of oil in the manner prescribed by Article 4 of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (adopted at London, November 30, 1990), in accordance with regulations promulgated by the Secretary for that purpose.".

AMENDMENTS TO IMPLEMENT INTERNATIONAL SALVAGE CONVENTION 1989

SEC. 29.(a) PAYMENT TO SALVORS OF LIFE.—Section 3 of the Act of August 1, 1912 (46 App. U.S.C. 729), is amended by striking all after "fair share of the" and inserting in lieu thereof "payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.".

(b) TECHNICAL AMENDMENT.—Section 5 of the Act of August 1, 1912 (46 App. U.S.C. 731), is amended by striking "Nothing in this Act" and inserting in lieu thereof "Nothing in sections 1, 3, and 4 of this Act and section 2304 of title 46, United States Code,".

TRANSFER OF HECETA HEAD AND CAPE BLANCO LIGHTHOUSES

SEC. 30.(a) CONVEYANCE OF LIGHTHOUSES.—(1) The Secretary may convey by any appropriate means to the State of Oregon all rights, title, and interest of the United States in and to property comprising one or both of the Heceta Head Lighthouse and the Cape Blanco Lighthouse.

(2) The Secretary may identify, describe, and determine property conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) The conveyance of property pursuant to subsection (a) shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property comprising Heceta Head Lighthouse or Cape Blanco Lighthouse pursuant to this section shall be subject to the condition that all rights, title, and interest in and to the property so conveyed shall immediately revert to the United States if the property, or any part thereof, ceases to be used as a nonprofit center for public benefit for the interpretation and preservation of the maritime history of Heceta Head or Cape Blanco, as applicable.

(3) Any conveyance of property pursuant to this section shall be made subject to such conditions as the Secretary considers to be necessary to assure that—

(A) the light, antennas, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the State of Oregon may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property without notice for the purpose of maintaining aids to navigation; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the aids to navigation in use on the property.

(4) The State of Oregon shall not have any obligation to maintain any active aid to navigation equipment on property conveyed pursuant to this section.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "Heceta Head Lighthouse" means the Coast Guard lighthouse located at Heceta Head, Oregon, including—

(A) the classical fresnel lens;

(B) the keeper's dwelling;

(C) several ancillary buildings; and

(D) such land as may be necessary to enable the State of Oregon to operate at that lighthouse a nonprofit center for public benefit for the interpretation and preservation of the maritime history of Heceta Head, Oregon; and

(2) the term "Cape Blanco Lighthouse" means the Coast Guard lighthouse located at Cape Blanco, Oregon, including—

(A) the classical fresnel lens;

(B) several ancillary buildings; and

(C) such land as may be necessary to enable the State of Oregon to operate at that lighthouse a nonprofit center for public benefit for the interpretation and preservation of the maritime history of Cape Blanco, Oregon.

CONVEYANCE OF WHITE ISLAND LIGHTHOUSE

SEC. 31.(a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary shall convey to the State of New Hampshire, by any appropriate means of conveyance, all rights, title, and interest of the United States in and to property comprising the White Island Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration;

(B) subject to such terms and conditions as the Secretary may consider appropriate; and

(C) the Coast Guard will complete its cleanup of the oil seepage on White Island and take any necessary measures to prevent further pollution.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all rights, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property so conveyed ceases to be used as a nonprofit center for public benefit. In connection therewith, the property may be used for educational, historic, recreational, and cultural programs open to and for the benefit of the general public. Theme displays, museum, gift shop, open exhibits, meeting rooms, and an office and quarters for personnel in connection with security and administration of the property are expressly authorized. Other uses not inconsistent with the foregoing uses are permitted unless the Secretary shall reasonably determine that such uses are incompatible with the historic nature of the property or with other provisions of this section.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) any light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the State of New Hampshire may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) There is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property with notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property.

(4) The State of New Hampshire shall not have any obligation to maintain any active aid-to-navigation equipment on property conveyed pursuant to this section.

(c) DEFINITION.—For the purpose of this section, the term "White Island Lighthouse" means the Coast Guard lighthouse located at White Island, Isles of Shoals, New Hampshire, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such lands as may be necessary to enable the State of New Hampshire to operate at that lighthouse a nonprofit center for public benefit.

TRANSFER AT JUNEAU, ALASKA

SEC. 32.(a) TRANSFER BY SECRETARY.—Notwithstanding any other provision of law, the Secretary shall transfer without consideration to the Secretary of Commerce all rights, title, and interest of the United States in Coast Guard property and improvements at Auke Cape, Alaska (Lot 2 on United States Survey Number 3811 comprising 28.16 acres), located approximately 11 miles northwest of Juneau, Alaska.

(b) AVAILABILITY TO NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—The Secretary of Commerce shall make the property

transferred under this section available to the National Oceanic and Atmospheric Administration.

SENSE OF THE CONGRESS ON RECREATIONAL BOAT FEES

SEC. 33.(a) FINDINGS.—The Congress finds that

(1) The Coast Guard fee imposed upon recreational boaters under section 2110(b) of title 46, United States Code, was mandated by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-397);

(2) recreational boaters who are required to pay this fee may not receive any direct service and cannot expect to receive any additional service in return for payment of the fee;

(3) recreational boaters already pay a motorboat fuel tax; and

(4) the fee imposed upon recreational boaters will not be directly available to the Coast Guard to increase services that would benefit recreational boaters.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the requirement that the Coast Guard collect a fee from recreational boaters under section 2110(b) of title 46, United States Code, should be repealed immediately upon enactment of offsetting receipts in order to comply with the requirements of the Omnibus Budget Reconciliation Act of 1990.

CERTIFICATE OF DOCUMENTATION FOR MAYFLOWER II

SEC. 34.(a) AUTHORITY TO ISSUE CERTIFICATE.—Notwithstanding section 12106 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade of the United States for the vessel *Mayflower II*, owned by Plymouth Plantation, Inc. (a corporation under the laws of Massachusetts).

(b) EXEMPTION FROM CERTAIN REQUIREMENTS.—(1) The Secretary may exempt the vessel *Mayflower II* from compliance with—

(A) any requirement relating to inspection or safety under title 46, United States Code; and

(B) any requirement relating to navigation under any law codified in title 33, United States Code.

(2) If the Secretary exempts the vessel from any requirement under paragraph (1), the Secretary may establish an alternative requirement designed to provide for the safety of the passengers and crew of the vessel.

JONES ACT WAIVERS FOR CERTAIN VESSELS

SEC. 35. Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the following vessels:

(1) *Miss Lelia*, United States official number 577213.

(2) *Billfish*, United States official number 920896.

(3) *Marsh Grass III*, United States official number 963616.

BENTSEN AMENDMENT NO. 1388

Mr. LEVIN (for Mr. BENTSEN) proposed an amendment to amendment No. 1387 proposed by Mr. Levin (for Mr. HOLLINGS) to the bill S. 1297, supra; as follows:

At the appropriate place, insert the following:

DECLARATION OF NONNAVIGABILITY FOR PORTIONS OF PELICAN ISLAND, TEXAS

SEC. . (a) AREA TO BE DECLARED NONNAVIGABLE.—Subject to the provisions of subsections (b), (c), and (d) of this section, those portions of Pelican Island, Texas, which are not submerged and which are within the following property descriptions are declared to be nonnavigable waters of the United States:

(1) A 1,903.6655 acre tract of land situated in Galveston County, Texas, within the Galveston City Limits and on Pelican Island and being more particularly described by metes and bounds as follows, with all control referred to the Texas State Plane Coordinate System, Lambert Projection, South Central Zone:

Beginning at a United States Corps of Engineers concrete monument with a brass cap, being Corps of Engineers station 40+00 and being located on the southwesterly line of a United States Government Reservation and having Texas State Plane Coordinate Value of X=3,340,636.67, Y=568,271.91;

thence south 57 degrees 00 minutes 04 seconds east, 501.68 feet to a point for corner;

thence north 37 degrees 18 minutes 11 seconds east, 2,802.65 feet to a point for corner;

thence north 79 degrees 03 minutes 47 seconds east, 798.87 feet to a point for corner;

thence north 15 degrees 34 minutes 53 seconds east, 2,200.00 feet to a point for corner located on the north harbor line of Pelican Island;

thence along said north harbor line south 63 degrees 00 minutes 45 seconds east, 306.04 feet to a point for corner;

thence leaving said harbor line south 15 degrees 34 minutes 53 seconds west, at 1,946.05 feet past the northwesterly corner of Seawolf Park, in all a total distance of 2,285.87 feet to the southwesterly corner of Seawolf Park;

thence along the southeasterly line of said Seawolf Park, south 74 degrees 25 minutes 07 seconds east, 421.01 feet to a point for corner;

thence continuing along said line south 65 degrees 12 minutes 37 seconds east, 93.74 feet to a point for corner;

thence south 63 degrees 00 minutes 45 seconds east, 800.02 feet to a point for corner on Galveston Channel Harbor Line;

thence along said Galveston Channel Harbor Line as follows:

south 15 degrees 14 minutes 01 second west, 965.95 feet to a point,

south 74 degrees 26 minutes 20 seconds east, 37.64 feet to a point,

south 15 degrees 33 minutes 40 seconds west, 2,779.13 feet to a point,

south 36 degrees 18 minutes 31 seconds west, 1,809.93 feet to a point,

south 36 degrees 24 minutes 57 seconds west, 190.98 feet to a point,

south 40 degrees 37 minutes 46 seconds west, 558.04 feet to a point,

south 49 degrees 02 minutes 41 seconds west, 558.16 feet to a point,

south 53 degrees 15 minutes 03 seconds west, 1,557.49 feet to a point,

south 55 degrees 34 minutes 51 seconds west, 455.45 feet to a point,

south 60 degrees 14 minutes 23 seconds west, 455.37 feet to a point,

south 62 degrees 34 minutes 14 seconds west, 426.02 feet to a point,

south 68 degrees 11 minutes 32 seconds west, 784.25 feet to a point,

south 79 degrees 26 minutes 20 seconds west, 784.21 feet to a point,

south 85 degrees 03 minutes 42 seconds west, 761.77 feet to a point,

south 86 degrees 42 minutes 35 seconds west, 1,092.97 feet to a point,

north 89 degrees 59 minutes 40 seconds west, 827.53 feet to a point,

north 88 degrees 20 minutes 24 seconds west, 1,853.01 feet to a point,

south 62 degrees 11 minutes 55 seconds west, 45.94 feet to a point,

north 88 degrees 04 minutes 15 seconds west, 653.80 feet to a point, and

north 78 degrees 19 minutes 36 seconds west, 1,871.96 feet to a point for corner located on the Mean High Water Line (0.88 foot contour line, above sea level datum);

thence leaving said Harbor Line and following the meanders of said Mean High Water Line along Galveston Bay as follows:

north 26 degrees 26 minutes 35 seconds west, 1,044.28 feet to a point,

north 25 degrees 25 minutes 56 seconds east, 242.71 feet to a point,

north 16 degrees 42 minutes 01 second west, 270.77 feet to a point,

north 10 degrees 04 minutes 05 seconds west, 508.36 feet to a point,

north 11 degrees 21 minutes 01 second west, 732.39 feet to a point,

north 03 degrees 45 minutes 31 seconds west, 446.34 feet to a point,

north 03 degrees 08 minutes 15 seconds west, 566.01 feet to a point,

north 02 degrees 48 minutes 50 seconds west, 288.02 feet to a point,

north 06 degrees 53 minutes 40 seconds west, 301.48 feet to a point,

north 19 degrees 04 minutes 56 seconds east, 407.38 feet to a point,

north 12 degrees 28 minutes 05 seconds east, 346.79 feet to a point,

north 01 degrees 30 minutes 23 seconds east, 222.91 feet to a point, and

north 08 degrees 08 minutes 07 seconds east, 289.74 feet to a point for corner;

thence leaving said Mean High Water Line north 84 degrees 43 minutes 15 seconds east 10,099.75 feet to the point of beginning and containing 1,903.6655 acres of land.

(2) All of that certain tract of 206.6116 acres of land, being part of an out of Pelican Island, in the city of Galveston, Galveston County, Texas, and being more particularly described by metes and bounds are follows:

Beginning at the most northwesterly corner of the Pelican Spit Military Reservation, as described in the Deed from the city of Galveston unto the United States of America, dated April 29, 1907, and recorded in Book 221, at Page 416 of the Office of the County Clerk of Galveston County, Texas, said point being Pelican Island Coordinates N=15, 171.20 and E=11,533.92;

thence north 29 degrees 11 minutes 52 seconds east, a distance of 100.00 feet to a 2-inch iron pipe for corner, said corner being the most southerly corner of the herein described tract, and place of beginning:

thence north 60 degrees 48 minutes 08 seconds west, a distance of 3,000.00 feet to a 2-inch pipe for corner;

thence north 29 degrees 11 minutes 52 seconds east, a distance of 3,000.00 feet to a point for corner;

thence south 60 degrees 48 minutes 08 seconds east, a distance of 3,000.00 feet to a point for corner;

thence south 29 degrees 11 minutes 52 seconds west, a distance of 3,000.00 feet to the place of beginning, containing 206.6116 acres.

(3) Beginning at point "H" (point "H" is also known as point "3" on Pelican Island Harbor Line), the coordinates of which are South 8,827.773 meters and East 11,483.592 meters, on Pelican Island proposed harbor line;

thence with harbor line north 61 degrees west 800 feet;

thence south 17 degrees 35 minutes 38 seconds west 2,200 feet;

thence south 61 degrees east 800 feet to proposed harbor line;

thence with proposed harbor line north 17 degrees 35 minutes 38 seconds east to the place of beginning and containing 39.88 acres, more or less, together with all buildings, utilities, and improvements thereon.

(4) Beginning at a point in the westerly property line of the tract described in paragraph (3), said point being 285.00 feet bearing north 17 degrees 35 minutes 38 seconds east from the southwest corner of said tract;

thence north 72 degrees 24 minutes 22 seconds west, a distance of 346.00 feet;

thence north 14 degrees 58 minutes 09 seconds east, a distance of 610.00 feet;

thence south 72 degrees 24 minutes 22 seconds east, a distance of 374.00 feet;

thence south 17 degrees 35 minutes 38 seconds west, a distance of 609.36 feet to the point of beginning and containing 5.036 acres of land, more or less.

(5) Beginning at the southwest corner of the tract described in paragraph (3);

thence north 63 degrees 11 minutes 52 seconds west, a distance of 93.74 feet to a point for corner;

thence north 72 degrees 24 minutes 22 seconds west, a distance at 421.01 feet to a point for corner;

thence north 17 degrees 35 minutes 38 seconds east, a distance of 339.82 feet to a point for corner;

thence south 82 degrees 24 minutes 22 seconds east, a distance of 86.03 feet to a point for corner;

thence north 77 degrees 11 minutes 26 seconds east, a distance of 89.12 feet to a point for corner in the westerly line of the tract described in paragraph (4);

thence south 14 degrees 58 minutes 09 seconds west, with said westerly line, a distance of 130.00 feet to a point for corner, the southwest corner of the tract described in paragraph (4);

thence south 72 degrees 24 minutes 22 seconds east with the southerly line of the tract described in paragraph (4), a distance of 346.00 feet to a point for corner, the southeast corner of the tract described in paragraph (4);

thence south 17 degrees 35 minutes 38 seconds west with the westerly line of the tract described in paragraph (3), a distance of 285.00 feet to the point of beginning, containing 3.548 acres of land, more or less.

(b) AREAS EXCLUDED FROM DECLARATION OF NONNAVIGABILITY.—Notwithstanding the declaration under subsection (a), the following portions of Pelican Island, Texas, within those lands described in subsection (a) shall remain navigable waters of the United States:

(1) Out of the Eneas Smith Survey, A-190, on Pelican Island, the 2.7392 acre tract, the 3.2779 acre tract, and the 2.8557 acre tract described in the Perpetual Easements dated May 9, 1975, from Mitchell Development Corporation of the Southwest to the United States, recorded on pages 111 through 122 of Book 2571 of the Real Property Records in the Office of the County Clerk of Galveston County, Texas.

(2) Out of the Eneas Smith Survey, A-190, on Pelican Island, the 1.8361 acre tract of land described in Exhibit "B" of the Specific Location of Pipeline Easement dated July 30, 1975, by and between the Mitchell Development Corporation of the Southwest, the United States of America, and Chase Manhattan Bank (National Association), recorded on pages 9 through 14 of Book 2605 of the Real Property Records in the Office of the County Clerk of Galveston County, Texas.

(3) For each of the four tracts of land described in paragraphs (1) and (2) of this subsection, a 40-foot wide strip of land along, adjacent and parallel to, and extending the full length of, the easterly boundary line of the tract and a 40-foot wide strip of land along adjacent and parallel to, and extending the full length of, the westerly boundary line of the tract.

(c) LIMITS ON APPLICABILITY; REGULATORY REQUIREMENTS.—The declaration under subsection (a) shall apply only to those parts of the areas described in subsection (a) of this section and not described in subsection (b) of this section which are or will be bulkheaded and filled or otherwise occupied by permanent structures or other permanent physical improvements, including marina facilities. All such work is subject to applicable Federal statutes and regulations, including sections 9 and 10 of the Act of March 3, 1899 (commonly known as the Rivers and Harbors Appropriation Act of 1899; 33 U.S.C. 401 and 403), section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) *Expiration Date.*—If, 20 years from the date of the enactment of this Act, any area or part thereof described in subsection (a) of this section and not described in subsection (b) of this section is not bulkheaded or filled or occupied by permanent structures or other permanent physical improvements, including marina facilities, in accordance with the requirements set out in subsection (c) of this section, or if work is not commenced within 5 years after issuance of any permits required to be obtained under subsection (c), then the declaration of nonnavigability for such area or part thereof shall expire.

BREAUX AMENDMENT NO. 1389

Mr. LEVIN (for Mr. BREAUX) proposed an amendment to amendment No. 1387 proposed by Mr. LEVIN (for Mr. HOLLINGS) to the bill S. 1297, supra, as follows:

At the appropriate place, insert the following new section:

NATIONAL MARITIME ENHANCEMENT INSTITUTES

SEC. . Section 8(e) of the Act entitled "An Act to authorize appropriations for fiscal year 1990 for the Maritime Administration, and for other purposes", approved October 13, 1989 (46 App. U.S.C. 1121-2(e)), is amended by striking "$100,000" and inserting in lieu thereof "$500,000".

CONDEMNING THE MASSACRE OF EAST TIMORESE CIVILIANS

PELL AMENDMENT NO. 1390

Mr. LEVIN (for Mr. PELL) proposed an amendment to the concurrent resolution (S. Con. Res. 77) condemning the massacre of East Timorese civilians by the Indonesia military, as follows:

(a) FINDINGS.—The Congress finds that—

(1) On November 12, 1991, Indonesian security forces killed 75 to 100, according to Department of State reports, and injured as many as 100 people when they fired on a Roman catholic funeral procession in which demonstrators were attempting to place flowers on the grave of a youth killed by Indonesian troops on October 28, 1991, in Dill, East Timor;

(2) Indonesian soldiers also beat several foreign journalists, including two Americans from the New Yorker and Pacifica Radio, who were observing the procession;

(3) Indonesia, in violation of international law, illegally invaded East Timor in 1975, annexing the territory without consideration for the rights of self-determination enjoyed by the East Timorese;

(4) tens of thousands out of a population of approximately 600,000 died in the fighting, famine, and disease that followed Indonesia's invasion of East Timor;

(5) since Indonesia's invasion, a state of intermittent conflict continues to exist in East Timor and Amnesty International, Asia Watch, and other international human rights organizations frequently report human rights abuses, including torture, arbitrary arrest and repression of freedom of expression;

(6) the Government of Indonesia continues to restrict access by international organizations and foreign journalists to East Timor; and

(7) the United States and Indonesia have maintained close bilateral relations for the past twenty-five years, including a program of economic and military assistance which totalled $50 million in FY 1991.

(b) STATEMENT OF POLICY.—It is the sense of the Congress

(1) the President should reassess immediately the International Military Educational Training program for the Indonesian government to ensure that these training programs are advancing effectively human rights;

(2) now that a U.S. embassy team has visited East Timor the American ambassador to indonesia should immediately seek to visit East Timor in order to investigate reports of the atrocity and reports of additional repression by Indonesian authorities;

(3) the President should request that a report be made available by the United Nations Special Rapporteur on Torture, who was in East Timor during the massacre, as soon as possible to the General Assembly;

(4) the President should support the immediate introduction of a resolution in the General Assembly instructing the United Nations Commission on Human Rights to appoint a Special Rapporteur for East Timor to assist in the resolution of the East Timorese conflict in pursuit of the right of self-determination by the East Timorese people;

(5) the President should request that the Government of Indonesia permit an investigation by the United Nations Special Rapporteur on Summary and Arbitrary Executions of the situation in East Timor;

(6) the President should encourage the Secretary General of the United Nations and the governments of Indonesia and Portugal, and the East Timorese to arrive at an internationally acceptable solution which addresses the underlying causes of the conflict in East Timor, and

(7) the President should request that the Government of Indonesia establish an independent commission to investigate the cause of the atrocity and to assist the prosecution of those responsible for the massacre.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON NUCLEAR REGULATION

Mr. LEVIN. Mr. President, I ask unanimous consent that the Sub-

committee on Nuclear Regulation, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, November 21, beginning at 9:30 a.m., to conduct a hearing on international nuclear safety standards.

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

SUBCOMMITTEE ON EUROPEAN AFFAIRS AND SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs jointly with the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Regulations be authorized to meet during the session of the Senate on Thursday, November 21, at 1:30 p.m., to hold a hearing entitled, "Broadcasting to China: Applying the Lessons from the European Freedom Radios".

COMMITTEE ON FOREIGN RELATIONS

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

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 21, at 2 p.m., to hold hearings on ambassadorial nominations.

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

SUBCOMMITTEE ON TERRORISM, NARCOTICS AND INTERNATIONAL OPERATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on Terrorism, Narcotics and International Operations of the Foreign Relations Committee be authorized to meet during the session of the Senate on Thursday, November 21, at 9 a.m., to hold a hearing on the narcotics and foreign policy implications of the BCCI affair.

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

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 A.M., November 21, 1991, to receive testimony on the effect of Foreign Service plan and timber sale appeals on timber supply.

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

COMMITTEE ON THE JUDICIARY

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, November 21, at 10 a.m., to hold an executive business meeting.

I. NOMINATIONS

United States District Judges

Monti L. Belot, of Kansas, to be United States District Judge for the District of Kansas.

David A. Faber, of West Virginia, to be United States District Judge for the Southern District of West Virginia.

Edith Brown Clement, of Louisiana, to be United States District Judge for the Eastern District of Louisiana.

Sam Sparks, of Texas, to be United States District Judge for the Western District of Texas.

Anne C. Conway, of Florida, to be United States District Judge for the Middle District of Florida.

United States Department of Justice

William Ho-Gonzalez, of Virginia, to be Special Counsel for Immigration-Related Unfair Employment Practices.

II. BILLS

S. 793. A bill to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes—DeConcini.

S. 313. A bill to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from a person who engages in torture extra judicial killing—Specter.

S. 826. A bill to establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purpose—Heflin.

S. 474. A bill to prohibit sports gambling under state law—DeConcini.

S. 758. A bill to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity—DeConcini.

S. 759. A bill to amend certain trademark laws to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of trademarks, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity—DeConcini.

S. 654. A bill to amend title 35, United States Code, with respect to patents on certain processes (as amended by subcommittee)—DeConcini.

S. 1521. A bill to provide a cause of action for victims of sexual abuse, rape, and murder, against producers and distributors of hard-core pornographic material—McConnell.

S. 580. A bill to amend title 11 of the United States Code to exclude from the estate of the debtor certain interests in liquid and gaseous hydrocarbons—Bentsen.

S. 120. A bill for the relief of Timothy Bostock (as amended by subcommittee)—Inouye.

S. 800. A bill for the relief of Carmen Victoria Parini, Felix Juan Parini, and Sergio Manuel Parini—Packwood.

S. 1776. A bill to amend the Immigration and Nationality Act with respect to the admission of O and P nonimmigrants—Kennedy.

S. 1941. A bill to amend the Immigration and Nationality Act for the purpose of reforming procedures for the resettlement of refugees of the United States—Kennedy.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on November 21, 1991, beginning at 9:30 a.m., in 485 Russell Senate Office Building, on S. 1705, a bill to resolve claims of the Sisseton-Wahpeton Sioux Tribe of South Dakota, the Devils Lake Sioux Tribe of North Dakota, and the Sisseton-Wahpeton Sioux Council of the Assiniboine Sioux Tribe of Montana arising out of a judgment fund distribution.

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

COMMITTEE ON SMALL BUSINESS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Thursday, November 21, 1991, at 9:30 a.m. The Committee will hold a full Committee hearing on business and investment opportunities in Eastern Europe, the Baltic States, and the Soviet Union.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 21, at 4 p.m., to hold a closed hearing with former Ambassador to Iraq, April Glaspie.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 21, at 6 p.m., to hold ambassadorial nominations hearings.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 21, at 3:30 p.m., to hold a hearing on an ambassadorial nomination.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 21, at 10 a.m., to hold a hearing on the international covenant on civil and political rights—Executive E, 95-2.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on Near Eastern and South Asian Affairs of the Committee on Foreign Relations be authorized to meet

during the session of the Senate on Thursday, November 21, at 8 a.m., to hold a hearing on whether the Senate should proceed to investigate circumstances surrounding the release of the American hostages in 1980.

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

COMMITTEE ON ARMED SERVICES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session on Thursday, November 21, 1991, at 4 p.m., to consider the nomination of Leo P. Duffy to be Assistant Secretary of Energy for Environmental Restoration and Waste Management.

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

COMMITTEE ON ARMED SERVICES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in closed session on Thursday, November 21, 1991, at 9:30 a.m., to discuss the fiscal year 1992 defense appropriations bill conference report and to continue to discuss Air Force nominations.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, November 21, 1991, at 9:30 a.m., for a hearing on Finding Medical Cures: The Promise of Fetal Tissue Research.

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

ADDITIONAL STATEMENTS

IN RECOGNITION OF THE CONFIRMATION OF RICHARD CULLEN TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF VIRGINIA

• Mr. WARNER. Mr. President, I am extremely pleased to have this opportunity to take special note of the recent confirmation of Richard Cullen to be the U.S. attorney for the Eastern District of Virginia.

Richard is a highly qualified, successful attorney who will bring considerable talent and expertise to the position. His long tenure with the Richmond-based law firm of McGuire, Woods, Battle & Boothe—where he was a partner for the past 6 years—is testimony to his ability as a litigator. With his other professional experience and strong educational background, he brings with him facility as a scholar, adviser, and manager.

The eastern district, which extends from Washington's Virginia suburbs, south to Richmond and on to Tidewater, is one of the most active Federal judicial districts in our Nation. As U.S. attorney, Richard will be faced with the daunting task of dealing with an ever-increasing volume of cases, many of which address the most poignant issues of our day. The illicit drug trade continues to rank as a special challenge—one reason why the U.S. attorney's office now includes almost 90 lawyers. Fortunately, I can report, Mr. President, that cooperation among Federal, State, and local law enforcement officials is strong in the eastern district, which is a key to success in the fight against crime. Richard Cullen is dedicated to fostering that cooperation.

In one respect, the eastern district is one of the most important jurisdictions in the Nation: It counts both the headquarters of the Central Intelligence Agency and the Pentagon among its clients. I could not be more confident of a person's ability to meet the needs of those institutions, as well as to deal fairly with all Virginians, than I am of Richard's. In fact, as interim U.S. attorney for the past month, he has already begun to demonstrate that ability.

Like many of my colleagues, Mr. President, I invest considerable time and care in the task of identifying and recommending highly qualified individuals in my State to serve as Federal officials or on the Federal bench. These positions are of crucial importance to the lives and liberties of all of us. It is particularly gratifying to me, therefore, to have recommended— and to have seen nominated by the President and confirmed by the Senate—someone whose work I so highly respect and whose company I so very much enjoy.

I have the highest personal regard for Richard, and I look forward to working with him and observing his many future successes.•

THE CONGRESSIONAL CALL TO CONSCIENCE

• Mr. LEVIN. Mr. President, I bring to the attention of the Senate the case of Yan Satanovsky of Moscow, a Soviet Jew who has sought to emigrate since 1979.

When Mr. Satanovsky and his family first applied for permission to emigrate to Israel, they were refused on the grounds of secrecy. They were refused repeatedly, most recently in June of 1990 when their appeal to the Weapons Ministry of the Soviet Government was turned down. But, Mr. President, the secret work for which Mr. Satanovsky was denied permission to emigrate was his job at the Ministry of Machine Building, a job he left in 1974.

It has now been 17 years since Mr. Satanovsky supposedly had access to secrets and 12 years since he first applied to emigrate. He has the dubious distinction of being possibly the oldest active refusenik case.

There have been great changes in the former Soviet Union during the past few years. The movement of Soviet Jews is truly an exodus of Biblical proportions. New laws on immigration have been enacted, but not fully implemented. There are still practices which are inconsistent with the new law. And even though they have set a 5-year limit on secrecy, there are two problems in the case of the Satanovsky family: the secrecy limitation law will not be implemented until January 1, 1993, and, the law has a clause that allows individual cases to be stretched out for prolonged periods.

Mr. President, I hope the case of the Satanovsky family is resolved soon. I hope the leaders of the new central government of the former Soviet Union, who have become more willing to recognize human rights, will acknowledge the injustice being done to this family. I hope that my colleagues will understand that there is still a need for vigilance and still a need for action until all refuseniks have been allowed to emigrate.•

SMALL TOWN TRIUMPH

• Mr. SYMMS. Mr. President, today I rise to bring to the attention of my colleagues the innovative solution one rural community has found to help solve the rural health care crisis. Like most rural communities, Weiser, ID, is facing tremendous challenges to their efforts to provide adequate health care to its residents. Weiser's problems were exacerbated by the retirement of two physicians who had served their community for many years.

Mr. President, I ask that the very interesting article from the November 11, 1991 edition of the American Medical (Association) News be printed in the RECORD so it is available for people who share my concern over conditional of rural health care today.

Although I have introduced legislation to assist rural communities, and we have had some success in leveling the playing field, so to speak. Rural Americans still face tremendous obstacles in assuring that they will have adequate medical care.

The people of Weiser, a community near my hometown in southwest Idaho, took matters into their own hands—and succeeded.

The article follows:

SMALL TOWN TRIUMPH

(By Arnold Q. Collins)

WEISER, ID.—When this farm town of 4,700 signed a new physician in mid-October, hospital and town officials were in a celebratory mood.

The contract signing, at the polished dining table of Weiser's foremost bed-and-breakfast inn, ended a three-year search for a family physician. It punctuated an outpouring of community spirit and small-town hoopla that had buoyed Deland Barr, DO, and his wife, Salley, through a four-day visit to western Idaho.

Dr. Barr, of Wellington, Kan., was the answer to Weiser's prayers. An experienced family physician, he delights in doing obstetrics and was willing to cover the emergency room at the 27-bed Weiser Memorial Hospital.

Dr. Barr, 40, is a good-humored man, of stocky build, bearded and balding. He is leaving a successful practice in the flatlands of Kansas because "at 40 you stop and take a look at your life." He and his wife had always dreamed of living near mountains. In Weiser, the mountains begin just north of the potato and onion fields. Of his new, two-year contract. Dr. Barr says he's had "more misgivings signing house loans than doing this."

Administrator Phil Lowe of Memorial Hospital calls Dr. Barr "a natural, a perfect fit." Salley Barr, hoping to complete a master's in social work, has been offered employment at the hospital.

But the match-up didn't come easily. For three years, Weiser worried, planned, educated, raised funds and searched.

Weiser, named for a member of the Lewis and Clark expedition (and pronounced to rhyme with "Caesar"), is on the Snake River, which separates Idaho from Oregon. It is the largest of three towns in Washington County and has the only hospital, which serves 8,500 county residents and 1,500 inhabitants of adjacent Malheur County, Ore.

Of the three physicians practicing in town, two are about to retire. A third, Bryan Drake, DO, knew he could not handle the patient load and said he would leave unless help could be found. "Everyone was telling me, 'That's the best of all possible worlds—you'll make money hand over fist,'" says Dr. Drake, who is 38. "But you burn out and leave, and it's not healthy for the patients either, to be herded through like cattle and not well taken care of."

If Dr. Drake had left, only one physician would have remained in the county and he, too, is nearing retirement.

In 1988, shortly after his arrival in Weiser, Lowe identified the physician crunch as the hospital's No. 1 priority. With no doctors, the hospital would close and patients would have to travel to Ontario, Ore., 20 miles away, a hardship to the many elderly residents and a danger in cases of farming accidents and other emergencies.

In addition, the county's Economic Development Commission projected that a loss of physicians would depress the economy. Weiser Care, the town's nursing home, and Weiser Shelter Home, its retirement village, both depend on the town's doctors and, with the hospital, provide 132 jobs, with an annual payroll of $1.5 million.

For a year, the hospital sought a physician unsuccessfully. "We have all of these attractions—skiing, hunting, fishing, boating and camping," Lowe says. "But I can give you examples of hospitals that tried [marketing] the same things—and they're closed."

In January 1989, the hospital formed a physician-recruitment committee. Chaired by Lowe, it included a county commissioner, city attorney, liaison member from the northern part of the county, local business owners, clergy and the superintendent of schools.

Town meetings were held and residents made donations to a physician-recruitment fund, to be used for search fees, mailings and entertaining possible recruits. There were fund-raising car washes, sales of baked goods and Christmas trees, and canvasses of local businesses.

The committee contacted the Rural Health Education Center in Boise, a private nonprofit corporation providing consultation to rural areas. The center searched its database and provided 40 to 50 names. Three were considered suitable for practice in Weiser and were brought in for interviews, but none of the meetings produced a solid candidate. For its services, the center charges a $500 annual subscription fee, plus $6,000 to $8,000 for a successful placement.

But Weiser, by its organization and persistence, ran into a stroke of good luck. In June it was chosen by Merritt, Hawkins & Associates of Irving, Texas, a large, retained-consultant firm, as recipient of Merrit, Hawkins' first annual pro bono search.

The company cited Weiser's "most complete and impressive" application, which included a chronology of the community's efforts to find a physician, testimony from former patients who had undergone life-saving interventions at Memorial Hospital and letters of support from an array of officials including U.S. senators and representatives.

The award put an 80-person national firm in Weiser's corner while saving the town the $17,000 to $20,000 in fees that Merritt Hawkins normally charges for its services.

Company officials say their success rate is 90%—compared with an industry-wide rate of about 48%—largely because they refuse to work with towns where the physician compensation package is too low.

Dr. Barr had contacted Merritt Hawkins looking for a job in Colorado or another place where he could ski. His wife, though born in South Carolina, had spent some childhood years living in the Himalayas, so was more than ready to introduce their three sons to the mountains of Idaho.

The search firm's chief officer, Joseph Hawkins, emphasizes that Dr. Barr was a real find. "Imagine a family practitioner making $120,000-plus. Ask him to move to the middle of nowhere, to a hospital that might be closed in five years."

During an initial trip to Idaho, the Barrs were greeted by signs and banners, treated to receptions and barbecues, and taken sightseeing. They experienced the town's hospitality—and its concern, says county development aide Jeanette Anderson. "Without doctors, this town would just fall. We can't imagine a worse situation."

The subsequent, contract-clinching visit came Oct. 17-20, homecoming weekend at Weiser High School.

Accompanied by a team of Merritt Hawkins consultants, the Barrs toured the hospital and met with Edward R. Wheeler, MD, the retiring physician whose practice Dr. Barr will take over after an initial period of partnership. "I met a laid-back guy pretty much like myself," Dr. Barr says. "I just knew we could work together."

The couple moved on to a luncheon in the downtown mini-mall, accepted salutes in the homecoming parade, toured again, and were feted at a barbecue replete with country fiddlers. Later they were singled out for applause during the victorious football game.

Weiser's real victory came the next morning when Dr. Barr signed a contract in which the hospital guaranteed him $430,000 a year for two years—28.5 percent more than the national average for family physicians. Says Dr. Wheeler, "He has common sense. Weiser needs him. I think he'll do fine."

The national news media covered the event, a source of amusement to Dr. Barr. "Its a real big deal," he says, "about someone who's just looking for a job."

But the attention reflects the critical state of the physician shortage in rural communities. Weiser's successful search does provide a few clues for other underserved areas: The town used a provident and businesslike approach, rallied community support, employed a search agency and offered a generous financial package.

However, the odds against small rural communities are mounting. The current shortfall of rural physicians is estimated at 11,142 by the National Rural Health Assn. and the pool of rural doctors in diminishing, with an estimated 26% nearing retirement.

Meanwhile, only 1.5% of medical students graduating last year declared an interest in rural practice, according to the Assn. of American Medical Colleges.

Making matters worse, few physicians seem willing to relocate from cities to rural areas. In rural recruitment, "there is a certain amount of robbing Peter to pay Paul," admits Merritt Hawkins information aide Phil Miller. "We'd like to take them from cities and put them into the rurals, but most of the physicians willing to practice in the rurals are already there."

Dr. Barr's situation is a case in point. A strong irony involved in his successful recruitment by Weiser is that Wellington, which he will leave next July, is also critically underserved.

President-elect Larry R. Anderson, MD, of the Kansas Medical Society has a family practice in Wellington. He says that Sumner County will be losing "a fine and active physician" in Dr. Barr. When it does, a county that had 19 doctors in 1976 will be left with only 10.

Dr. Barr agrees that to look just at Weiser's success is "missing the boat." But its future might have been grim without him. He looks forward to being there, and to pitching in.•

FIFTY YEARS OF SERVICE

• Mr. LEVIN. Mr. President, on Wednesday, December 4, 1991, members of the U.S. Tank Automotive Command [TACOM] will gather to honor three outstanding employees: Henry B. Jones, Director of Procurement and Production; Sophia T. Sapielak, accounting technician; and Samuel Letman, materials engineering technician. Each of these fine individuals will be celebrating 50 years of loyal service to the U.S. Government.

Mr. Jones began his career with the U.S. Government as a junior engineering aide in October 1941. Through hard work and dedication, he rose to his current position as Director of Procurement and Production. He has demonstrated superior expertise within his field and has received numerous awards, most notably the Presidential Rank Award.

Mrs. Sapielak is retiring as an accounting technician, a position that she has held for more than a decade. She is a valuable part of the U.S. Tank Automotive Command organization whose proficiency in accounting and clerical skills will not easily be replaced. Her dedication is evidenced by the numerous awards she has received over the years, most recently the Special Act or Service Award.

Mr. Letman has most recently worked as a materials engineer techni-

cian for TACOM. He has made significant contributions to the security of our country as both a civilian employee and as a member of the Armed Forces. His research into the development of tank automotive rubber components has done much to strengthen our mobile ground forces. In 1990, he received the Highly Successful Performance Award.

These outstanding individuals have demonstrated extraordinary commitment to their professions and their country. They have earned the respect and admiration of all who know them. I salute them.•

MICKEY LELAND CHILDHOOD HUNGER RELIEF ACT OF 1991

• Mr. LEAHY. Mr. President, at a time when thousands of Americans are losing their jobs because of the recession, the United States must do more to feed the hungry and help the newly-unemployed. This legislation will help cushion the shock for families hardest hit by the recession.

Current economic policies have failed.

Let us look at the hard facts. Housing costs are skyrocketing—45 percent of low-income renters spend 70 percent of their paycheck on housing. Many of these families must often choose between feeding their children or keeping a roof over their heads.

The Mickey Leland bill that the Senate Agriculture Committee ordered reported today expands nutrition programs to meet the economic demands of the recession. This bill makes important improvements in the Child Care Food Program, the after-school child care program, and the Food Stamp Program.

Farmers, storekeepers, factory and steel workers across this country are sending their sons and daughters to school hungry every day. Millions of Americans are just two or three paychecks away from hunger.

The bad news is that one in every five children in America lives in poverty. The good news is that over 80 percent of food stamp benefits go to families with children.

The Mickey Leland bill, for example, adjusts shelter cost estimates to more accurately reflect real costs and provide necessary food stamp benefits. This bill also raises the vehicle asset limit, which food stamp recipients deduct from their income when calculating benefit levels. The current limit of $4,500, which was set over a decade ago, is increased to $5,500 and indexed to inflation.

The bill also allows more low-income children to participate in the Child Care Food Program and the after-school child care program. The Mickey Leland bill encourages absent fathers to meet their child support payments by not counting the first $50 of support paid or received each month as income for purposes of calculating food stamp payments.

These provisions recognize the economic realities of providing for a family, and act as a safety net that helps put food on the table of working, now struggling Americans.

This year the administration wants to build four B2 bombers. With the same $3.4 billion that these planes would cost, we could fund the entire Mickey Leland bill for 2 years.

I have said time and time again that a country as wealthy as ours has the money to provide for its own—unfortunately the administration seems to have an economic plan for every nation in the world except this one.

I have been working with members of the Senate Agriculture, Budget, and Finance Committees to fund this bill. To date, no agreement has been reached.

I have pledged that I will not take this bill to the floor of the Senate until we reach a funding agreement that can be met within the budget. This represents the same understanding as in the House Agriculture Committee. The passage of the Mickey Leland bill by the Senate Agriculture Committee is a positive step toward realizing a funding agreement.

I want to work with Senate leadership, in a bipartisan fashion, to fund the Mickey Leland bill. I deeply appreciate the cooperation of all the committee members regarding this bill. Senator HARKIN, as chairman of the Nutrition Subcommittee has been a major supporter of nutrition programs over the years.

Nutrition issues are not partisan in this committee. For years Senator DOLE has worked to maintain a bipartisan tradition when it comes to nutrition programs. That tradition has been maintained by the ranking member, Senator LUGAR, who has become a leader on this issue.

Senator MCCONNELL, the ranking member of the subcommittee, has brought forward excellent ideas especially regarding child nutrition programs. Two excellent provisions of this bill were originally introduced by Senator MCCONNELL. Senator MCCONNELL'S provisions would allow more low-income children to participate in the Child Care Food Program and encourage more schools to participate in the after-school child care snack program.

The Mickey Leland bill takes sensible steps to support working families who are struggling to ensure security and self-sufficiency for their families. I urge Congress to reach an agreement soon to fund this important bill.•

THE CRISIS IN CROATIA

•Mr. WIRTH. Mr. President, I rise today to support the Gore-Pell resolution on United States policy toward Yugoslavia. The violence in that country this year has already claimed thousands of lives and cost billions of dollars. Despite the efforts of European Community diplomats and more than a dozen cease-fire agreements, there is no end in sight to this tragic fighting.

It is now evident that President Milosevic of Serbia is seeking to create a Greater Serbia out of the ruins of the Yugoslav State. He used the June 25 Croatian declaration of independence as a spark to ignite the anger and fear of Serbs living in Croatia, and then fanned the flame of violence once it had ignited. Now he hopes to create a Serbian State with Kosovo, Vojvodina, Montenegro, and as much of Croatia, Bosnia-Herzegovina, and Macedonia as he can gather. These efforts are a clear assault on the fundamental principle of territorial integrity and the rule of law. This new state would be based on the kind of repression that the Serbian authorities have used in Kosovo Province against ethnic Albanians.

I am also troubled by the active participation of the Yugoslav Federal Army in the bloodshed. When fighting initially broke out between the Croatian militia and Serbian guerrillas, the Army declared that it would use its superior strength to act as a peacekeeping force. Instead, the army has fought alongside the Serbian guerrillas, attacking and killing the Croatian citizens it is constitutionally obliged to protect.

Moreover, the army has not limited its role to fighting the Croatian partisans. It has destroyed Croatian villages, creating hundreds of thousands of refugees, and in the last few weeks has been heavily shelling the magnificent walled city of Dubrovnik, with its irreplaceable treasures of Byzantine, Gothic, and Renaissance art and architecture. After an 11-week siege, the Croatian city of Vukovar was captured by the army this week amid widespread reports of atrocities and with the town itself almost completely leveled. After more than 4 months of fighting, the army and the Serbian guerrillas are in control of more than one-third of Croatian territory.

The Army has even attempted political assassination. On October 7, Federal jets bombed the Croatian Presidential Palace in Zagreb, while Franjo Tudjman, the Croatian President, was meeting with Ante Markovic and Stipe Mesic, the President and Prime Minister of Yugoslavia.

Mr. President, this conflict may well have serious repercussions extending far beyond the borders of Yugoslavia. Since World War II, no border in Europe has been redrawn by force of arms. Serbian efforts to annex portions of Croatia are a dangerous precedent, particularly now, as the opening of Eastern Europe has allowed a number of border disputes and ethnic conflicts to rise to the surface. Bulgaria and Greece

have long been interested in Macedonia. Should the conflict spread there, they may become involved. The ethnic Albanians of Kosovo may take the opportunity presented by this war to press their efforts to join Albania. The mass movement of Croatian refugees into Hungary may drag that country into the war if the Yugoslav Army decides that refugee camps there are providing a safe haven for Croatian fighters. Thus, this war has the potential to widen significantly, destabilizing the region.

As a Member of the Commission on Security and Cooperation in Europe, I do not want to look back in a few years and wonder why we didn't do everything in our power to stop this tragedy before it got out of hand. I appreciate the administration's decision to let the European Community take the lead in solving this conflict. It is first and foremost a European problem. With that said, I want to stress to the administration and to the members of this body that the stakes here are very high and the human tragedy enormous.

The reality is that European efforts at diplomacy have not stopped the bloodshed. I am pleased that the European Community has finally imposed trade sanctions against Serbia and that President Bush is supporting them. However, it is time to go further, because the peaceful and united Europe, which we have been working toward since 1945, is at stake. That is the purpose of the Gore-Pell resolution.

First, that resolution would call on the administration to begin consultations with our allies on the question of recognizing Slovenia, Croatia, and the other republics which have declared their independence from Yugoslavia. This will bring home to Serbia that its armed aggression will not be tolerated and cannot succeed. Recognition would make clear to Serbia that this is not just an internal problem that it can deal with as it chooses. This conflict has consequences for all of Europe.

The Yugoslav federation is not going to be reestablished out of this conflict. We must stop basing American policy on the assumption that the status quo ante can be restored. Slovenia is already well on its way to becoming a responsible member of the European family. Croatia is not likely to rejoin Yugoslavia in its present form. Moreover, Bosnia-Herzegovina and Macedonia have also declared their independence.

Second, the resolution calls for taking whatever steps are necessary to ensure that the United States is in full compliance with the European sanctions against Serbia.

Third, the resolution would provide for humanitarian assistance to the republics which have fighting on their territory. This would primarily be Croatia, but it would not limit out other Republics if the fighting spreads.

Fourth, the Gore-Pell resolution would place Serbia on notice that if its military assault on Croatia continues, the United States will support a strong U.N. Security Council response. Such a response could include the introduction of a U.N. peacekeeping force.

Fifth, the resolution would seek a clear and binding commitment from each republic to protect the rights of minorities on its territory, including a formal commitment to accept international inspection and, if necessary, arbitration to protect those rights. Because without protection for minorities we really have not solved anything, we've just changed one dictatorship for another.

Finally, the resolution would reaffirm our support for international efforts to bring about a restoration of peace and respect for the principle that territorial disputes cannot be settled by use of force.

Mr. President, let me emphasize that I am not criticizing the diplomatic efforts of the European Community. Diplomacy should always be the first step in dealing with any conflict. Unfortunately, diplomatic efforts to bring both sides to negotiate in good faith have not worked. It is now time for stronger measures to be considered.

Working with our European allies, we should be developing mechanisms to strengthen the economic and military embargo of Serbia, laying the groundwork for recognition, and working to bring the issue of a peacekeeping force before the Security Council. We must now play a larger role in this conflict, so that we can stop illegal attempts to change borders by force, and get the parties involved to settle their differences peaceably and agree on the political arrangements to take the place of the Yugoslav Federal Republic.

In concluding, I would like to note the valuable information and advice I have received on this issue from two prominent Coloradans—Mr. George Miketa of Pueblo, and Dr. Michael Muftic of Denver.●

VETERANS COMPENSATION IMPROVEMENT ACT

● Mr. SIMPSON. Mr. President, I would like to make a brief statement about S. 775, the veterans' radiation provisions bill for certain veterans. In particular, I am not convinced that this legislation is needed.

The Department of Veterans Affairs is concerned about this legislation because the department feels the presumptive disease regarding the urinary tract cancer is much too broad-based, and the scope of this disease should be limited. I fully agree. I, too oppose this provision because I feel it is unwarranted and simply a continuation of the expansion of presumptive diseases. There are currently 84 presumptive diseases and I do not believe the list should continue to grow.

At the same time, it pleases me to see that a compromise was reached regarding the examination of other activities involving exposure to ionizing radiation, between the Department of Veterans Affairs and the sponsors of this legislation.

This compromise ensures that the established VA Advisory Committee will be properly utilized and it will require the Committee to examine all material relating to exposure of veterans to ionizing radiation, and make recommendations to the Secretary of Veterans Affairs for further study. I worked diligently with Senators SPECTER and MURKOWSKI to hammer out this meaningful compromise on this provision of the bill.

I offer my support for this bill, but with caution. We must sound the cry regarding our fiscal situation and the huge national debt over $4 trillion. I urge my colleagues to look at what we already provide veterans in terms of benefits, health care, and other truly deserving programs.●

GARBAGE IMPORTED FROM CANADA

● Mr. LEAHY. Mr. President, S. 1884 requires that the Department of Agriculture (USDA), collect a fee of $150 per ton on garbage imported from Canada.

For a number of years the State of Vermont has been working to develop a new system for dealing with the solid waste problems. We have learned that we just cannot drive to the town dump every Saturday morning and think the problem is solved.

This has been a difficult process for Vermonters. It has cost Vermont taxpayers money. But we have made changes in our solid waste practices because they were necessary.

In the last few months there have been disturbing reports about Canadian garbage coming into the United States. Large amounts have entered both New York and Pennsylvania. It is my understanding that this garbage is coming into Vermont because Canadian cities have recently increased their dumping fees dramatically.

I know the big waste management companies think that they have found a good way to improve their bottom line.

I do not care.

I am concerned that the landfills in Vermont will be overwhelmed by this garbage and I want to stop this garbage from coming into the United States until we know what is happening.

This bill, which puts a $150/ton fee on this garbage, will stop this garbage from coming into the United States.

That is why I support it.●

AMENDING THE ALBERT EINSTEIN CONGRESSIONAL FELLOWSHIP PROGRAM

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of Senate Resolution 228 relating to the Albert Einstein Fellowship submitted earlier today by Senator HATFIELD.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 228) to amend the Albert Einstein Congressional Fellowship Program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Are there amendments? Is there debate? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 228) was agreed to, as follows:

S. RES 228

SECTION 1. FELLOWSHIP PROGRAM

Section 1 of the Senate Resolution entitled "A resolution to establish an Albert Einstein Congressional Fellowship Program" agreed to an August 2, 1991 (hereafter in this resolution referred to as the "Resolution") is amended—

(1) in subsection (a)—

(A) by striking "are" and inserting "is";

(B) by striking "three" and inserting "two"; and

(C) by striking "concurrent"; and

(2) in paragraph (3) of subsection (b), by inserting ", partial compensation" after "administration".

SEC. 2. SELECTION PROCESS.

Section 2 of the Resolution is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking "and" after the semicolon;

(B) in paragraph (3), by striking the period and inserting a semicolon and "and"; and

(C) by inserting at the end the following new paragraph—

"(4) convene a panel of representatives of not less than six scientific and educational societies to select the two recipients of the Senate fellowships.";

(2) by striking subsections (b) and (c);

(3) by inserting after subsection (a) the following new subsection:

"(b) INTERVIEWING.—Each fellowship recipient shall interview with various Senate committees and Senators' offices to determine the best placement for such Senate fellowship recipient.";

(4) by redesignating subsections (d), (e) and (f) as subsections (c), (d) and (e), respectively;

(5) in subsection (c) (as redesignated in paragraph (4)), by striking "Recipients" and inserting "Fellowship recipients";

(6) by amending subsection (d) (as redesignated in paragraph (4)) to read as follows:

"(d) COMPENSATION.—Each Senate fellowship recipient shall receive one-half of the funds made available pursuant to section 6(a) as the Senate contribution to such recipient's compensation. The remainder of such recipient's compensation shall be provided by the Triangle Coalition for Science and Technology Education."; and

(7) in subsection (e) (as redesignated in paragraph (4)), by striking "up to 1 year" and inserting "ten months".

SEC. 3. EVALUATION.

Section 3 of the Resolution is amended by striking "and member of the Senate referred to in section 2(b)" and inserting "or member of the Senate in whose office a Senate fellowship recipient is placed".

SEC. 4. FUNDING.

Subsection (a) of section 4 of the Resolution is amended—

(1) by striking "and 1992" and inserting ", 1992 and 1993";

(2) by striking "1991 and $42,500" and inserting "1991, $42,500"; and

(3) by inserting "and $45,000 for fiscal year 1993" before "for the Senate".

Mr. WARNER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

EXCLUSION OF TRUST INCOME OF INDIANS IN DETERMINING CERTAIN BENEFITS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 320, S. 754 to relating to Indians; that the bill be deemed read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements appear at the appropriate place in the RECORD.

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

So the bill (S. 754) to provide that a portion of the income derived from trust or restricted land held by an individual Indian shall not be considered as a resource or income in determining eligibility for assistance under any Federal or federally assisted program, was passed, as follows:

S. 754

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

SECTION 1. EXEMPTION.

Section 8 of the Act of October 19, 1973 (25 U.S.C. 1408) is amended by—

(1) inserting immediately after "lands" a comma and the following: "and income including interest up to $4,000 per annum derived therefrom,"; and

(2) inserting immediately after "resource" the following: "or income".

CONCERNING THE USE OF FORCED LABOR IN CHINESE PRISONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 216, regarding the use of forced labor in Chinese prisons, just received from the House, the resolution be agreed to and the preamble agreed to, and the motion to reconsider be laid upon the table.

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

So the concurrent resolution (H. Con. Res. 216) was agreed to.

The preamble was agreed to.

FORCED LABOR IN CHINA: AN INTERNATIONAL SCOURGE

Mr. SANFORD. Mr. President, the law of the United States is clear on the importation of goods produced by forced labor. China, though, continues to abuse its people and treat the international standards of human rights with a callous and cavalier defiance.

The legal history is not ambiguous. Over 100 years ago, the McKinley Trade Act of 1890 banned the importation of goods produced by convict labor. Forty years later, the Tariff Act of 1930 broadened the prohibition against the importation of prison-made goods into the United States. Most recently, on May 14, 1991, the Senate consented to ratification of the Convention Concerning the Abolition of Forced Labor (Convention No. 105) which was adopted by the International Labor Conference (40th session) at Geneva, Switzerland, on June 25, 1957.

The United States trade relationship with China is indisputably an important one, both for the immediate benefit of the exchange of goods and services but, more important, I would argue, for the long-term potential of United States influence in China to promote the respect for human rights and political participation. Overarching that long-term goal, the commitment that the United States has made to oppose forced labor is inherent in the very fabric of America as defined by our Bill of Rights.

The prevalence of forced labor in China is well-documented. It has been reported by the Congressional Research Service, Asia Watch, and the General Accounting Office. The July 23, 1991 GAO report summary stated that "forced labor is an integral part of the political, judicial, penal and economic systems in the People's Republic of China [PRC] and is practiced throughout the country." Mr. President, Most Favored Nation (MFN) status is designed for countries that act responsibly in the world community. China's record is reprehensible.

If forced labor as a humanitarian disgrace is not enough, consider the despicable example it sets about respecting international trade law. The disregard for international standards has a devastating impact on the U.S. textile industry in my State.

China is the largest single exporter of textiles and apparel to the United States, accounting for 14 percent of our total imports. It is no secret that the U.S. textile and apparel industry is in dangerous waters on all fronts. The North American Free Trade Agreement [NAFTA] continues to be negotiated. On November 7, 1991, the Fiber, Fabric and Apparel Coalition for Trade (FFACT) reported that the elimination of textile and apparel quotas currently being negotiated would result in a drop of as much as 60 percent in U.S. production and the loss of nearly one million jobs.

Facing the threatening outcome for the textile and apparel industry of NAFTA and the Uruguay round—both

legitimate trade agreements—how can we continue to expose our industry to the influx of Chinese textiles and apparel produced by the illegal labor of prisoners in inhumane conditions of squalor, disease, and abuse?

The steady increase of Chinese exports to the United States of products made with prison labor is not in the United States trade advantage nor is it acceptable to the United States conscience. I advocate continued relations with China. Therefore, the exposure of this Chinese policy must lead to its abolishment.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY ACT

Mr. LEVIN. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 1176, the Morris K. Udall Scholarship and Excellence in National Environmental Policy Act, and that the Senate then proceed to its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1176) to establish the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BURDICK. Mr. President I am pleased to join with my colleagues Senator CHAFEE and DECONCINI in urging the passage of S. 1176, legislation to authorize the Morris K. Udall Scholarship and Excellence in National Environmental Policy at the University of Arizona. For nearly 30 years the gentle giant from Tucson represented his constituents with dedication, intelligence, and above all humor.

It is fitting that Congressman Udall's alma mater, the University of Arizona will be the site of the Udall Center for Environmental Policy. Morris Udall and environmental protection have been synonymous all his life. Mo Udall stood for environmental protection long before it became part of America's vocabulary. His efforts concerning public land management, wilderness, wild and scenic river designation, surface mining regulation and reclamation are legendary.

Early in my Senate career I served on the Senate Committee on Interior and Insular Affairs. On numerous occasions I had the pleasure of working with Congressman Udall. We worked on many issues of vital importance to the West. Mo Udall was always fair, he was always a gentleman and his word was his bond.

Senator DECONCINI will offer an amendment to add the training of Indian health care professionals to the mission of the foundation. Few in Congress have done more to advance the well being of native Americans than Mo Udall. As a member of the Senate Select Committee on Indian Affairs I strongly support this amendment. The health care problems confronting native Americans are varied and cry out for solutions. I look forward to working in the future with native American health care professionals who will be Udall scholars.

Again I commend my colleague from Arizona, Mr. DECONCINI, for initiating this legislation. I urge all of my colleagues to support this bill as fitting tribute to a man who served his constituents and the Nation well for nearly 30 years.

Mr. CHAFEE. Mr. President, I am proud to be a sponsor, along with Senators DECONCINI, BURDICK, and others, of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Act.

I can think of no Member of Congress more deserving of this tribute than Mo Udall. He was an environmentalist before it was fashionable. His list of accomplishments on behalf of the environment and the preservation of natural resources is too long to enumerate.

As chairman of the Interior Committee in the House of Representatives, he infused an environmental ethic into our policies governing our national parks, mining and mineral exploration, government land, and Indian Tribes. The Alaska Lands Act and comprehensive laws governing strip mining stand as major accomplishments in the career of one of the most productive legislators of our time.

The Senator from Arizona [Mr. DECONCINI] should be commended for crafting this legislation. I am hopeful that all of my colleagues will join with us in honoring Mo Udall with this fitting tribute to his 30 years of service to the Nation.

AMENDMENT NO. 1386

(Purpose: To amend the bill regarding Native Americans and Alaska Natives)

Mr. LEVIN. Mr. President, I send an amendment to the desk on behalf of Senator DECONCINI and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. DECONCINI, proposes an amendment numbered 1386.

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

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

The amendment is as follows:

On page 2, line 8, strike "and".

On page 2, between lines 8 and 9, insert the following:

(3) Congressman Morris K. Udall has been a champion of the rights of Native Americans and Alaska Natives and has used his leadership in the Congress to strengthen tribal self-governance; and

On page 2, line 9, strike "(3)" and insert "(4)".

On page 4, strike lines 15 through 19, and insert the following:

who have shown leadership and interest in—

(A) the continued use, enjoyment, education, and exploration of our Nation's rich and bountiful natural resources, such as presidents of major foundations involved with the environment; and

(B) in the improvement of the health status of Native Americans and Alaska Natives and in strengthening tribal self-governance, such as tribal leaders involved in health and public policy development affecting Native American and Alaska Native communities.

On page 7, line 17, strike "and" after the semicolon.

On page 7, line 19, strike the period and insert a semicolon and "and".

On page 7, between lines 19 and 20, insert the following:

(7) develop resources to properly train Native American and Alaska Native professionals in health care and public policy.

On page 8, line 14, insert "and Native American and Alaska Native health care and tribal public policy" before the period.

On page 8, line 20, insert "and to outstanding Native American and Alaska Native undergraduate students who intend to pursue careers in health care and tribal public policy" before the period.

On page 9, line 19, insert "and to outstanding Native American and Alaska Native graduate students who intend to pursue advanced degrees in health care and tribal public policy," after "environment".

On page 10, line 1, strike "Deserving" and insert "deserving".

On page 10, line 4, strike the period and insert a semicolon and "and".

On page 10, between lines 4 and 5, insert the following:

(B) deserving and qualified Native American and Alaska Native individuals to participate in internships in Federal, State and local agencies or in offices of major public health or public policy organizations pursuant to section 5.

On page 10, line 11, strike "and".

On page 10, between lines 11 and 12, insert the following:

(C) to conduct research on Native American and Alaska Native health care issues and tribal public policy issues.

On page 10, line 12, strike "(C)" and insert "(D)".

Mr. DECONCINI. Mr. President, I am pleased that the Senate is today considering the Mo Udall Scholarship and Excellence in National Environmental Policy Act. This legislation is a fitting tribute to one of the finest individuals who has ever served in Congress. It is sponsored by 23 Senators, including the distinguished chairman and ranking member of the Environment and Public Works Committee.

Mo Udall was first elected to Congress in 1961 by a special election to replace his brother Stewart who was selected by President Kennedy to serve as the Secretary of Interior. During his

tenure in Congress, Mo worked tirelessly to serve the people of the Second Congressional District, the State of Arizona, and the Nation. Although he was a leader in a number of areas, Civil Service Reform, Health Care and Campaign Finance Reform among them, he will be especially remembered for his commitment to protecting our precious natural resources. He was the author of landmark legislation such as the strip mining bill of 1977, the Alaska Lands Act of 1980 and most recently the Arizona Desert Wilderness Act of 1990. Mo often said that, "a nation that does not love and respect its land, does not respect itself."

It is for this reason that I introduced the Mo Udall Scholarship and Excellence in National Environmental Policy Act. This legislation will establish a national foundation as an independent entity of the executive branch with the express purposes of: First, increasing the awareness of the importance and promoting the benefit and enjoyment of our Nation's natural resources; second, fostering among the American population a greater recognition and understanding of the role of the environment, public lands and resources in the development of the United States; third, identifying critical environmental issues; fourth, establishing a Program for Environmental Policy Research and an Environmental Conflict Resolution Program at the Udall Center for Studies in Public Policy on the campus of the University of Arizona; and fifth, developing resources to properly train professionals in the environment and related fields; and sixth, providing educational outreach on environmental issues.

To accomplish these goals, the legislation establishes a 10-member board of directors comprised of two Members of the House of Representatives, two Members of the Senate, two individuals selected by the President, the Secretaries of Interior and Education and two members from Mo's alma mater, the University of Arizona. The board will award scholarships, fellowships, internships, and grants to deserving individuals to pursue studies related to the environment.

The Foundation will also support the activities of the Udall Center on the campus of the University of Arizona. The Udall Center was established in 1987 to sponsor research and forums on a variety of critical public policy issues. Among the activities of the Udall Center that will be supported by the Foundation are the establishment of an environmental conflict resolution center, the creation of a repository for the Udall papers, and assembling an annual panel of experts to discuss contemporary environmental issues.

The legislation authorizes the creation of the Morris K. Udall Scholarship and Excellence in National Environmental Policy trust fund in the amount of $40 million which is to be administered by the Foundation. The proceeds of this trust fund will enable the Foundation to carry out the provisions of this legislation.

During consideration of the fiscal year 1992 Interior Appropriations bill, the Mo Udall Foundation was a topic of discussion between the House and Senate conferees for this legislation. There was unanimous praise for Mo by both his former House colleagues and the Senators on this conference committee. Accordingly, $5 million was included in this bill as an initial downpayment on the trust fund pending authorization. Also, in recognition of Mo's work on behalf of our Native Americans, Chairman YATES suggested that S. 1176 be amended to add the training of Indian health care professionals as a goal of the Foundation. I felt at the time, and still do, that this is an outstanding suggestion and therefore, I am offering an amendment that will do just that.

Also, to build on Mo's work on behalf of Indian self-determination, S. 1176 will also be amended so that the Foundation can provide scholarships to train native Americans in the field of public policy. As chairman of the House Committee on Interior and Insular Affairs, Mo was largely responsible for the passage of landmark Indian legislation such as the Alaska Native Claims Settlement Act, the Indian Financing Act, the Indian Self-Determination Act, the American Indian Policy Review Commission Act, the American Indian Religious Freedom Act, the Indian Child Welfare Act, the Indian Alcohol and Substance Abuse Prevention and Treatment Act, the Native American Grave Protection and Repatriation Act, and the Indian Child Protection and Family Violence Act.

Mr. President, Mo's efforts on behalf of our native American are nothing short of herculean. In the 14 years he was chairman of the House Interior Committee, over 184 Indian bills have been enacted into law. It is only appropriate that S. 1176 be amended to recognize Mo's efforts on behalf of the first Americans.

Mr. President, I want to thank the chairman and ranking member of Environment and Public Works Committee for their efforts to move this legislation forward. Without their assistance, we would not be here today.

Mr. President, this legislation will not only serve as a monument to one of our truly outstanding colleagues, but it will serve to prepare and train the next generation of leaders such as Mo Udall. I ask that my colleagues join me in supporting this legislation.

Mr. President, I ask unanimous consent that a list of Public Laws sponsored by Mo Udall be entered into the RECORD at this point. This list while not entirely complete, shows how prolific a legislator Mo was.

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

MORRIS K. UDALL LEGISLATIVE CAREER

87TH CONGRESS (1961–1962)

H.R. 7240—Authorizes an exchange of lands at Wupatki National Monument, AZ, to provide access to certain ruins to add certain federally owned lands. Became Public Law 87–136.

H.R. 10566—Provides for the withdrawal and orderly disposition of mineral interests in certain public lands in Pima County, AZ. Became Public law 87–747.

88TH CONGRESS (1963–1964)

H.R. 946—Authorizes the establishment of the Fort Bowie National Historic Site, in Arizona. Became Public Law 88–510.

H.R. 7419—Authorizes the conclusion of agreements with Mexico for joint construction, operation, and maintenance of flood control works on the lower Colorado River. Became Public Law 88–411.

89TH CONGRESS (1965–1966)

H.R. 1746—Defines "child" under the Civil Service Retirement Act to include adopted child but not stepchild for lump sum benefits. Became Public Law 89–407.

H.R. 3320—Authorizes the establishment of the Hubbell Trading Post National Historic Site, in Arizona. Became Public Law 89–148.

H.R. 6845—Provides that the basic compensation for teaching positions in overseas schools operated by the Department of Defense be the same as basic compensation for similar positions under the Government of the District of Columbia. Became Public law 89–391.

H.R. 7648—Authorizes long-term leases on the Papago Indian Reservation. Became Public Law 89–715.

H.R. 10281—Government Employees Salary Comparability Act

Title I. Federal Salary Adjustment Act—Provides for an increase in the compensation of Federal employees of approximately 4.5 percent. Provides for the reconsideration and review by the Civil Service Commission of "acceptable level of competence" for purposes of step increases. Increases to GS–10 (now GS–9) the maximum level at which overtime compensation may be paid.

Provides for similar increase in the compensation of Postal employees and relocation allowances for such employees who are transferred.

Provides similar increases for employees in Department of Medicine and Surgery of the Veterans' Administration, for officers, and employees in the Foreign Service, employees in the legislative branch, and employees in the judicial branch.

Provides for an additional adjustment of salary rates in 1966 and periodically thereafter to make the Federal salary schedule comparable to the rates paid by private industry.

Provides severance pay, up to 1 year's pay, for employees who are involuntarily (except for cause) separated from the service. Bases such as pay on years of service and age.

Title II. Federal Salary Review Commission Act—Provides for a 10 member Federal Salary Review Commission to review the compensation of Member of Congress, Justices, and salary levels under the Federal Executive Salary Act. Provides for the Commission to submit a report by January 1967, and periodically thereafter.

90TH CONGRESS (1967–1968)

H.R. 2154—Provides long term leasing for the Gila River Indian Reservation. Became Public law 90–182.

92ND CONGRESS (1971–1972)

H.R. 15869—Provides that an action for money damages brought by the United States on behalf of a recognized tribe, band, or group of American Indians shall not be barred unless the complaints filled more than six years and ninety days after the right of action is accrued. Became Public Law 92–353.

H.R. 13825—Provides that an action for money damages brought by the United States on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed more than eleven years after the right of action accrued or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later. Became Public Law 92–485.

93RD CONGRESS (1973–1974)

H.R. 7730—The Secretary of Interior is authorized and directed to acquire through purchase within the so called San Carlos Mineral Strip as of January 24, 1969, all privately owned real property, taking title thereto in the name of the United States in trust for the San Carlos Apache Indian Tribe. Became Public Law 93–530.

H.R. 3180—Franked Mail Amendment. The policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.

94TH CONGRESS (1975–1976)

H.R. 14227—Directs the Secretary of Agriculture to release the board of regents of the universities and State colleges of Arizona from the requirement that specified lands transferred by the United States for the use of the University of Arizona be used only for research or educational purposes.

95TH CONGRESS (1977–1978)

H.J. Res. 539—A resolution to amend the statute of limitations provisions in section 2415 of title 28, United States Code, relating to claims by the United States on behalf of Indians. Became Public law 95–64.

H.R. 4992—A bill to amend the Indian Financing Act of 1974 by revising the appropriations authorization for the Indian Business Development Program. Became Public law 95–68.

H.R. 8397—A bill to provide that a certain tract of land in Pinal County, AZ, held in trust by the United States for the Papago Indian Tribe, be declared a part of the Papago Indian Reservation. Became Public Law 95–361.

H.R. 10787—A bill to authorize appropriations for activities and programs carried out by the Secretary of the Interior through the Bureau of Land Management. Became Public Law 95–352.

H.R. 13972—A bill to designate the Great Bear Wilderness, Flathead National Forest, and enlarge the Bob Marshall Wilderness Flathead and Lewis and Clark National Forests State of Montana. Became Public Law 95–546.

H.R. 2—To provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes. Became Public law 95–87.

H.R. 3454—To designate certain endangered pubic lands for preservation as wilderness, and for other purposes. Became Public Law 95–237.

H.R. 10532—To amend Public Law 95–18, providing for emergency drought relief measures. An act to provide temporary authorities to the Secretary of the Interior to facilitate emergency actions to mitigate the impacts of the 1976–1977 drought. Became Public Law 95–226.

H.R. 13650—To authorize appropriations for activities and programs carried out by the Secretary of the Interior through the Bureau of Land Management. Became Public Law 95–352.

96TH CONGRESS (1979–1980)

H.R. 39—A bill to provide for the designation and conservation of certain public lands in the state of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes. Became Public Law 96–487.

H.R. 1825—A bill to protect archaeological resources owned by the United States, and for other purposes. Became Public Law 96–95.

H.R. 3661—A bill to increase the authorization of appropriations under the Act of December 22, 1974. Became Public Law 96–40.

H.R. 1885—A bill to amend Civil Service retirement provisions as they apply to certain employees of the Bureau of Indian Affairs and of the Indian Health Service who are not entitled to Indian employment preference and to modify the application of the Indian employment preference laws as it applies to those agencies. Became Public Law 96–135.

H.R. 5278—A bill to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments. Became Public Law 96–375.

97TH CONGRESS (1981–1982)

H.R. 2330—A bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes. Became Public Law 97–415.

H.R. 4364—A bill to declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, AZ. Became Public Law 97–386.

H.R. 5553—A bill to provide for the use and disposition of Miami Indians judgment funds in Dockets 124–b and 254 before the United States Court of Claims, and for other purposes. Became Public Law 97–376.

H.R. 6403—A bill to provide for the use and distribution of funds to the Wayndot Tribe of Indians in Docket 139 before the Indian Claim Commission and Docket 141 before the United States Court of Claims and for other purposes. Became Public Law 97–371.

H.R. 3809—A bill to provide for the development of repositories for the disposal of high level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high level radioactive waste and spent nuclear fuel, and for other purposes. Became Public Law 97–425.

H.R. 4707—A bill to designate certain National Forest Lands in the State of Arizona as wilderness, and for other purposes. Became Public Law 98–406.

98TH CONGRESS (1983–1984)

H.J. Res. 158—A joint resolution to make technical corrections in the Act of January 25, 1983. Became Public Law 98–608.

H.R. 1746—A bill to authorize appropriations for the Navajo and Hopi Indian Relocation Commission. Became Public Law 98–48.

H.R. 6206—A bill amending the Act of July 28, 1978 (P.L. 95–238) relating to the water rights of the Ak-Chin Indian Community and for other purposes. Became Public Law 98–530.

H.R. 4707—A bill to designate certain national forest lands in the State of Arizona as wilderness, and for other purposes. Became Public Law 98–406.

99TH CONGRESS (1985–1986)

H.R. 730—A bill to declare that the United States holds in trust for the Cocopah Indian Tribe of Arizona certain land in Yuma County, AZ. Became Public Law 99–23.

H.R. 1185—A bill to amend the Act establishing the Petrified Forest National Park. Became Public Law 99–250.

H.R. 2698—A bill to designate the United States Courthouse in Tucson, AZ, as the "James A. Walsh United States Courthouse". Became Public Law 99–213.

H.R. 4378—A bill to govern the establishment of commemorative works within the National Capital Region of the National Parks System, and for other purposes. Became Public Law 99–652.

H.R. 5430—A bill to amend the Gila River Pima-Maricopa Indian Community Judgment Distribution Plan. Became Public Law 99–493.

H.R. 1083—A bill to amend the Low-Level Radioactive Waste Policy Act to improve procedures for the Implementation of compacts providing for the establishment and operation of regional disposal for low-level radioactive waste; to grant the consent of the Congress to certain interstate compacts on low level radioactive waste; and for other purposes. Became Public Law 99–240.

H.R. 4216—A bill to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes. Became Public Law 99–503.

H.R. 4217—A bill to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolik Dam, and for other purposes. Became Public Law 99–469.

100TH CONGRESS (1987–1988)

H.J. Res 284—A joint resolution designating the week beginning June 21, 1987, as "National Outward Bound Week". Became Public Law 100–61.

H.R. 1963—A bill to amend the Surface Mining Control and Reclamation Act of 1977 to permit States to set aside in a special trust fund up to 10 per centum of the annual State funds from the Abandoned Mani Land Reclamation Fund for expenditure in the future for purposes of abandoned mine reclamation, and for other purposes. Became Public Law 100–34.

H.R. 2937—A bill to make miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes. Became Public Law 100–153.

H.R. 3479—An Act to provide clarification regarding the royalty payments owed under certain Federal Onshore and Indian oil and gas leases, and for other purposes. Became Public Law 100–234.

H.R. 1414—A bill to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve the procedures for liability and indemnification for nuclear incidents. Became Public law 100–408.

H.R. 4102—A bill to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, AZ and for other purposes. Became Public Law 100–512.

H.R. 4362—A bill to amend Section 3 of the Act of June 14, 1926, as amended (43 U.S.C. 869–2), to authorize the issuance of patents with a limited reverter provision of lands de-

voted to solid waste disposal, and for other purposes. Became Public Law 100-648.

H.R. 5232—A bill to grant the consent of the Congress to the Southwestern Low-Level Radioactive Waste Disposal Compact. Became Public Law 100-712.

H.R. 5261—A bill to authorize and amend the Indian Health Care Improvement Act, and for other purposes. Became Public Law 100-713.

H.R. 4754—A bill to amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes. Became Public Law 100-415.

H.R. 1044—A bill to establish the San Francisco Maritime National Historical Park in the State of California, and for other purposes. Became Public Law 100-348.

H.R. 1223—A bill entitled "Indian Self-Determination Amendments of 1987". Became Law 100-472.

101TH CONGRESS (1989-1990)

H.R. 2843—A bill to establish the Kino Missions National Monument in the State of Arizona. Became Public Law 101-344.

H.R. 2570—A bill to provide for the designation of certain public lands as wilderness in the state of Arizona. (Arizona Desert Wilderness Act of 1990; Fort McDowell Indian Community Water Rights Settlement Act of 1990; Sudbury, Assabet, and Concord Wild and Scenic River Study Act; Camp W.G. Williams Land Exchange Act of 1989; Take Pride in America Act; Civil War Sites Study Act of 1990; Clarks Fork Wild and Scenic River Designation Act of 1990.) Became Public law 101-628.

H.R. 5237—A bill to provide for the protection of Native American graves, and for other purposes. Became Public Law 101-601.

Mr. McCAIN. Mr. President, today the Senate will honor a great man and a national treasure: Morris K. Udall.

When I last addressed the Senate about Mo it was on the occasion of his retirement. I wondered how to find words to honor one who has achieved so much, who has served his country and his countrymen with such grace and distinction.

I realized words could never fully describe what Mo Udall means to Arizona and our Nation. They ring hollow in tribute to a life which has exemplified action and achievement.

Mo Udall figures prominently in the laws of our Nation, his values memorialized in a natural heritage which is richer and healthier because of him. He is a public figure of enormous significance to our Nation's history. But the true measure of Mo's legacy can be found in the smiles of the countless souls whose lives he has touched.

Above all Mo Udall is a man of talent and humor, courage, compassion and integrity. The only worthy tribute would be to ensure the Nation carries on the work he has so nobly advanced.

Today, the Senate will vote to create the Morris K. Udall Excellence in National Environmental Policy Foundation and Scholarship. Passage of the legislation will ensure that the excellence of Mo Udall, his passion for the responsible stewardship of our natural resources, will endure in the leaders of tomorrow.

I congratulate Senator DECONCINI on his leadership and hard work in bringing this initiative before the Senate. Passage of this legislation is our way of saying—thank you Mo Udall, we have learned from you and your work will be carried on.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1386) was agreed to.

The PRESIDING OFFICER. Is there further debate on the bill as amended?

Without objection, the bill is engrossed for a third reading, deemed read a third time and passed.

(The text of S. 1176, as passed today by the Senate, will be printed in a future edition of the RECORD.)

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the bill as amended, was passed.

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

The motion to lay on the table was agreed to.

A 6-MONTH EXTENSION OF THE COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION

Mr. LEVIN. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H.R. 3728, and the Senate proceed to its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3728) to provide for a 6-month extension of the Commission on the Bicentennial of the Constitution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LEVIN. Mr. President, the bill provides for a 6-month extension of the Bicentennial of the Constitution.

I ask unanimous consent the Senate proceed to its immediate consideration; the bill be deemed read a third time and passed; and the motion to reconsider be laid on the table.

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

The bill (H.R. 3728) was deemed read the third time and passed.

COAST GUARD AUTHORIZATION ACT OF 1991

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 253, S. 1297, the Coast Guard Authorization Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1297) to authorize appropriations for the Coast Guard for fiscal years 1992 and 1993, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Coast Guard Authorization Act of 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) AUTHORIZATIONS FOR FISCAL YEAR 1992.—Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1992, as follows:

(1) For the operation and maintenance of the Coast Guard, $2,569,500,000, of which $31,054,000 shall be derived from the Oil Spill Liability Trust Fund and of which $35,000,000 shall be expended from the Boat Safety Account.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $452,000,000, to remain available until expended, of which $29,000,000 shall be used to acquire a new command and control aircraft and of which $26,752,000 shall be derived from the Oil Spill Liability Trust Fund.

(3) For research, development, test, and evaluation, $28,800,000, to remain available until expended.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $487,700,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $10,200,000.

(6) For environmental compliance and restoration at Coast Guard facilities, $25,100,000, to remain available until expended.

(b) AUTHORIZATIONS FOR FISCAL YEAR 1993.—Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1993, as follows:

(1) For the operation and maintenance of the Coast Guard, $2,569,500,000, of which $31,054,000 shall be derived from the Oil Spill Liability Trust Fund and of which $35,000,000 shall be expended from the Boat Safety Account.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $423,000,000, to remain available until expended, of which $26,752,000 shall be derived from the Oil Spill Liability Trust Fund.

(3) For research, development, test, and evaluation, $28,800,000, to remain available until expended.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medi-

cal care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $519,000,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $10,200,000.

(6) For environmental compliance and restoration at Coast Guard facilities, $25,100,000, to remain available until expended.

(c) ACQUISITION OF OIL RECOVERY SYSTEMS.—Funds authorized to be appropriated under subsection (a)(2) or (b)(2) for the construction of any new seagoing buoy tender (WLB) may not be expended for acquisition of oil recovery systems unless those systems are manufactured in the United States and only pursuant to competitive bidding based on performance specification and cost.

AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1992

SEC. 3. (a) ACTIVE DUTY PERSONNEL STRENGTH.—As of September 30, 1992, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,559. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) MILITARY TRAINING STUDENT LOADS.—For fiscal year 1992, the Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,653 student years.

(2) For flight training, 110 student years.

(3) For professional training in military and civilian institutions, 362 student years.

(4) For officer acquisition, 878 student years.

AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1993

SEC. 4. (a) ACTIVE DUTY PERSONNEL STRENGTH.—As of September 30, 1993, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,559. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) MILITARY TRAINING STUDENT LOADS.—For fiscal year 1993, the Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,653 student years.

(2) For flight training, 110 student years.

(3) For professional training in military and civilian institutions, 362 student years.

(4) For officer acquisition, 878 student years.

RETIREMENT OF REAR ADMIRALS

SEC. 5. (a) IN GENERAL.—Section 290 of title 14, United States Code, is amended—

(1) in subsection (e) by striking "June 30 of" and inserting in lieu thereof "July 1 of the promotion year immediately following"; and

(2) by striking subsections (f) and (g) and inserting in lieu thereof the following new subsections:

"(f)(1) Unless retired under some other provision of law, each officer who is continued on active duty under this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes seven years of combined service in the grades of rear admiral (lower half) and rear admiral, unless that officer is selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy.

"(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy, or retired under some other provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.

"(g)(1) Unless retired under some other provision of law, an officer subject to this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes a total of thirty-six years of active commissioned service unless selected for or serving in the grade of admiral.

"(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or retired under some other provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.".

(b) TECHNICAL AMENDMENTS.—(1) Section 290(a) of title 14, United States Code, is amended by striking "he" and inserting in lieu thereof "that officer".

(2) Section 290(d) of title 14, United States Code, is amended by striking "his" each place it appears.

ENLISTED PERSONNEL BOARDS

SEC. 6. (a) IN GENERAL.—Section 357 of title 14, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a) Enlisted Personnel Boards shall be convened at such times as the Commandant may prescribe to review the records of enlisted members who have twenty or more years of active military service.";

(2) in subsection (b), by striking "retired from active duty by the Commandant pursuant to the action of an Enlisted Personnel Board" and inserting in lieu thereof "involuntarily retired by the Commandant";

(3) by redesignating subsections (b) and (c) as subsections (h) and (i), respectively; and

(4) by inserting immediately after subsection (a) the following new subsections:

"(b) Enlisted members who have twenty or more years of active military service may be considered by the Commandant for involuntary retirement and may be retired upon recommendation of a Board—

"(1) because the member's performance is below the standards prescribed by the Commandant, or

"(2) because of moral or professional dereliction.

"(c) Each enlisted member considered for involuntary retirement shall be—

"(1) notified in writing of the reasons for which the member is being considered for involuntary retirement;

"(2) allowed thirty days to submit any matters in rebuttal;

"(3) provided counsel, certified in accordance with section 827(b) of title 10, to assist with the preparation of the rebuttal submitted pursuant to paragraph (2); and

"(4) allowed full access to and furnished copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted pursuant to paragraph (2).

"(d) A Board convened under this section shall consist of at least three commissioned officers, at least one of whom shall be of the grade of Commander or above.

"(e) A Board convened under this section shall recommend to the Commandant enlisted members who have twenty or more years of active service and have been considered for involuntary retirement who, in its discretion, it determines should be involuntarily retired.

"(f) If the Commandant approves the recommendation of the Board, the enlisted member shall be notified of the decision of the Commandant and shall be retired from the service within ninety days after such notification.

"(g) This section is not applicable to reductions in force ordered by the Secretary.".

*(b) TECHNICAL AMENDMENTS.—(1) The catchline to section 357 of title 14, United States Code, is amended by striking "**Enlisted Personnel Board**" and inserting in lieu thereof "**Involuntary retirement of enlisted members**".*

(2) The item relating to section 357 in the analysis of chapter 11 of title 14, United States Code, is amended to read as follows:

"357. Involuntary retirement of enlisted members.".

AUTHORITY TO ACCEPT COURT-ORDERED COMMUNITY SERVICE

SEC. 7. Section 93 of title 14, United States Code, is amended—

(1) by striking "and" at the end of subsection (q);

(2) by striking the period at the end of the first subsection (r) and inserting in lieu thereof "; and";

(3) by striking the second subsection (r); and

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

"(s) accept and utilize, under such terms and conditions as are deemed advisable by the Commandant, services of individuals performing community service under the order of a Federal, State, or municipal court.".

HOUSING UNIT LEASE AUTHORITY

SEC. 8. (a) SITE ACQUISITION LEASE.—(1) The Coast Guard may enter into a lease, for a term in excess of one fiscal year, to acquire a site at the Massachusetts Military Reservation on Cape Cod, Massachusetts, for construction or renovation of housing units, or both.

(2) Any lease authorized under paragraph (1) is effective only to the extent that amounts are provided for in advance in appropriations Acts.

(b) EXPENDITURES ON CONSTRUCTION AND RENOVATION OF HOUSING UNITS.—Beginning in fiscal year 1991 the Coast Guard may spend appropriated amounts for the construction or renovation (or both) of housing units at the site of such Massachusetts Military Reservation.

AIR FACILITIES LEASE AUTHORITY

SEC. 9. (a) SITE ACQUISITION LEASE.—(1) The Coast Guard may enter into a lease, for a term in excess of one fiscal year, to acquire a site at Charleston, South Carolina, for construction of a permanent air facility.

(2) Any lease authorized under paragraph (1) is effective only to the extent that amounts are provided for in advance in appropriations Acts.

(b) EXPENDITURES ON CONSTRUCTION OF FACILITY.—Beginning in fiscal year 1991, the Coast Guard may spend appropriated amounts for the construction of a permanent air facility on the site at Charleston, South Carolina.

COAST GUARD HOUSING STUDY

SEC. 10. Not later than six months after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on Coast Guard housing. The report shall examine the current housing problems of the Coast Guard, the long term housing needs of the Coast Guard, and estimates of projected housing costs needed to relieve the current problems.

COAST GUARD ACADEMY ADVISORY COMMITTEE

SEC. 11. Section 193 of title 14, United States Code, is amended by striking "September 10,

1992" and inserting in lieu thereof "September 30, 1994".

JOHN F. LIMEHOUSE MEMORIAL BRIDGE

SEC. 12. Notwithstanding any other law, the John F. Limehouse Memorial Bridge across the Atlantic Intracoastal Waterway in Charleston County, South Carolina, is deemed an unreasonable obstruction to navigation.

NATIONAL BOATING SAFETY ADVISORY COUNCIL

SEC. 13. Section 13110(e) of title 46, United States Code, is amended by striking "September 30, 1991" and inserting in lieu thereof "September 30, 1996".

EMERGENCY RECALL OF RESERVISTS

SEC. 14. Section 712(a) of title 14, United States Code, is amended to read as follows:

"(a) Notwithstanding any other law, and for the emergency augmentation of the Regular Coast Guard forces during a time of serious natural or manmade disaster, accident, or catastrophe, the Secretary may, without the consent of the member affected, order to active duty of not more than thirty days in any four-month period and not more than sixty days in any two-year period from the Coast Guard Ready Reserve an organized training unit, a member thereof, or a member not assigned to a unit organized to serve as a unit.".

RECALL OF RETIRED OFFICERS

SEC. 15. (a) INCREASE IN PERCENTAGE LIMITATION.—Section 332(b) of title 14, United States Code, is amended by striking "1" and inserting in lieu thereof "2".

(b) TECHNICAL AMENDMENTS.—Section 332(a) of title 14, United States Code, is amended by striking "his" and inserting in lieu thereof "that officer's" and by striking "he" and inserting in lieu thereof "that officer".

AMENDMENT OF INLAND NAVIGATIONAL RULES

SEC. 16. Section 2 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001 et seq.) is amended—

(1) in Rule 1(e) (33 U.S.C. 2001(e)), by striking "without interfering with the special function of the vessel,"; and

(2) in Rule 8 (33 U.S.C. 2008), by inserting immediately after paragraph (e) the following new paragraph:

"(f)(i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

"(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

"(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two vessels are approaching one another so as to involve risk of collision.".

REQUIREMENTS FOR CERTAIN VESSELS

SEC. 17. Section 3503 of title 46, United States Code, is amended—

(1) in subsection (a) by striking "November 1, 1993" and inserting in lieu thereof "November 1, 1998"; and

(2) in subsection (b)(1)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) the owner or managing operator of the vessel shall notify the Coast Guard of structural alterations to the vessel, and with regard to those alterations shall comply with any noncombustible material requirements that the Coast Guard prescribes, consistent with preservation of the historic integrity of the vessel.".

STUDY OF JOINT ENFORCEMENT OF MARINE SANCTUARY REGULATIONS

SEC. 18. Not later than one year after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a joint report describing methods by which Coast Guard enforcement efforts under the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) may be enhanced and coordinated with those of the National Oceanic and Atmospheric Administration. The report shall—

(1) evaluate the ability of the Coast Guard to address key enforcement problems, which the Secretary of Commerce shall identify, for each national marine sanctuary;

(2) propose procedures by which the Coast Guard and the National Oceanic and Atmospheric Administration may coordinate their efforts in order to improve and maximize effective enforcement of marine sanctuary regulations; and

(3) recommend appropriate levels of Coast Guard participation in such efforts.

CONVEYANCE OF CAPE MAY POINT LIGHTHOUSE

SEC. 19. (a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary may convey to the State of New Jersey, by any appropriate means of conveyance, all right, title, and interest of the United States in and to property comprising the Cape May Point Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all right, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property, or any part thereof, ceases to be used as a nonprofit center for public benefit for the interpretation and preservation of the material culture of the Coast Guard and the maritime history of Cape May, New Jersey.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) the light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the State of New Jersey may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property without notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property.

(4) The State of New Jersey shall not have any obligation to maintain any active aid-to-navigation equipment on property conveyed pursuant to this section.

(d) DEFINITION.—For purposes of this section, the term—

(1) "Cape May Point Lighthouse" means the Coast Guard lighthouse located at Cape May, New Jersey, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such land as may be necessary to enable the State of New Jersey to operate at that lighthouse a nonprofit center for public benefit for the interpretation and preservation of the material culture of the Coast Guard and the maritime history of Cape May, New Jersey; and

(2) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

CONVEYANCE OF PORTLAND HEAD LIGHTHOUSE

SEC. 20. (a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary shall convey to the Town of Cape Elizabeth, Maine, by any appropriate means of conveyance, all right, title, and interest of the United States in and to property comprising the Portland Head Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all right, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property so conveyed ceases to be used as a nonprofit center for public benefit. In connection therewith, the property may be used for educational, historic, recreational, and cultural programs open to and for the benefit of the general public. Theme displays, museum, gift shop, open exhibits, meeting rooms, and an office and quarters for personnel in connection with security and administration of the property and the adjacent Fort Williams Park, owned and operated by the Town of Cape Elizabeth, are expressly authorized. Other uses not inconsistent with the foregoing uses are permitted unless the Secretary shall reasonably determine that such uses are incompatible with the historic nature of the property or with other provisions of this section.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) any light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the Town of Cape Elizabeth may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property with notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of

maintaining the navigational aids in use on the property.

(4) The Town of Cape Elizabeth shall not have any obligation to maintain any active aid-to-navigation equipment on property conveyed pursuant to this section.

(c) DEFINITION.—For purposes of this section, the term—

(1) "Portland Head Lighthouse" means the Coast Guard lighthouse located at Cape Elizabeth, Maine, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such lands as may be necessary to enable the Town of Cape Elizabeth to operate at that lighthouse a nonprofit center for public benefit; and

(2) "Secretary" means the Secretary of the department in which the Coast Guard is operating.

OREGON OIL SPILL RESPONSE STUDY

SEC. 21. Not later than one year after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report examining the adequacy of pre-positioned oil spill response equipment to respond to potential damage caused by spills upriver on the Columbia River where commercial and government marine vessel activity takes place.

COAST GUARD CUTTER MACKINAW RENOVATION

SEC. 22. Before October 1, 1992, the Secretary of Transportation shall use such funds as may be necessary, up to $14,000,000, to begin and actively pursue the renovation project to extend the useful life of the Coast Guard Cutter Mackinaw.

EXTENSION OF FISHING VESSEL ADVISORY COMMITTEE

SEC. 23. Section 4508(e)(1) of title 46, United States Code, is amended by striking "1992" and inserting in lieu thereof "1994".

DECLARATION OF NONNAVIGABILITY

SEC. 24. The portion of the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia, extending 500 feet upstream and downstream from the Brasfield Dam (at 37 degrees, 13 minutes, 14 seconds north latitude; 77 degrees 31 minutes, 31 seconds west longitude) is declared not to be navigable water within the meaning of the Constitution and laws of the United States, and not to be water affecting navigable waters of the United States or interstate or foreign commerce, except for purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

VESSEL SAFETY NEAR STRAIT OF JUAN DE FUCA

SEC. 25. The Secretary of the department in which the Coast Guard is operating, through the Secretary of State, is directed to enter into discussions with their appropriate Canadian counterparts to examine alternatives to improve commercial vessel traffic safety off the entrance to the Strait of Juan de Fuca.

COAST GUARD RECREATIONAL BOAT TAX REPEAL

SEC. 26. Section 2110 of title 46, United States Code, is amended—

(1) by repealing subsection (b);

(2) in subsection (c), by striking "subsections (a) and (b)," and inserting in lieu thereof "this section,"; and

(3) by redesignating subsections (c) through (i) as subsection (b) through (h), respectively.

AMENDMENT NO. 1387

(Purpose: To make an amendment in the nature of a substitute)

Mr. LEVIN. Mr. President, I send a substitute amendment to the desk on behalf of Senator HOLLINGS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. HOLLINGS, for himself and Mr. STEVENS, proposes an amendment numbered 1387.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Coast Guard Authorization Act of 1991".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2.(a) AUTHORIZATIONS FOR FISCAL YEAR 1992.—Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1992, as follows:

(1) For the operation and maintenance of the Coast Guard, $2,569,500,000; of which $31,054,000 shall be derived from the Oil Spill Liability Trust Fund; of which not more than $1,900,000 shall be used for annual obligations of membership in the International Maritime Organization for calendar year 1992, notwithstanding section 2 of the Act of September 21, 1950 (22 U.S.C. 262a); and of which $35,000,000 shall be expended from the Boat Safety Account.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $452,000,000, to remain available until expended, of which $29,000,000 shall be used to acquire a new command and control aircraft and of which $26,752,000 shall be derived from the Oil Spill Liability Trust Fund.

(3) For research, development, test, and evaluation, $28,800,000, to remain available until expended.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $487,700,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $10,200,000.

(6) For environmental compliance and restoration at Coast Guard facilities, $25,100,000, to remain available until expended.

(b) AUTHORIZATIONS FOR FISCAL YEAR 1993.—Funds are authorized to be appropriated for necessary expenses of the Coast Guard for fiscal year 1993, as follows:

(1) For the operation and maintenance of the Coast Guard, $2,569,500,000, of which $31,054,000 shall be derived from the Oil Spill Liability Trust Fund and of which $35,000,000 shall be expended from the Boat Safety Account.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $423,000,000, to remain available until expended, of which $26,752,000 shall be derived from the Oil Spill Liability Trust Fund.

(3) For research, development, test, and evaluation, $28,800,000, to remain available until expended.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $519,000,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, $10,200,000.

(6) For environmental compliance and restoration at Coast Guard facilities, $25,100,000, to remain available until expended.

(c) ACQUISITION OF OIL RECOVERY SYSTEMS.—Funds authorized to be appropriated under subsection (a)(2) or (b)(2) for the construction of any new seagoing buoy tender (WLB) may not be expended for the acquisition of oil recovery systems unless those systems are manufactured in the United States and only pursuant to competitive bidding based on performance specification and cost.

(d) COMMAND AND CONTROL AIRCRAFT ACQUISITION.—(1) Notwithstanding any other provision of law, the Secretary of the department in which the Coast Guard is operating (hereinafter referred to as the "Secretary") may submit a request for reprogramming of funds in order to purchase, lease, or lease with option to purchase a replacement command and control aircraft for the Coast Guard during fiscal year 1992. The request shall be in accordance with the existing procedures for congressional review of appropriations reprogramming requests. Subject to such reprogramming procedures—

(A) The Coast Guard may enter into a multiyear lease agreement for a replacement aircraft and may utilize operating expenses for the multiyear lease but not for the purchase of aircraft; and

(B) funds may be reprogrammed, pursuant to the request, from any subaccount of the acquisition, construction, and improvements appropriation.

(2) The Coast Guard may transfer the current command and control aircraft to the vendor of any replacement aircraft in exchange for an equitable reduction in the cash price of an aircraft to be acquired, or in lieu of exchange, the current aircraft may be sold and the proceeds applied toward such purchase, lease, or lease with option to purchase.

AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1992

SEC. 3.(a) ACTIVE DUTY PERSONNEL STRENGTH.—As of September 30, 1992, the Coast Guard is authorized an end-of-year strength for active duty personnel of 39,559. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) MILITARY TRAINING STUDENT LOADS.—For fiscal year 1992, the Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,653 student years.

(2) For flight training, 110 student years.

(3) For professional training in military and civilian institutions, 362 student years.

(4) For officer acquisition, 878 student years.

AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1993

SEC. 4.(a) ACTIVE DUTY PERSONNEL STRENGTH.—As of September 30, 1993, the Coast Guard is authorized as end-of-year

strength for active duty personnel of 39,559. The authorized strength does not include members of the Ready Reserve called to active duty under section 712 of title 14, United States Code.

(b) MILITARY TRAINING STUDENT LOADS.—For fiscal year 1993, the Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,653 student years.

(2) For flight training, 110 student years.

(3) For professional training in military and civilian institutions, 362 student years.

(4) For officer acquisition, 878 student years.

RETIREMENT OF REAR ADMIRALS

SEC. 5.(a) IN GENERAL.—Section 290 of title 14, United States Code, is amended—

(1) in subsection (e) by striking "June 30 of" and inserting in lieu thereof "July 1 of the promotion year immediately following"; and

(2) by striking subsections (f) and (g) and inserting in lieu thereof the following new subsections:

"(f)(1) Unless retired under some other provision of law, each officer who is continued on active duty under this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes seven years of combined service in the grades of rear admiral (lower half) and rear admiral, unless that officer is selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy.

"(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or vice admiral or the position of Chief of Staff or Superintendent of the Coast Guard Academy, or retired under some other provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.

"(g)(1) Unless retired under some other provision of law, an officer subject to this section shall, except as provided in paragraph (2), be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes a total of thirty-six years of active commissioned service unless selected for or serving in the grade of admiral.

"(2) The Commandant, with the approval of the Secretary, may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under paragraph (1). Unless selected for or serving in the grade of admiral or retired under some other provision of law, an officer so retained shall be retired on July 1 of the promotion year immediately following the promotion year in which no action is taken to further retain that officer under this paragraph.".

(b) TECHNICAL AMENDMENTS.—(1) Section 290(a) of title 14, United States Code, is amended by striking "he" and inserting in lieu thereof "that officer".

(2) Section 290(d) of title 14, United States Code, is amended by striking "his" each place it appears.

ENLISTED PERSONNEL BOARDS

SEC. 6.(a) IN GENERAL.—Section 357 of title 14, United States Code, is amended—

(1) By amending subsection (a) to read as follows:

"(a) Enlisted Personnel Boards shall be convened at such times as the Commandant may prescribe to review the records of enlisted members who have 20 or more years of active military service.";

(2) in subsection (b), by striking "retired from active duty by the Commandant pursuant to the action of an Enlisted Personnel Board" and inserting in lieu thereof "involuntarily retired by the Commandant";

(3) by redesignating subsections (b) and (c) as subsections (h) and (i), respectively; and

(4) by inserting immediately after subsection (a) the following new subsections:

"(b) Enlisted members who have 20 or more years of active military service may be considered by the Commandant for involuntary retirement and may be retired upon recommendation of a Board—

"(1) because the member's performance is below the standards prescribed by the Commandant, or

"(2) because of moral or professional dereliction.

"(c) Each enlisted member considered for involuntary retirement shall be—

"(1) notified in writing of the reasons for which the member is being considered for involuntary retirement;

"(2) allowed 30 days to submit any matters in rebuttal;

"(3) provided counsel, certified in accordance with section 827(b) of title 10, to assist with the preparation of the rebuttal submitted pursuant to paragraph (2); and

"(4) allowed full access to and furnished copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted pursuant to paragraph (2).

"(d) A Board convened under this section shall consist of at least three commissioned officers, at least one of whom shall be of the grade of Commander or above.

"(e) A Board convened under this section shall recommend to the Commandant enlisted members who have 20 or more years of active service and have been considered for involuntary retirement who, in its discretion, it determines should be involuntarily retired.

"(f) If the Commandant approves the recommendation of the Board, the enlisted member shall be notified of the decision of the Commandant and shall be retired from the service within 90 days after such notification.

"(g) This section is not applicable to reductions is force ordered by the Secretary.".

(b) TECHNICAL AMENDMENTS.—(1) The catchline to section 357 of title 14, United States Code, is amended by striking "Enlisted Personnel Board" and inserting in lieu thereof "Involuntary retirement of enlisted members".

(2) The item relating to section 357 in the analysis of chapter 11 of title 14, United States Code, is amended to read as follows:

"357. Involuntary retirement of enlisted members.".

AUTHORITY TO ACCEPT COURT-ORDERED COMMUNITY SERVICE

SEC. 7. Section 93 of title 14, United States Code, is amended—

(1) by striking "and" at the end of subsection (q);

(2) by striking the period at the end of the first subsection (r) and inserting in lieu thereof "; and";

(3) by striking the second subsection (r); and

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

"(s) accept and utilize, under such terms and conditions as are deemed advisable by the Commandant, services of individuals performing community service under the order of a Federal, State, or municipal court.".

HOUSING UNIT LEASE AUTHORITY

SEC. 8.(a) SITE ACQUISITION LEASE.—(1) The Coast Guard may enter into a lease, for a term in excess of 1 fiscal year, to acquire a site at the Massachusetts Military Reservation on Cape Cod, Massachusetts, for construction or renovation of housing units, or both,

(2) Any lease authorized under paragraph (1) is effective only to the extent that amounts are provided for in advance in appropriations Acts.

(b) EXPENDITURES ON CONSTRUCTION AND RENOVATION OF HOUSING UNITS.—Beginning in fiscal year 1991 the Coast Guard may spend appropriated amounts for the construction or renovation (or both) of housing units at the site of such Massachusetts Military Reservation.

AIR FACILITIES LEASE AUTHORITY

SEC. 9. (a) SITE ACQUISITION LEASE.—(1) The Coast Guard may enter into a lease, for a term in excess of 1 fiscal year, to acquire a site at Charleston, South Carolina, for construction of a permanent air facility.

(2) Any lease authorized under paragraph (1) is effective only to the extent that amounts are provided for in advance in appropriations Acts.

(b) EXPENDITURES ON CONSTRUCTION OF FACILITY.—Beginning in fiscal year 1991, the Coast Guard may spend appropriated amounts for the construction of a permanent air facility on the site at Charleston, South Carolina.

COAST GUARD HOUSING STUDY

SEC. 10. Not later than 6 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on Coast Guard housing. The report shall examine the current housing problems of the Coast Guard, the long term housing needs of the Coast Guard, and estimates of projected housing costs needed to relieve the current problems.

COAST GUARD ACADEMY ADVISORY COMMITTEE

SEC. 11. Section 193 of title 14, United States Code, is amended by striking "September 30, 1992" and inserting in lieu thereof "September 30, 1994".

JOHN F. LIMEHOUSE MEMORIAL BRIDGE

SEC. 12. Notwithstanding any other law, the John F. Limehouse Memorial Bridge across the Atlantic Intracoastal Waterway in Charleston County, South Carolina, is deemed an unreasonable obstruction to navigation.

NATIONAL BOATING SAFETY ADVISORY COUNCIL

SEC. 13. Section 13110(e) of title 46, United States Code, is amended by striking "September 30, 1991" and inserting in lieu thereof "September 30, 1996".

EMERGENCY RECALL OF RESERVISTS

SEC. 14. Section 712(a) of title 14, United States Code, is amended to read as follows:

"(a) Notwithstanding any other law, and for the emergency augmentation of the Regular Coast Guard forces during a time of serious natural or manmade disaster, accident, or catastrophe, the Secretary may, without the consent of the member affected, order to active duty of not more than 30 days in any four-month period and not more than sixty

days in any two-year period from the Coast Guard Ready Reserve an organized training unit, a member thereof, or a member not assigned to a unit organized to serve as a unit.".

RECALL OF RETIRED OFFICERS

SEC. 15. (a) INCREASE IN PERCENTAGE LIMITATION.—Section 332(b) of title 14, United States Code, is amended by striking "1" and inserting in lieu thereof "2".

(b) TECHNICAL AMENDMENTS.—Section 332(a) of title 14, United States Code, is amended by striking "his" and inserting in lieu thereof "that officer's" and by striking "he" and inserting in lieu thereof "that officer".

AMENDMENT OF INLAND NAVIGATIONAL RULES

SEC. 16. Section 2 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001 et seq.) is amended—

(1) in Rule 1(e) (33 U.S.C. 2001(e)), by striking "without interfering with the special function of the vessel,"; and

(2) in Rule 8 (33 U.S.C. 2008), by inserting immediately after paragraph (e) the following new paragraph:

"(f)(i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

"(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

"(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two vessels are approaching one another so as to involve risk of collision.".

REQUIREMENTS FOR CERTAIN VESSELS

SEC. 17. Section 3503 of title 46, United States Code, is amended—

(1) in subsection (a) by striking "November 1, 1993" and inserting in lieu thereof "November 1, 1998"; and

(2) in subsection (b)(1)—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting in lieu thereof"; and"; and

(C) by adding at the end the following new subparagraph:

"(D) the owner or managing operator of the vessel shall notify the Coast Guard of structural alterations to the vessel, and with regard to those alterations shall comply with any noncombustible material requirements (which shall be consistent with preservation of the historic integrity of the vessel in areas carrying or accessible to passengers or generally visible to the public) that the Coast Guard prescribes for nonpublic spaces.".

STUDY OF JOINT ENFORCEMENT OF MARINE SANCTUARY REGULATIONS

SEC. 18. Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a joint report describing methods by which Coast Guard enforcement efforts under the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) may be enhanced and coordinated with those of the National Oceanic and Atmospheric Administration. The report shall—

(1) evaluate the ability of the Coast Guard to address key enforcement problems, which the Secretary of Commerce shall identify, for each national marine sanctuary;

(2) propose procedures by which the Coast Guard and the National Oceanic and Atmospheric Administration may coordinate their efforts in order to improve and maximize effective enforcement of marine sanctuary regulations; and

(3) recommend appropriate levels of Coast Guard participation in such efforts.

CONVEYANCE OF CAPE MAY POINT LIGHTHOUSE

SEC. 19. (a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary may convey to the State of New Jersey, by any appropriate means of conveyance, all rights, title, and interest of the United States in and to property comprising the Cape May Point Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all rights, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property, or any part thereof, ceases to be used as a nonprofit center for public benefit for the interpretation and preservation of the material culture of the Coast Guard and the maritime history of Cape May, New Jersey.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) the light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the State of New Jersey may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property without notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property.

(4) The State of New Jersey shall not have any obligation to maintain any active aid-to-navigation equipment on property conveyed pursuant to this section.

(d) DEFINITION.—For purposes of this section, the term "Cape May Point Lighthouse" means the Coast Guard lighthouse located at Cape May, New Jersey, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such land as may be necessary to enable the State of New Jersey to operate at that lighthouse a nonprofit center for public benefit for the interpretation and preservation of the material culture of the Coast Guard and the maritime history of Cape May, New Jersey.

CONVEYANCE OF PORTLAND HEAD LIGHTHOUSE

SEC. 20. (a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary shall convey to the Town of Cape Elizabeth, Maine, by any appropriate means of conveyance, all rights, title, and interest of the United States in and to property comprising the Portland Head Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all rights, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property so conveyed ceases to be used as a nonprofit center for public benefit. In connection therewith, the property may be used for educational, historic, recreational, and cultural programs open to and for the benefit of the general public. Theme displays, museum, gift shop, open exhibits, meeting rooms, and an office and quarters for personnel in connection with security and administration of the property and the adjacent Fort Williams Park, owned and operated by the Town of Cape Elizabeth, are expressly authorized. Other uses not inconsistent with the foregoing uses are permitted unless the Secretary shall reasonably determine that such uses are incompatible with the historic nature of the property or with other provisions of this section.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) any light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the Town of Cape Elizabeth may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property with notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property.

(4) The Town of Cape Elizabeth shall not have any obligation to maintain any active aid-to-navigation equipment on property conveyed pursuant to this section.

(c) DEFINITION.—For purposes of this section, the term "Portland Head Lighthouse" means the Coast Guard lighthouse located at Cape Elizabeth, Maine, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such lands as may be necessary to enable the Town of Cape Elizabeth to operate at that

lighthouse a nonprofit center for public benefit.

OREGON OIL SPILL RESPONSE STUDY

SEC. 21. Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report examining the adequacy of pre-positioned oil spill response equipment to respond to potential damage caused by spills upriver on the Columbia River where commercial and government marine vessel activity takes place.

COAST GUARD CUTTER MACKINAW RENOVATION

SEC. 22. Before October 1, 1992, the Secretary shall use such funds as may be necessary, up to $14,000,000, to begin and actively pursue the renovation project to extend the useful life of the Coast Guard Cutter MACKINAW.

EXTENSION OF FISHING VESSEL ADVISORY COMMITTEE

SEC. 23. Section 4508(e)(1) of title 46, United States Code, is amended by striking "1992" and inserting in lieu thereof "1994".

DECLARATION OF NONNAVIGABILITY WITH RESPECT TO APPOMATTOX RIVER, VIRGINIA

SEC. 24. The portion of the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia, extending 500 feet upstream and downstream from the Brasfield Dam (at 37 degrees 13 minutes 14 seconds north latitude, 77 degrees 31 minutes 31 seconds west longitude) is declared not to be navigable water within the meaning of the Constitution and laws of the United States, and not to be water affecting navigable waters of the United States or interstate or foreign commerce, except for purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

BRIDGE ACROSS WAPPINGER CREEK, NEW YORK

SEC. 25. Notwithstanding any other provision of law, the railroad bridge across Wappinger Creek, mile 0.0. at New Hamburg, New York, is hereby determined to provide for the reasonable needs of navigation under the Act of March 3, 1899 (33 U.S.C. 401); section 1 of the Act of March 23, 1906 (33 U.S.C. 491), and section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)), at the closed position and need not be maintained as a movable structure.

VESSEL SAFETY NEAR STRAIT OF JUAN DE FUCA

SEC. 26. The Secretary, through the Secretary of State, is directed to enter into discussions with their appropriate Canadian counterparts to examine alternatives to improve commercial vessel traffic safety off the entrance to the Strait of Juan de Fuca.

TRANSFER OF CERTAIN PROPERTY AT FOLLY BEACH, SOUTH CAROLINA

SEC. 27.(a) TRANSFER OF PROPERTY.—Notwithstanding any other law, the Secretary shall transfer without consideration to the County of Charleston all rights, title, and interest of the United States in Coast Guard property located at Folly Island, Charleston County, South Carolina, described in subsection (b), subject to existing easements and restrictions of record. The transferee shall pay for all conveyance costs.

(b) DESCRIPTION.—The property to be transferred under subsection (a) is described as commencing at a point in the center of United States Army Observation Steel Tower (32 degrees 41 minutes 13.590 seconds north latitude, 79 degrees 53 minutes 16.783 seconds west longitude), and running from there due south 261.75 feet to a point at 32 degrees 41 minutes 11 seconds north latitude, 79 degrees 53 minutes 16.783 seconds west longitude, for a point of beginning; running from there, due east along north latitude 32 degrees 41 minutes 11 seconds 854 feet, more or less, to a point in the low water line; from there, running southerly and southwesterly along the meanderings of such low water line 4650 feet, more or less, to the intersection of such low water line with west longitude 79 degrees 53 minutes 30 seconds; from there, running due north along such longitude 3380 feet, more or less, to the intersection of such longitude with north latitude 32 degrees 41 minutes 11 seconds; from there, running due east along such latitude 1129.64 feet to the point of beginning, containing 143 acres, more or less (part high and part submerged lands); together with the 2300 volt power line, and all power line rights of way connected therewith, extending from the Government's property at the east end of Folly Island to such power line's connection with the South Carolina Power Company's power line at Folly Beach.

REQUIREMENT TO REPORT ON CERTAIN POLLUTION INCIDENTS

SEC. 28. Section 7 of the Act to Prevent Pollution from Ships (33 U.S.C. 1906) is amended to read as follows:

"SEC. 7.(a) The master, person in charge, owner, charterer, manager, or operator of a ship involved in an incident shall report the incident in the manner prescribed by Article 8 of the Convention in accordance with regulations promulgated by the Secretary for that purpose.

"(b) The master or person in charge of—

"(1) a ship of United States registry or nationality, or operated under the authority of the United States, wherever located;

"(2) another ship while in the navigable waters of the United States, or

"(3) a sea port or oil handling facility subject to the jurisdiction of the United States, shall report a discharge, probable discharge, or presence of oil in the manner prescribed by Article 4 of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (adopted at London, November 30, 1990), in accordance with regulations promulgated by the Secretary for that purpose.".

AMENDMENTS TO IMPLEMENT INTERNATIONAL SALVAGE CONVENTION, 1989

SEC. 29.(a) PAYMENT TO SALVORS OF LIFE.—Section 3 of the Act of August 1, 1912 (46 App. U.S.C. 729), is amended by striking all after "fair share of the" and inserting in lieu thereof "payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.".

(b) TECHNICAL AMENDMENT.—Section 5 of the Act of August 1, 1912 (46 App. U.S.C. 731), is amended by striking "Nothing in this Act" and inserting in lieu thereof "Nothing in sections 1, 3, and 4 of this Act and section 2304 of title 46, United States Code.".

TRANSFER OF HECETA HEAD AND CAPE BLANCO LIGHTHOUSES

SEC. 30.(a) CONVEYANCE OF LIGHTHOUSES.—(1) The Secretary may convey by any appropriate means to the State of Oregon all rights, title, and interest of the United States in and to property comprising one or both of the Heceta Head Lighthouse and the Cape Blanco Lighthouse.

(2) The Secretary may identify, describe, and determine property conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) The conveyance of property pursuant to subsection (a) shall be made—

(A) without the payment of consideration; and

(B) subject to such terms and conditions as the Secretary may consider appropriate.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property comprising Heceta Head Lighthouse or Cape Blanco Lighthouse pursuant to this section shall be subject to the condition that all rights, title, and interest in and to the property so conveyed shall immediately revert to the United States if the property, or any part thereof, ceases to be used as a nonprofit center for public benefit for the interpretation and preservation of the maritime history of Heceta Head or Cape Blanco, as applicable.

(3) Any conveyance of property pursuant to this section shall be made subject to such conditions as the Secretary considers to be necessary to assure that—

(A) the light, antennas, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the State of Oregon may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property without notice for the purpose of maintaining aids to navigation; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the aids to navigation in use on the property.

(4) The State of Oregon shall not have any obligation to maintain any active aid to navigation equipment on property conveyed pursuant to this section.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "Heceta Head Lighthouse" means the Coast Guard lighthouse located at Heceta Head, Oregon, including—

(A) the classical fresnel lens;

(B) the keeper's dwelling;

(C) several ancillary buildings; and

(D) such land as may be necessary to enable the State of Oregon to operate at that lighthouse a nonprofit center for public benefit for the interpretation and preservation of the maritime history of Heceta Head, Oregon; and

(2) the term "Cape Blanco Lighthouse" means the Coast Guard lighthouse located at Cape Blanco, Oregon, including—

(A) the classical fresnel lens;

(B) several ancillary buildings; and

(C) such land as may be necessary to enable the State of Oregon to operate at that lighthouse a nonprofit center for public benefit for the interpretation and preservation of the maritime history of Cape Blanco, Oregon.

CONVEYANCE OF WHITE ISLAND LIGHTHOUSE

SEC. 31. (a) CONVEYANCE OF LIGHTHOUSE.—(1) The Secretary shall convey to the State of New Hampshire, by any appropriate means of conveyance, all rights, title, and interest of the United States in and to property comprising the White Island Lighthouse.

(2) The Secretary may identify, describe, and determine the property to be conveyed pursuant to this section.

(b) TERMS AND CONDITIONS.—(1) A conveyance of property pursuant to this section shall be made—

(A) without the payment of consideration;

(B) subject to such terms and conditions as the Secretary may consider appropriate; and

(C) the Coast Guard will complete its cleanup of the oil seepage on White Island and take any necessary measures to prevent further pollution.

(2) In addition to any term or condition established pursuant to paragraph (1), any conveyance of property pursuant to this section shall be subject to the condition that all rights, title, and interest in and to all such property so conveyed shall immediately revert to the United States if the property so conveyed ceases to be used as a nonprofit center for public benefit. In connection therewith, the property may be used for educational, historic, recreational, and cultural programs open to and for the benefit of the general public. Theme displays, museum, gift shop, open exhibits, meeting rooms, and an office and quarters for personnel in connection with security and administration of the property are expressly authorized. Other uses not inconsistent with the foregoing uses are permitted unless the Secretary shall reasonably determine that such uses are incompatible with the historic nature of the property or with other provisions of this section.

(3) Any conveyance of property pursuant to this section shall be subject to such conditions as the Secretary considers to be necessary to assure that—

(A) any light, antennas, sound signal, and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(B) the State of New Hampshire may not interfere or allow interference in any manner with such aids to navigation without express written permission from the United States;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property as may be necessary for navigation purposes;

(D) the United States shall have the right, at any time, to enter such property with notice for the purpose of maintaining navigational aids; and

(E) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property.

(4) The State of New Hampshire shall not have any obligation to maintain any active aid-to-navigation equipment on property covered pursuant to this section.

(c) DEFINITION.—For purposes of this section, the term "White Island Lighthouse" means the Coast Guard Lighthouse located at White Island, Isles of Shoals, New Hampshire, including the attached keeper's dwelling, several ancillary buildings, the associated fog signal, and such lands as may be necessary to able the State of New Hampshire to operate at that lighthouse a nonprofit center for public benefit.

TRANSFER AT JUNEAU, ALASKA

SEC. 32.(a) TRANSFER BY SECRETARY.—Notwithstanding any other provision of law, the Secretary shall transfer without consideration to the Secretary of Commerce all rights, title, and interest of the United States in Coast Guard property and improvements at Auke Cape, Alaska (Lot 2 on United States Survey Number 3811 comprising 28.16 acres), located approximately 11 miles northwest of Juneau, Alaska.

(b) AVAILABILITY TO NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—The Secretary of Commerce shall make the property transferred under this section available to the National Oceanic and Atmospheric Administration.

SENSE OF THE CONGRESS ON RECREATIONAL BOAT FEES

SEC. 33.(a) FINDINGS.—The Congress finds that—

(1) the Coast Guard fee imposed upon recreational boaters under section 2110(b) of title 46, United States Code, was mandated by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-397);

(2) recreational boaters who are required to pay this fee may not receive any direct service and cannot expect to receive any additional service in return for payment of the fee;

(3) recreational boaters already pay a motorboat fuel tax; and

(4) the fee imposed upon recreational boaters will not be directly available to the Coast Guard to increase services that would benefit recreational boaters.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the requirements that the Coast Guard collect a fee from recreational boaters under section 2110(b) of title 46, United States Code, should be repealed immediately upon enactment of offsetting receipts in order to comply with the requirements of the Omnibus Budget Reconciliation Act of 1990.

CERTIFICATE OF DOCUMENTATION FOR MAYFLOWER II

SEC 34.(a) AUTHORITY TO ISSUE CERTIFICATE.—Notwithstandig section 12106 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. 883), as applicable on the date of documentation with appropriate endorsement for employment endorsement for employment in the costwise trade of the United States for the vessel MAYFLOWER II, owned by Plymouth Plantation, Inc. (a corporation under the laws of Massachusetts).

(b) EXEMPTION FROM CERTAIN REQUIREMENTS.—(1) The Secretary may exempt the vessel MAYFLOWER II from compliance with—

(A) any requirement relating to inspection or safety under title 46, United States Code; and

(B) any requirement relating to navigation under any law codified in title 33, Code.

(2) If the Secretary exempts the vessel from any requirements under paragraph (1), the Secretary may establish an alternative requirement designed to provide for the safety of the passengers and crew of the vessel.

JONES ACT WAIVERS FOR CERTAIN VESSELS

SEC. 35. Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the following vessels:

(1) MISS LELIA, United States official number 577213.

(2) BILLFISH, United States official number 920896.

(3) MARSH GRASS III, United States official number 963616.

Mr. HOLLINGS. Mr. President, I rise in strong support of S. 1297, the Coast Guard Authorization Act of 1991 which authorizes appropriations and manning levels for Coast Guard activities in fiscal years 1992 and 1993. The substitute amendment which I am offering today also includes other important provisions which provide for a sound investment in the future of the Coast Guard.

AUTHORIZATION LEVELS

With respect to funding, the bill provides an 8-percent increase for Coast Guard operating expenses over the level authorized for fiscal year 1991, totaling $2.57 billion for each of the 2 fiscal years 1992 and 1993. This account covers the basic needs of the Coast Guard, such as salaries, housing, medical care, training, and fuel.

From a budgetary standpoint, this bill will require the Coast Guard to run a tight ship, particularly give the multitude and variety of Coast Guard responsibilities. When the service was first established in 1790, its mission was fairly straightforward—to prevent smuggling and collect tax revenues. Since that time, many new responsibilities have been added, including search and rescue, fisheries law enforcement, drug interdiction, aids to navigation, marine safety, and marine environmental protection. The diversity of the Coast Guard's mission is apparent when one looks at its involvement in several recent highly publicized events. From the blockade of Iraq to the cleanup of the *Exxon Valdez*, the Coast Guard has been on the frontline. S. 1297 is intended to provide the necessary funds for all these activities.

In addition to operating expenses, the bill authorizes appropriations of $452 million for fiscal year 1992 and $423 million for fiscal year 1993 for the Coast Guard's capital funding account. Capital funding, of course, includes the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft. Specific programs to be undertaken during the next 2 years include continuation of the 378-foot high endurance cutter rehabilitation program, acquisition of the remaining 110-foot Island Class patrol boats, delivery of the last HH-60J Jayhawk helicopters, replacement of seagoing buoy tenders and 44-foot motor lifeboats, and renovation of the Coast Guard cutter *Mackinaw*.

The bill also authorizes payments to retired Coast Guard military personnel, including the Coast Guard Reserve and the former Lighthouse Service. Authorizations of appropriations for retired pay total $488 million in fiscal year 1992 and $519 million in fiscal year 1993. Other accounts authorized in the bill cover research and development, bridge alteration, and environmental compliance and restoration.

With respect to manning levels, and end-of-year strength of 39,559 military personnel is authorized for fiscal years 1992 and 1993. The bill also calls for average military training loads for recruits and special training, flight training, professional training, and officer training.

RELATED ISSUES

S. 1297 also contains a number of other provisions that affect the Coast

Guard. Three of these provisions in particular are important to the State of South Carolina. First, the bill contains language authorizing the Coast Guard to lease property for the construction of Air Station Charleston. This facility, when completed, will provide vital Coast Guard search and rescue services to the Charleston area. Second, the bill designates the John F. Limehouse bridge, near Charleston, as an obstruction to navigation. The designation makes this obsolete bridge eligible for repair or replacement under the Truman-Hobbs Bridge Act. Third, the bill transfers surplus Coast Guard property on Folly Island, South Carolina to Charleston County. This property will be used as a public park and will provide the public with needed access to that island's beaches.

There is one provision, to which I am firmly committed, that the bill before us today regrettably does not include: the repeal of the Coast Guard's recreational boat user fee. This fee, which was included in last year's Omnibus Budget Reconciliation Act, went into effect on July 30 of this year. The Coast Guard has implemented this user fee in a manner that is unfair to many boaters. For example, in South Carolina, boaters on Lakes Marion and Moultrie are required to pay the fee despite not having a Coast Guard presence on these lakes. The same is true on the Cooper River, the Congaree River, the Saluda River, the Wateree River, and the Pee Dee River. In fact, this fee in general bears no relationship to any direct services of additional services to be received by the boaters.

Thus, during the Commerce Committee's markup of this authorization bill, I cosponsored an amendment offered by Senator BREAUX to repeal the boat user fee. Since that markup in late July, Senator BREAUX and I, along with others, have been working to identify an offset for the repeal of the user fee. Unfortunately, this issue has not yet been resolved, and thus the fee repeal has been removed from this bill. However, the bill before the Senate does include a statement of Congress' intent that this fee be repealed once offsetting receipts are determined. I assure my colleagues that I intend to continue my efforts to repeal this unfair fee on boaters.

WORLD MARITIME DAY

Related to S. 1297, on September 26, 1991, the International Maritime Organization [IMO] celebrated World Maritime Day. This year's theme was "Passenger and Crew Safety on Board Ship."

The IMO is a U.N. technical organization with 135 members and 2 associate members. From its very beginning in 1958 as the first international body devoted exclusively to maritime matters, the improvement of maritime safety and the prevention of marine pollution have been the IMO's most important objectives. Recently, the IMO has made great strides on issues pertaining to the theme of World Maritime Day 1991. With regard to passenger vessel safety, the United States, and particularly the Coast Guard, has helped make this progress possible. At the May 1991 session of the IMO's Maritime Safety Committee, the Coast Guard not only chaired a working group on passenger vessel safety but also worked closely with the IMO Secretariat to produce a global consensus on these issues.

Mr. President, ship passenger and crew safety are a paramount national and international concern, as is demonstrated by the theme of this year's World Maritime Day. I ask unanimous consent that the message from the Secretary General of the IMO, Mr. William A. O'Neil, marking the observance of World Maritime Day 1991, be printed in the RECORD at the conclusion of my remarks, and

I urge my colleagues to support the passage of this important legislation.

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

MESSAGE FROM THE SECRETARY-GENERAL, MR. WILLIAM A. O'NEIL

This year IMO is celebrating its 14th World Maritime Day. Each year the Organization uses the Day to highlight a particularly important activity. But this year the theme is the most important subject of all—the safety of the passengers and crews who sail on board the world's ships.

The days of the great ocean liners and the emigrant ships may have gone, for nowadays most people travelling between continents do so by plane rather than ship. Nevertheless sea travel remains popular. More and more people are now choosing to take their holidays on cruise ships which offer all the comforts of a luxury hotel, with the bonus of visiting a different port every day. The short-sea routes are dominated by ro-ro ferries. And the bulk of the world's trade is still carried in a fleet of more than 78,000 vessels.

IMO's most important task is to make sure that the people who sail on these ships, whether they are passenger or crew members, arrive at their destination safely. Over the years a great deal has been done in this regard by adopting international measures which are then implemented by national Governments. IMO's Membership now stands at a record 135 States and its most important conventions apply to more than 97 per cent of the world's ships.

This shows that IMO's work has global support and it should mean that the safety standards in the world fleet are roughly the same everywhere, but regrettably this is not the case. A glance at the annual statistics for losses at sea shows that people traveling on ships from the country with the worst record are 114 times more likely to be involved in an accident than those on board ships from the country with the best. This is unacceptable.

The responsibility for enforcing IMO standards rests with individual Governments. When they ratify a convention they undertake to ensure that its provisions are effectively applied to all ships which fly its flag. Yet the huge discrepancy between the accident rates of various fleets indicates that this is not being done.

For the last few years, IMO has been handicapped by a serious cash-flow crisis caused by the failure of many Governments to pay their contributions on time. Payments were due in January but by July only 59 States had paid in full. The other 76 were behind for this year and many of them owe money for previous year's as well. This failure to meet their legal obligation is sapping the strength of the Organization and tends to divert everyone's attention and energy from the real issues of life and death of those at sea.

It should not be any surprise that several IMO Members have expressed concern at the huge differences in safety standards and the attitudes toward safety that seem to exist in different countries. This concern has deepened by the changes that are now taking place in world shipping and which are likely to continue in the years to come. Many shipowners are reducing the sizes of their crews in an effort to save money; but is enough being done to raise the standard of the crews that remain? The average age of ships today is 16 years, which is already fairly elderly in shipping terms, and old ships need more maintenance and repair than young ones. Are Governments and shipping companies doing enough to ensure that this is done?

The danger is that if the improvement in the casualty rate that marked the 1980s is halted in the 1990s many lives will be lost. In 1989, 3.7 million people took their vacation on a cruise liner; by the end of the century this figure is expected to grow to 10 million a year. Yet in recent years there have been a number of accidents to passenger ships which have resulted in the deaths of hundreds of people. Will 10 million people really want to go to sea if they think there is a serious risk of a fire on board or of the ship sinking and that those responsible for safety are not doing anything to improve the situation?

The stability of roll-on/roll-off passenger ships continues to give cause for concern, as does the continuing loss of bulk carriers, many of which have vanished without a trace in the past year. If nothing is done to stop these casualties the public will lose faith in shipping and some countries will become impatient with the ability of the shipping industry to introduce improvements on an international basis, through IMO. This could lead to a proliferation of regional or national standards and would be the end of any real attempt to raise safety standards internationally.

Standards might improve in some countries—but overall there would almost certainly be a serious reduction in safety levels, an increase in the casualty rate and more accidents involving heavy loss of life.

IMO is taking positive steps to prevent this from happening by becomming more pro-active rather than reactive in improving international safety legislation. Emphasis is being placed on the fact that no single unit in the safety chain can act alone but, instead, all must work in concert to achieve the common objective. Shipbuilders, classification societies, shipowners, ship managers, charterers, insurers, seafarers' unions, government administrations and IMO must all do their part to being about safer shipping and regain the confidence of the public—without always trying to put the blame on others for any failures.

For this part, IMO will continue to assist and encourage all parties in this endeavor and will provide leadership in the never ending quest for improvements to safety of life at sea.

Mr. KERRY. Mr. President, I rise today to support the Coast Guard Authorization Act of 1991. The Coast Guard provides valuable services to the Nation in the areas of drug interdiction, vessel safety, maritime law enforcement and protection of the marine environment.

I would like to thank the chairman of the Commerce Committee, Senator HOLLINGS, for accepting three of my amendments. Two of the amendments provide the necessary implementation for important international treaties designed to help protect the marine environment. The third amendment will provide the *Mayflower II*, a replica of the original *Mayflower* ship, with U.S. flagship status. It will also enable the guardians of the *Mayflower II*, Plymouth Plantation, to work closely with the Coast Guard to establish safety requirements that would enable the ship to sail on rare and special occasions while ensuring a safe trip for its passengers.

The first amendment I am offering will change the International Convention on Oil Pollution to require a vessel crew or facility personnel to report any observed oil spill. Under current domestic law, reporting is only required if the vessel or facility was responsible for the spill. Clearly, expanding the requirement to observers as well as spillers will increase the number of incidents that are reported and enhance our ability to respond to such events.

The second amendment implements changes to the International Convention on Salvage. These changes would allow salvors who attempt to prevent environmental damage during a salvage operation to be compensated, even if the attempt is not successful. This change is necessary because the traditional law of salvage, which is no cure-no pay, simply does not provide incentives that are needed to protect the environment from the hazardous materials that are carried by today's cargo ships.

Both of these treaties were negotiated through the International Maritime Organization in London and fully reflect U.S. interests. As a leader in international pollution reduction efforts, it is essential that the U.S. ratify and implement these provisions in a timely manner.

Finally, Mr. President, this legislation contains a provision for the *Mayflower II*, a replica of the original ship that brought the Pilgrims to America in the 1620's. The *Mayflower II* is part of a world-renowned living history museum located in Plymouth, MA. The replica was a gift from the British people after World War II as a symbol of friendship between our two nations. Over 11 million people have visited the ship since it arrived in Plymouth in 1958.

The *Mayflower II* periodically leaves her berth to visit other locations. These trips are conducted by qualified staff. Because the *Mayflower II* was built in 1955, as an accurate representation of a 17th century vessel, it carries no propelling machinery or modern equipment. A tug assist vessel accompanies her, carrying emergency equipment and electronic navigational equipment.

The amendment I am proposing today would allow the *Mayflower II* to meet an "equivalent level of safety" requirement rather than the existing standards that were established for modern vessels. The Plymouth Plantation has assured me that they plan to sail the vessel only a few times each year on very special occasions. In their view these safety requirements are essential when the vessel leaves its berth; they are committed to working closely with the Coast Guard to ensure the requirements are met. The safety requirements would be determined cooperatively by the *Mayflower II's* owners, investors, insurers, the U.S. Coast Guard, and tugboat operators. It would, for example, limit the weather conditions under which she could sail, define escort requirements and evacuation procedures, and enhance fire and life saving equipment. Without this change, it would be impossible for *Mayflower II* to sail. I want to assure my colleagues that this amendment will not jeopardize the safety of the crew or passengers of the vessel. It will only allow the Coast Guard and others to define specific safety standards that meet the special needs of this unique and historically important vessel.

Mr. President, the Coast Guard provides a number of valuable services to New England and to the Nation as a whole. Its mission to ensure safety in our waters is a gallant one. In the past few years the Coast Guard's mandated functions have increased. With the passage of the Oil Pollution Act of 1990 and the increased need for drug interdiction, the Coast Guard has had to reassess its budget and spending options. The bill we are passing today reflects the increased responsibilities which the Coast Guard faces.

I applaud the efforts of the Coast Guard throughout the Nation. I urge my colleagues to support this legislation that enables the Coast Guard to continue their essential work.

Mr. LAUTENBERG. Mr. President, I rise today in support of the Coast Guard authorization bill which includes a provision, incorporating the text of S. 1297, my bill to authorize the transfer of the Cape May Point Lighthouse to the State of New Jersey. I want to thank Senator HOLLINGS, chairman of the Commerce, Science and Transportation Committee for including this provision in the Coast Guard authorization bill we are considering today.

The Cape May Point Lighthouse is recognized by both the State of New Jersey and the Federal Government as an historically significant structure. The original lighthouse was built in 1823, and was the second lighthouse in New Jersey. In 1857, the Army Corps of Engineers began construction of the current structure and its light has guided navigators since 1859. It is one of the oldest active lighthouses in the Nation.

In 1986, the Coast Guard leased the lighthouse to the State of New Jersey which, in turn, subleased the structure to the Mid-Atlantic Center for the Arts to operate it as a museum of lighthouse and maritime history. By agreement, the Center assumes responsibility for restoration, maintenance, and operation of the lighthouse. This relationship has proved successful and has resulted in reopening the lighthouse to the public after more than a century.

The Cape May Point Lighthouse is currently in need of major repairs, the most important of which is repair of a leaking roof and the lantern room. The Mid-Atlantic Center for the Arts has applied to the State of New Jersey for historic preservation funds, but has been told that the project is ineligible for New Jersey State preservation funds, since the lighthouse is owned by the Federal Government.

The provision I included in the Coast Guard authorization bill would transfer ownership of the structure from the Coast Guard to the State of New Jersey. This transfer would allow the Mid-Atlantic Center for the Arts to receive preservation funds from the New Jersey State government. It will also help ensure that tourists can continue to enjoy the lighthouse and learn more about maritime history in southern New Jersey. Furthermore, the transfer would not affect the lighthouse's mission as a navigational aide because it assures the Coast Guard full access to the structure to maintain navigational activities.

The transfer of the lighthouse to New Jersey is widely supported in Cape May County, NJ, where the structure is located. The transfer also enjoys the support of the State of New Jersey.

I'm grateful to the chairman for his efforts and hope my colleagues will support this important effort.

Mr. ROBB. Mr. President, I rise today in support of S. 1297, the Coast Guard Authorization Act of 1991, and in particular, of section 24, which will facilitate the construction of a small hydroelectric facility on the Appomattox River in Virginia. The provision declares a narrow portion of the Appomattox River nonnavigable in order to remove a technical roadblock to the construction of a four megawatt hydroelectric facility by the Appomattox River Water Authority, a nonprofit State-chartered water supply agency, located in Petersburg, VA.

The authority has proposed building the hydroelectric facility at its exist-

ing Brasfield Dam, which was originally constructed by the authority to supply water to surrounding communities. Because the Appomattox River is a navigable water of the United States, the hydroelectric facility requires permits from a number of Federal agencies, including the Federal Energy Regulatory Commission [FERC]. The Authority has already received a permit from the Army Corps of Engineers and a license from FERC. However, because the Authority's charter says it must retain control over the Appomattox Reservoir, it has been impossible for the authority to accept the FERC license. FERC operating licenses require that FERC be given ultimate control over waterflows and other matters, control which the Authority does not believe its charter allows it to cede.

The provision in this bill is based on S. 1068, sponsored by Senator WARNER and myself. When S. 1068 was originally introduced, environmental groups raised some legitimate drafting questions. Section 24 of the Coast Guard bill reflects two specific changes suggested by the Environmental Defense Fund: the portion of the river declared nonnavigable was narrowed to 500 feet upstream and downstream of the Brasfield Dam; and the legislation now makes clear that the Clean Water Act will still apply to activities on all portions of the river. In addition, the Appomattox River Water Authority and the private company which will construct the hydrofacility have executed an agreement with the Virginia Department of Game and Inland Fisheries which will essentially require the Authority to do what FERC could have required: Build fish ladders to facilitate fish passage.

The Appomattox Authority is in a genuine bind: Its charter fundamentally conflicts with the requirements of the FERC license. The Coast Guard bill helps resolve the conflict and allows an otherwise fully permitted and engineered renewable energy project to proceed.

Mr. President, I want to make it clear that the declaration of nonnavigability contained in this bill is meant to address an unusual set of circumstances. It is in no way meant to set a precedent for exempting hydrofacilities from the requirements of FERC where these special circumstances do not apply.

I am pleased to support the Coast Guard Authorization Act of 1991, and I urge its passage.

Mr. PACKWOOD. Mr. President, I rise to support a provision included at my request in the Coast Guard authorization bill. This provision would open up some wonderful scenic sites for Oregonians and others from around the world. It would do this while saving the Federal Government some money, as well.

This provision would transfer two lighthouses located on the Oregon coast from the U.S. Coast Guard to the State of Oregon. People at the Oregon State Parks Department are excited about assuming ownership of the lighthouses and opening them up to the public.

Heceta Head, the first of the two lighthouses I would like to transfer, is located just north of the coastal town of Florence and right next door to the world famous Sea Lion Caves. The Heceta Head Beacon is one of the world's most photographed lighthouses, probably because it sits in front of a background of dark green firs and rocky headlands.

The Cape Blanco Lighthouse, the second lighthouse to be turned over to the State, is located on the westernmost headland of the Pacific coast. The historic Hughes House is the gateway to this tower that has guided sea vessels around the head since 1870.

Transfer of these lighthouses to the State of Oregon will allow the public the chance to enter these historic landmarks for the first time, will permit the construction of a museum and educational exhibits, and will provide much-needed tourism dollars to the local coastal communities. Visitors from across the country will be able to enjoy these time-honored sentinels of the Oregon coast.

My provision will allow the Coast Guard to continue operating navigational equipment at the lighthouses. However, the classic fresnel lenses on the beacons will cease to operate, so the public will be able to examine the mechanics of the light works. Alternate beacons will be placed atop these newly opened lighthouses, making them functional and enjoyable for Oregonians.

Mr. RUDMAN. Mr. President, I rise to support the amendment to transfer the White Island Lighthouse from the Coast Guard to the State of New Hampshire in order to preserve its historic and environmental assets. The State requested this transfer earlier this year and, along with my colleague, Senator SMITH, I have been working to honor it.

The White Island Lighthouse, at the Isle of Shoals, has been an integral part of New Hampshire's maritime history by standing as a guardian to Portsmouth Harbor since 1821. The State of New Hampshire, working with the University of New Hampshire, intends to renovate the property and undertake a variety of limited educational and historical programs in conjunction with similar activities at nearby Odiorne State Park. These programs will focus on the importance of the seacoast area to the economic and infrastructure development of New Hampshire over the past 170 years.

The State intends to limit access to the island out of concern for a tern nesting site located on the property. The State is working closely with the New Hampshire Audubon Society to ensure that all necessary measures are undertaken to preserve this important natural habitat and continue the nesting site at White Island.

I appreciate the support of Senator DANFORTH and Senator HOLLINGS, and their work on the Committee on Commerce, Science, and Transportation for this transfer as part of the Coast Guard authorization bill. This transfer will allow the State of New Hampshire to preserve this important part of its history and environment.

S. 1297, THE COAST GUARD REAUTHORIZATION ACT OF 1991

Mr. BREAUX. Mr. President, I rise in support of the Coast Guard Reauthorization Act of 1991. This bill supports the U.S. Coast Guard in its highly regarded work of protecting our shores. I remind us that the Coast Guard is a military service that in peacetime enforces America's maritime laws. The Coast Guard must patrol thousands of miles of coasts and inland waterways. The Coast Guard engages in illegal drug running interdiction. The Guard's services included search and rescue operations, and boat safety programs. Additionally, the Guard operates aids to navigation. In peacetime the Coast Guard's prime responsibility is to save lives and property at sea.

As if these responsibilities are not enough, Mr. President, we've added another. After more than 10 years of pressure from the administration, the 101st Congress yielded to those pressures and agreed to direct the Coast Guard to collect user fees from recreational boat owners. It is now clear that, as implemented, the fee is grossly unfair to over 4 million recreational boaters, and it is not fair to the Coast Guard to be required to collect it.

In order to alleviate the budget deficit, and without providing any new or improved services to boaters, the 1990 Budget Reconciliation Act requires the Coast Guard to collect a $25 per year fee from owners of boats that are 16 to 20 feet long; $35 if the boat is 20 to 27 feet; $50 for boats in the 27- to 40-foot category; and, $100 if your boat is longer than 40 feet. Boaters are subject to a fine or $5,000, if they fail to pay these fees.

Recreational boaters already pay registration fees, FCC radio license fees, State sales and property taxes, trailer and title fees, nearly $140 million a year in fuel taxes, and Federal luxury taxes. And now we've asked them to ante up another $700 million in so-called user fees.

Mr. President, not a nickel of this user fee collection is consigned to the Coast Guard. The Coast Guard is asked to collect over $700 million in 5 years, and all of it goes into the General Treasury to support deficit reduction. Calling this a user fee is a farce.

The Coast Guard admits that there is no relationship between specific services or benefits to boaters and this fee. In fact, Mr. President, the Coast Guard may be required to cut back services in some areas; the Coast Guard could lose revenue as a result of its costs in collecting the fee.

Under the user fee statute a user fee must be related to services rendered, Mr. President. In this case, any such relationship is tenuous at best. So, let's identify these user fees for what they are, Mr. President. They are in fact highly discriminatory deficit reduction taxes. And, as such, they are grossly unfair, and they should be repealed.

This bill moves us a step closer to getting that repeal. The Coast Guard reauthorization bill includes a congressional resolution calling for the repeal of the recreational boat user fee. While I would prefer an outright repeal of this unfair tax, budget act complications require additional time and negotiations for their unraveling in both the House and the Senate. The House has already passed a resolution in support of repeal of the boat tax by an overwhelming vote of 412–6. If the Senate concurs, repealing this user fee should be a matter of resolving budget act concerns.

It should be clearly understood that I, and my colleagues who are sponsoring my boat user fee repeal legislation, S. 843—it has 24 Senate sponsors—will continue to pursue full repeal of this unfair and discriminatory tax.

AMENDMENT NO. 1388 TO AMENDMENT NO. 1387

Purpose: To declare certain portions of Pelican Island, Texas, nonnavigable

Mr. LEVIN. Mr. President, I send an amendment to the desk on behalf of Mr. BENTSEN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. BENTSEN, proposes an amendment numbered 1388 to Amendment No. 1387.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

DECLARATION OF NONNAVIGABILITY FOR PORTIONS OF PELICAN ISLAND, TEXAS

SEC. . (a) AREA TO BE DECLARED NONNAVIGABLE.—Subject to the provisions of subsections (b), (c), and (d) of this section, those portions of Pelican Island, Texas, which are not submerged and which are within the following property descriptions are declared to be nonnavigable waters of the United States:

(1) A 1,903.6655 acre tract of land situated in Galveston County, Texas, within the Galveston City Limits and on Pelican Island and being more particularly described by metes and bounds as follows: with all control referred to the Texas State Plane Coordinate System, Lambert Projection, South Zone:

Beginning at a United States Corps of Engineers concrete monument with a brass cap, being Corps of Engineers station 40+00 and being located on the southwesterly line of a United States Government Reservation and having Texas State Plane Coordinate Value of X=3,340,636.67, Y=568,271.91;

thence south 57 degrees 00 minutes 04 seconds east, 501.68 feet to a point for corner;

thence north 37 degrees 18 minutes 11 seconds east, 2,802.65 feet to a point for corner;

thence north 79 degrees 03 minutes 47 seconds east, 798.87 feet to a point for corner;

thence north 15 degrees 34 minutes 53 seconds east, 2,200.00 feet to a point for corner located on the north harbor line of Pelican Island;

thence along said north harbor line south 63 degrees 00 minutes 45 seconds east 306.04 feet to a point for corner;

thence leaving said harbor line south 15 degrees 34 minutes 53 seconds west, at 1,946.05 feet past the northwesterly corner of Seawolf Park, in all a total distance of 2,285.87 feet to the southwesterly corner of Seawolf Park;

thence along the southeasterly line of said Seawolf Park, south 74 degrees 25 minutes 07 seconds east, 421.01 feet to a point for corner;

thence continuing along said line south 65 degrees 12 minutes 37 seconds east, 93.74 feet to a point for corner;

thence south 63 degrees 00 minutes 45 seconds east, 800.02 feet to a point for corner on Galveston Channel Harbor Line;

thence along said Galveston Channel Harbor Line as follows:

south 15 degrees 14 minutes 01 second west, 965.95 feet to a point,

south 74 degrees 26 minutes 20 seconds east, 37.64 feet to a point,

south 15 degrees 33 minutes 40 seconds west, 2,779.13 feet to a point,

south 36 degrees 18 minutes 31 seconds west, 1,809.93 feet to a point,

south 36 degrees 24 minutes 57 seconds west, 190.98 feet to a point,

south 40 degrees 37 minutes 46 seconds west, 558.04 feet to a point,

south 49 degrees 02 minutes 41 seconds west, 558.16 feet to a point,

south 53 degrees 15 minutes 03 seconds west, 1,557.49 feet to a point,

south 55 degrees 34 minutes 51 seconds west, 455.45 feet to a point,

south 60 degrees 14 minutes 23 seconds west, 455.37 feet to a point,

south 62 degrees 34 minutes 14 seconds west, 426.02 feet to a point,

south 68 degrees 11 minutes 32 seconds west, 784.25 feet to a point,

south 79 degrees 26 minutes 20 seconds west, 784.21 feet to a point,

south 85 degrees 03 minutes 42 seconds west, 761.77 feet to a point,

south 86 degrees 42 minutes 35 seconds west, 1,092.97 feet to a point,

north 89 degrees 59 minutes 40 seconds west, 827.53 feet to a point,

north 88 degrees 20 minutes 24 seconds west, 1,853.01 feet to a point,

south 62 degrees 11 minutes 55 seconds west, 45.94 feet to a point,

north 88 degrees 04 minutes 15 seconds west, 653.80 feet to a point, and

north 78 degrees 19 minutes 36 seconds west, 1,871.96 feet to a point for corner located on the Mean High Water Line (0.88 foot contour line, above sea level datum);

thence leaving said Harbor Line and following the meanders of said Mean High Water Line along Galveston Bay as follows:

north 26 degrees 26 minutes 35 seconds west, 1,044.28 feet to a point,

north 25 degrees 25 minutes 56 seconds east, 242.71 feet to a point,

north 16 degrees 42 minutes 01 second west, 270.77 feet to a point,

north 10 degrees 04 minutes 05 seconds west, 508.36 feet to a point,

north 11 degrees 21 minutes 01 seconds west, 732.39 feet to a point,

north 03 degrees 45 minutes 31 seconds west, 446.34 feet to a point,

north 03 degrees 08 minutes 15 seconds west, 566.01 feet to a point,

north 02 degrees 48 minutes 50 seconds west, 288.02 feet to a point,

north 06 degrees 53 minutes 40 seconds west, 301.48 feet to a point,

north 19 degrees 04 minutes 56 seconds east, 407.38 feet to a point,

north 12 degrees 28 minutes 05 seconds east, 346.79 feet to a point,

north 01 degrees 30 minutes 23 seconds east, 222.91 feet to a point, and

north 08 degrees 08 minutes 07 seconds east, 289.74 feet to a point for corner;

thence leaving said Mean High Water Line north 84 degrees 43 minutes 15 seconds east 10,099.75 feet to the point of beginning and containing 1,903.6655 acres of land.

(2) All of that certain tract of 206.6116 acres of land, being part of and out of Pelican Island, in the city of Galveston, Galveston County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at the most northwesterly corner of the Pelican Spit Military Reservation, as described in the Deed from the city of Galveston unto the United States of America, dated April 29, 1907, and recorded in Book 221, at Page 416 of the Office of the County Clerk of Galveston County, Texas, said point being Pelican Island Coordinates N=15,171.20 and E=11,533.92;

thence north 29 degrees 11 minutes 52 seconds east, a distance of 100.00 feet to a 2-inch iron pipe for corner, said corner being the most southerly corner of the herein described tract, and place of beginning:

thence north 60 degrees 48 minutes 08 seconds west, a distance of 3,000.00 feet to a 2-inch iron pipe for corner;

thence north 29 degrees 11 minutes 52 seconds east, a distance of 3,000.00 feet to a point for corner;

thence south 60 degrees 48 minutes 08 seconds east, a distance of 3,000.00 feet to a point for corner;

thence south 29 degrees 11 minutes 52 seconds west a distance of 3,000.00 feed to the place of beginning, containing 206.6116 acres.

(3) Beginning at point "H" (point "H" is also known as point "3" on Pelican Island Harbor Line), the coordinates of which are South 8,827.773 meters and East 11,483.592 meters, on Pelican Island proposed harbor line;

thence with harbor line north 61 degrees west 800 feet;

thence south 17 degrees 35 minutes 38 seconds west 2,200 feet;

thence south 61 degrees east 800 feet to proposed harbor line;

thence with proposed harbor line north 17 degrees 35 minutes 38 seconds east to the place of beginning and containing 39.88 acres, more or less, together with all buildings, utilities, and improvements thereon.

(4) Beginning at a point in the westerly property line of the tract described in paragraph (3), said point being 285.00 feet bearing north 17 degrees 35 minutes 38 seconds east from the southwest corner of said tract;

thence north 72 degrees 24 minutes 22 seconds west, a distance of 346.00 feet;

thence north 14 degrees 58 minutes 09 seconds east, a distance of 610.00 feet;

thence south 72 degrees 24 minutes 22 seconds east, a distance of 374.00 feet;

thence south 17 degrees 35 minutes 38 seconds west, a distance of 609.36 feet to the point of beginning and containing 5.036 acres of land, more or less.

(5) Beginning at the southwest corner of the tract described in paragraph (3);

thence north 63 degrees 11 minutes 52 seconds west, a distance of 93.74 feet to a point for corner;

thence north 72 degrees 24 minutes 22 seconds west, a distance of 341.01 feet to a point for corner;

thence north 17 degrees 35 minutes 38 seconds east, a distance of 339.82 feet to a point for corner;

thence south 82 degrees 24 minutes 22 seconds east, a distance of 86.03 feet to a point for corner;

thence north 77 degrees 11 minutes 26 seconds east, a distance of 89.12 feet to a point for corner in the westerly line of the tract described in paragraph (4);

thence south 14 degrees 58 minutes 09 seconds west, with said westerly line, a distance of 130.00 feet to a point for corner, the southwest corner of the tract described in paragraph (4);

thence south 72 degrees 24 minutes 22 seconds east with the southerly line of the tract described in paragraph (4), a distance of 346.00 feet to a point for corner, the southeast corner of the tract described in paragraph (4);

thence south 17 degrees 35 minutes 38 seconds west with the westerly line of the tract described in paragraph (3), a distance of 285.00 feet to the point of beginning, containing 3.548 acres of land, more or less.

(b) AREAS EXCLUDED FROM DECLARATION OF NONNAVIGABILITY.—Notwithstanding the declaration under subsection (a), the following portions of Pelican Island, Texas, within those lands described in subsection (a) shall remain navigable waters of the United States:

(1) Out of the Eneas Smith Survey, A-190, on Pelican Island, the 2.7392 acre tract, the 3.2779 acre tract, and the 2.8557 acre tract described in the Perpetual Easements dated May 9, 1975, from Mitchell Development Corporation of the Southwest to the United States, recorded on pages 111 through 122 of Book 2571 of the Real Property Records in the Office of the County Clerk of Galveston County, Texas.

(2) Out of the Eneas Smith Survey, A-190, on Pelican Island, the 1.8361 acre tract of land described in Exhibit "B" of the Specific Location of Pipeline Easement dated July 30, 1975, by and between the Mitchell Development Corporation of the Southwest, the United States of America, and Chase Manhattan Bank (National Association), recorded on pages 9 through 14 of Book 2605 of the Real Property Records in the Office of the County Clerk of Galveston County, Texas.

(3) For each of the four tracts of land described in paragraphs (1) and (2) of this subsection, a 40-foot wide strip of land along, adjacent and parallel to, and extending the full length of, the easterly boundary line of the tract and a 40-foot wide strip of land along adjacent and parallel to, and extending the full length of, the westerly boundary line of the tract.

(c) LIMITS ON APPLICABILITY; REGULATORY REQUIREMENTS.—The declaration under subsection (a) shall apply only to those parts of the areas described in subsection (a) of this section and not described in subsection (b) of this section which are or will be bulkheaded and filled or otherwise occupied by permanent structures or other permanent physical improvements, including marina facilities. All such work is subject to applicable Federal statutes and regulations, including sections 9 and 10 of the Act of March 3, 1899 (commonly known as the Rivers and Harbors Appropriation Act of 1899; 33 U.S.C. 401 and 403), section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) EXPIRATION DATE.—If, 20 years from the date of the enactment of this Act, any area or part thereof described in subsection (a) of this section and not described in subsection (b) of this section is not bulkheaded or filled or occupied by permanent structures or other permanent physical improvements, including marina facilities, in accordance with the requirements set out in subsection (c) of this section, or if work is not commenced within 5 years after issuance of any permits required to be obtained under subsection (c), then the declaration of nonnavigability for such area or part thereof shall expire.

Mr. BENTSEN. Mr. President, I rise to offer an amendment to the substitute to S. 1297, the Coast Guard Reauthorization Act of 1991, which has been submitted by my colleague, the distinguished Senator from South Carolina [Mr. HOLLINGS.] This amendment would declare that nonfederally owned real property on Pelican Island, TX is deemed non-navigable, thereby extinguishing any right of navigational servitude over that property by the United States.

Pelican Island is located within the city limits of Galveston, TX. It is an island of approximately 5,000 acres, approximately 2,100 acres of which are owned by the city of Galveston, the State of Texas, and various corporations and individuals. The 2,100-acre tract is almost fully developed and includes a city park, the site of Texas A&M University's Galveston campus, the Todd Shipyards, and other large and small businesses. The remaining 2,900 acres is owned in fee simple by the United States of America, and used by the U.S. Army Corps of Engineers as a disposal site.

Since 1988, the city of Galveston, along with Texas A&M University at Galveston, the Galveston Wharves Board, the Galveston Chamber of Commerce, the Galveston Economic Development Council, and owners of the privately held property on Pelican Island have actively discussed the future development of the Island among themselves and with the corps.

At the suggestion of the corps, the city of Galveston decided to pursue the enactment of Federal law that would facilitate the positive development of the island. It was this effort which led to the development of my amendment being offered today.

This amendment meets all of the corps' general policy criteria for declarations of non-navigability. Furthermore, the declaration will not obstruct any current or anticipated navigational channel and it expressly states that any further development is subject to all applicable Federal laws. Finally, this declaration only applies to nonfederally owned lands that are not submerged.

With the agreement of local interests, the text of the amendment includes stipulations requested by the corps that will ensure that certain corps activities will not be disrupted by the declaration. Specifically, the amendment allows for wider easements for dredging pipelines, an extension of current contracts allowing the corps to use some private property as a spoils disposal area, and an offshore easement for dredging operations.

Mr. President, this amendment is the results of 2 years of good faith negotiations between public and private parties in which the best interests of the city of Galveston and the United States have been thoroughly considered and addressed. All Federal Government guidelines have been followed and the specific operational requirements of the corps have been fully accommodated.

Therefore, I urge the immediate passage of this amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1388) was agreed to.

AMENDMENT NO. 1389 TO AMENDMENT NO. 1387

(Purpose: *To amend the Act of October 13, 1989, to change the aggregate annual amount of the Federal share of awards to a designated National Maritime Enhancement Institute)*

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN] for Mr. BREAUX proposes an amendment numbered 1389 to amendment No. 1387.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

NATIONAL MARITIME ENHANCEMENT INSTITUTES

SEC. . Section 8(e) of the Act entitled "An Act to authorize appropriations for fiscal year 1990 for the Maritime Administration, and for other purposes", approved October 13, 1989 (46 App. U.S.C. 1121-2(e)), is amended by striking "$100,000" and inserting in lieu thereof "$500,000".

Mr. BREAUX. Mr. President, I am offering an amendment to the Coast Guard authorization bill for fiscal year 1992. This amendment pertains to National Maritime Enhancement Institutes, NMEI's. NMEI's were provided as

part of the Maritime Administration, MarAd, Authorization Act for fiscal year 1990.

Universities that are designated as NMEI's are responsible for conducting research that will promote and strengthen our domestic maritime industries in international trade. Institutions seeking NMEI status are required to submit applications to the Secretary of Transportation under regulations that are prescribed by the Secretary and are approved or rejected based on this prescribed criteria. The Secretary then may make research grants on an equal matching basis to these designated universities from amounts previously appropriated to MarAd for the purpose of research and development. There are currently four universities that have been designated as NMEI's by the Secretary—The University of California at Berkeley, Massachusetts Institute of Technology, Memphis State University, and Louisiana State University.

There currently is a cap of $100,000 on the aggregate amount that the Federal Government can spend on NMEI research. The Coast Guard and other Federal agencies have expressed a willingness to fund Institute research on matters within their concerns. Because MarAd has spent the full amount allowed over the past 2 years, funding from other sources has been precluded.

By raising the cap to $500,000, this amendment would increase their flexibility in providing funding for NMEI research as well as allow research funding by other Federal agencies. This amendment has no Budget Act implications since all funding for NMEI's is subject to authorization and appropriation.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1389) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to amendment in the nature of a substitute, as amended.

The amendment (No. 1387) in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. LEVIN. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 1776, the House companion, and that the Senate then proceed to its immediate consideration; that all after the enacting clause be stricken and the text of S. 1297, as amended, be inserted in lieu thereof', that the bill be advanced to third reading and passed and the motion to reconsider be laid upon the table; that upon disposition of H.R. 1776, Calendar Nos. 253, 107, 108, and 109 be indefinitely postponed.

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

The bill (H.R. 1776), as amended, was deemed read the third time and passed.

(The text of H.R. 1776, as passed today by the Senate will be printed in a future edition of the RECORD.)

CONDEMNING THE MASSACRE OF EAST TIMORESE CIVILIANS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 331, Senate Concurrent Resolution 77, regarding the massacre of East Timorese civilians.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 77) condemning the massacre of East Timorese civilians by the Indonesia military.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution which had been reported from the Committee on Foreign Relations, with amendments, as follows:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring),

(a) FINDINGS.—The Congress finds that—

(1) on November 12, 1991, Indonesian security forces killed twenty to sixty and injured as many as one hundred people when they fired on a Roman Catholic funeral procession in which demonstrators were attempting to place flowers on the grave of a youth killed by Indonesian troops on October 28, 1991, in Dili, East Timor;

(2) Indonesian solders also beat several foreign journalists, including two Americans from The New Yorker and Pacifica Radio, who were observing the procession;

(3) Indonesia in violation of international law illegally invaded East Timor in 1975, annexing the territory without consideration for the rights of self-determination enjoyed by the East Timorese;

(4) tens of thousands out of a population of approximately six hundred thousand died in the fighting, famine, and disease that followed Indonesia's invasion of East Timor;

(5) since Indonesia's invasion, a state of intermittent conflict continues to exist in East Timor and Amnesty International, Asia Watch, and other international human rights organizations frequently report evidence of human rights abuses, including torture, arbitrary arrest, and repression of freedom of expression;

(6) the Government of Indonesia continues to restrict access by international organizations and foreign journalists to East Timor; and

(7) the United States and Indonesia have maintained close bilateral relations for the past twenty-five years, including a program of economic and military assistance which totalled $50,000,000 in fiscal year 1991.

(b) STATEMENT OF POLICY.—It is the sense of the Congress that—

(1) the President should reassess immediately all International Military Educational Training program funds to the Indonesian government to ensure that these training programs are advancing effectively human rights;

(2) the American Ambassador to Indonesia should immediately visit East Timor in order to investigate reports of the atrocity and reports of additional repression by Indonesian authorities;

(3) the President should request a report by the United Nations Special Rapporteur on Torture, who was in East Timor during the massacre, to be made available as soon as possible to the General Assembly;

(4) the President should support the immediate introduction of a resolution in the General Assembly instructing the United Nations Commission on Human Rights to appoint a Special Rapporteur for East Timor to assist in the resolution of the East Timorese conflict, providing for self-determination by the East Timorese people;

(5) the President should request that the Government of Indonesia permit an investigation by the United Nations Special Rapporteur on Summary and Arbitrary Executions of the situation in East Timor;

(6) the President should encourage Secretary General of the United Nations and the governments of Indonesia and Portugal and the East Timorese to arrive at an internationally acceptable solution which addresses the underlying causes of the conflict in East Timor, and

(7) the President should request that the Government of Indonesia establish an independent commission to investigate the cause of the atrocity and to assist the prosecution of those responsible for the massacre.

AMENDMENT NO. 1390

Mr. LEVIN. Mr. President, I send to the desk a substitute amendment of Senator PELL.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. LEVIN] for Mr. PELL, proposes an amendment numbered 1390:

(a) FINDINGS.—The Congress finds that—

(1) on November 12, 1991, Indonesian security forces killed 75 to 100, according to Department of State reports, and injured as many as 100 people when they fired on a Roman Catholic funeral procession in which demonstrators were attempting to place flowers on the grave of a youth killed by Indonesian troops on October 28, 1991, in Dili, East Timor;

(2) Indonesian soldiers also beat several foreign journalists, including two Americans from The New Yorker and Pacifica Radio, who were observing the procession;

(3) Indonesia, in violation of international law, illegally invaded East Timor in 1975, annexing the territory without consideration for the rights of self-determination enjoyed by the East Timorese;

(4) tens of thousands out of a population of approximately 600,000 died in the fighting, famine, and disease that followed Indonesia's invasion of East Timor;

(5) since Indonesia's invasion, a state of intermittent conflict continues to exist in East Timor and Amnesty International, Asia Watch, and other international human rights organizations frequently report human rights abuses, including torture, arbitrary arrest and repression of freedom of expression;

(6) the Government of Indonesia continues to restrict access by international organizations and foreign journalists to East Timor; and

(7) the United States and Indonesia have maintained close bilateral relations for the past twenty-five years, including a program of economic and military assistance which totalled $50 million in FY 1991.

(b) STATEMENT OF POLICY.—It is the sense of the Congress that—

(1) the President should reassess immediately the International Military Educational Training program for the Indonesian government to ensure that these training programs are advancing effectively human rights;

(2) now that a U.S. embassy team has visited East Timor, the American ambassador to Indonesia should immediately seek to visit East Timor in order to investigate reports of the atrocity and reports of additional repression by Indonesian authorities;

(3) the President should request that a report be made available by the United Nations Special Rapporteur on Torture, who was in East Timor during the massacre, as soon as possible to the General Assembly;

(4) the President should support the immediate introduction of a resolution in the General Assembly instructing the United Nations Commission on Human Rights to appoint a Special Rapporteur for East Timor to assist in the resolution of the East Timorese conflict in pursuit of the right of self-determination by the East Timorese people;

(5) the President should request that the Government of Indonesia permit an investigation by the United Nations Special Rapporteur on Summary and Arbitrary Execution of the situation in East Timor;

(6) the President should encourage the Secretary General of the United Nations and the governments of Indonesia and Portugal, and the East Timorese to arrive at an internationally acceptable solution which addresses the underlying causes of the conflict in East Timor, and

(7) the President should request that the Government of Indonesia establish an independent commission to investigate the cause of the atrocity and to assist the prosecution of those responsible for the massacre.

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

The amendment (No. 1390) was agreed to.

Mr. DURENBERGER. Mr. President, I rise in strong support of the resolution before the Senate pertaining to the tragic situation in East Timor. I am an original cosponsor of this measure, and vigorously urge my colleagues to support its rapid adoption.

Although the world's attention was focused on East Timor last week in response to the latest outrage by Indonesia, the sad truth is that this is only the latest in a long series of outrages perpetrated by Indonesia against the people of East Timor.

Mr. President, since I came to the Senate, I have consistently attempted to raise this country's awareness about the history of East Timor, its annexation by Indonesia after the collapse of the Portuguese colonial empire, and the violent human rights abuses that tragically persist in East Timor.

Over the years, I and a number of colleagues, both here in the Senate and in the House, have written many letters, sponsored resolutions, spoken with colleagues and constituents—all in an effort to call attention to the deplorable situation in East Timor and to call the Indonesian Government to task for its responsibility in that situation.

This latest tragedy, in which a still undetermined number of peaceful, nonviolent people were killed or seriously wounded by Indonesian forces, should serve to remind each and every one of us that the people of East Timor do not yet live in peace and freedom.

It is true that the Indonesian Government has stated that it regrets the incident and will thoroughly investigate. I welcome these expressions of regret.

But I must emphasize that my very real concerns stretch back many years, not just 1 week. I decided to sponsor this resolution because the Government of Indonesia has a long and sordid record of gross human rights violations and violent repression of popular will in East Timor. This situation is much graver than just last week's tragic events.

The resolution now before the Senate speaks for itself. It expresses our serious concerns about the recent as well as ongoing circumstances in East Timor. It calls upon the President to take certain actions that I believe should constitute the bare minimum action from the U.S. Government. This is a responsible, evenhanded response to the recent tragedy, with appropriate recognition of the longstanding abuses that regrettably persist in East Timor.

I strongly urge my colleagues to swiftly and unanimously adopt this measure.

Mr. President, I ask unanimous consent that the full text of the resolution be printed in the RECORD at the conclusion of my remarks.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the concurrent resolution, as amended.

The concurrent resolution (S. Con. Res. 77), as amended, was agreed to.

(The text of Senate Congressional Resolution 77, as agreed to by the Senate today, will be printed in a future edition of the RECORD.)

Mr. LEVIN. I move to reconsider the vote.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURE PLACED ON CALENDAR—H.R. 3762

Mr. LEVIN. Mr. President, I ask unanimous consent that H.R. 3762, the Metropolitan Washington Airports Act Amendments of 1991, be placed on the calendar.

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

Mr. WARNER. Mr. President, will the Senator indulge me for a moment?

Mr. President, this is a piece of legislation which I deem absolutely essential that the Congress of the United States address between now and whatever date this particular session may be recessed by the leadership.

This is a piece of legislation that has been worked on by the House of Representatives in conjunction with and in consultation with the administration—that is the Secretary of Transportation—as well as Governor Holton, former Governor of Virginia, who is the current CEO, so to speak, of the Washington Metropolitan Airport organization, together with certain other collateral groups to work with.

The problem is that the Supreme Court struck down the law that was adopted by the Congress some years ago. I was instrumental in drawing up the bill that was eventually passed by the U.S. Senate. The House then sought to amend the bill. I am not here to criticize, but they amended it in such a way that it provided a basis for the Court to find the law unconstitutional.

At the present time under the direction of Governor Holton, the Secretary of Transportation, and the board, the facilities at Dulles and National Airport are being modernized and expanded to first provide for a greater degree of safety, and second to take facilities which in many respects are far outdated and bring them into current usage practices, modernization.

Many of these contracts have been let. The authorities are in the process of going into the financial markets, primarily in the bonding markets, to raise additional capital. And absent action by the Congress on this piece of legislation before we recess there is no alternative but the authority has to stop the modernization and the seeking of the necessary funds, which would bring about an enormous amount of hardship to the millions of passengers that come to and depart from the Nation's Capital; not to mention the 535 Members of the Congress of the United States and their staffs, numbering in the many thousands and the constituency that comes here.

So I am very hopeful that the Congress will be able to work on this legislation. I have indicated earlier on the floor here of the Senate that it is my intention to try to work with both the Senate and the House to get together on a piece of legislation which can be inserted into the highway conference report, to which in a matter of minutes I will return as a conferee to discuss this and other matters.

I am hopeful that that conference will conclude this weekend. So that is one vehicle by which this legislation can be passed in a timely fashion, because the majority leader has made it very clear that that piece of legisla-

tion, namely the highway conference report, will pass before the Congress adjourns.

So I am confident that we will have action on this piece of legislation. It may well be that the Senate would desire to work its will in connection with one or more amendments. I know the Senator from Arizona, the Senator from Kentucky, the chairman, Mr. HOLLINGS of South Carolina, have all expressed an interest in possible amendments to the House bill.

In any event, I do hope. And I must pay particular credit to my colleague, Senator ROBB, who is a member of the Commerce Committee having primary jurisdiction over this legislation. We are all working together to see it passed. I am hopeful that it can be done.

I thank my distinguished colleague from Michigan and the Chair for indulging the Senator in these remarks.

Mr. LEVIN. The Senator from Virginia is an extraordinarily creative Senator. I am sure he will have a way to accomplish his mission in that regard, and I am sure introducing this in the highway conference will introduce a note of simplicity and perhaps unlock that conference.

Mr. WARNER. I thank the Senator. That is precisely why I am going about it in that way.

AUTHORIZING TESTIMONY BY AND REPRESENTATION OF FORMER SENATE EMPLOYEE

Mr. LEVIN. Mr. President, in behalf of the majority leader and the distinguished Republican leader, Mr. DOLE, I send to the desk a resolution on authorization for a former Senate employee to provide testimony by and representation of the Senate Legal Counsel, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 229) to authorize testimony by and representation of former Senate employee.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Is there debate on the resolution?

AUTHORIZATION FOR FORMER SENATE EMPLOYEE TO TESTIFY AND REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. MITCHELL. Mr. President, the New York State Commission of Investigation, a bipartisan, independent, State investigative body, has requested the testimony of Robert Shapiro, a former Senate employee on Senator MOYNIHAN'S staff. The commission believes that Mr. Shapiro's testimony may be helpful to its investigation into the purchase in 1984 and the eventual closing of Roosevelt Raceway in Hempstead, Long Island.

This resolution would authorize Mr. Shapiro to provide testimony to the commission, and also would authorize the Senate legal counsel to provide representation to Mr. Shapiro in connection with the requested testimony.

Although some of the matters about which the commission seeks testimony may be privileged, Senator MOYNIHAN does not wish to assert his privilege concerning matters that the commission considers important to its Roosevelt Raceway inquiry.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the resolution.

The resolution (S. Res. 229) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 229

Whereas, the New York State Commission of Investigation has requested the testimony of Robert Shapiro, a former Senate employee on the staff of Senator Daniel Patrick Moynihan, in connection with a matter under inquiry by the Commission;

Whereas, by the privileges of the Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288(b) and 288c(a)(2), the Senate may direct its counsel to represent present or former employees of the Senate with respect to any subpoena or order relating to their official responsibilities;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Robert Shapiro is authorized to provide testimony to the New York State Commission of Investigation.

SEC. 2. The Senate Legal Counsel is authorized to represent Robert Shapiro in connection with the testimony authorized by section one of this resolution.

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

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

The motion to lay on the table was agreed to.

CORRECTION TO ENGROSSMENT OF S. 543

Mr. LEVIN. Mr. President, I ask unanimous consent on behalf of Senator KASSEBAUM and Senator DOLE that in the engrossment of S. 543 the Secretary be directed to include the following amendment, which shall also be included in the substitute amendment.

The PRESIDING OFFICER. Without objection it is so ordered.

The legislative clerk read as follows:

On page 6 of amendment number 1368 to S. 543, line 14, strike "(A)" and insert "(A)(i)."

On page 6 line 17, redesignate subparagraph (B) as clause (ii).

On page 6, line 22, redesignate subparagraph (C) as clause (iii).

"1991; or

"(B) the insurance is provided as agent or broker to an individual to whom insurance was actually provided by the national bank as of November 21, 1991."

MODIFICATION TO AMENDMENT No. 1377

Mr. LEVIN. Mr. President, I ask unanimous consent that amendment 1377 to S. 543 be amended by striking section 1126 and inserting the modifications that I now send to the desk.

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

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

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, if the Senator will withhold that request, I would like to conclude the proceedings tonight with a few remarks on behalf of the majority leader.

He has taken a very active interest in the conference on the highways and has informed the conferees that it is his intention that this conference report is absolutely essential to all Americans, that it be passed, because it involves a considerable sum of money which, in accordance with Federal and State practices, can be, I think, reasonably and quickly injected into America's economy.

I have had the privilege of being a conferee on that now for some week to 10 days. The conferees met on Saturday and Sunday of last week and, like all conferences, they come to a point where there is not that certainty that we are going to achieve a result.

But when the majority leader walked in before the Senate and the House and all gathered, and in the presence of all indicated that he personally was going to see that the Congress of the United States remains in session until such time as the conferees assume the responsibility to reconcile their differences in such a manner that hopefully it will be accepted by both Chambers, that moved the bill and gave some certainty that it will become law and hopefully will be signed by the President and, of course, prior thereto be adopted by both parties. I wish to commend him for that action.

Mr. LEVIN. While on the subject of that bill, and since the hour is so early the Senator might want to add some words.

Mr. WARNER. The conferees will meet at 11 o'clock Thursday night.

Mr. LEVIN. I join in the sentiment of the majority leader as well as the Senator from Virginia. But I think he would concur, as I know the Presiding Officer would, that it is important we not only have a bill but that we have a bill which is fair to those States called the donor States which the Senator from Virginia, the Senator from Florida, and myself happen to represent. And I am sure that is one of the issues in that conference.

There has been an injustice for a long, long time to about 20 States in this country that have consistently contributed much more to that fund than they have gotten back based on very arcane formulas that no one can understand in our constituencies.

I wish the Senator well in his quest on the bill and on his continuing quest to get a fair bill for all the donor States.

Mr. WARNER. Mr. President, I am hopeful that is achieved and that the bill is recognized to be fair by the Senator from Michigan, and indeed the distinguished Presiding Officer, the Senator from Florida, who during the course of the debate on that legislation in this Chamber was a leader in advancing the cause of those States, of which mine is one.

I will say the distinguished Republican leader, Mr. DOLE of Kansas, together with the distinguished Senator, the ranking member, Mr. CHAFEE, and Mr. SYMMS are now working in a manner to achieve that result, together with Mr. MOYNIHAN, who was representing the majority on the Committee on Public Works.

So let us hope the leadership will be able to bring to this body a bill and represent that it strikes the best and most equitable arrangement which they feel can be achieved.

Mr. LEVIN. I wish the Senator well on both of his quests and also hope there will be sufficient time when that bill comes to the Senate we will have an opportunity to take a look at what the impact is on the various States.

I join in the Senator's comments about Senator GRAHAM of Florida, who led a very stalwart effort on this floor to try to produce greater equity for those donor States of which our States happen to be parties to.

ORDERS FOR TOMORROW

Mr. NUNN. Mr. President, on behalf of the majority leader, Mr. MITCHELL, and—based on my understanding—with the clearance of the minority leader, Senator DOLE——

Mr. WARNER. Mr. President, that is correct.

Mr. NUNN. I ask unanimous consent that upon the completion of the debate on the DOD authorization conference report this evening, the Senate then stand in recess until 9 a.m., Friday, November 22; that following the prayer, the Journal of the proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there be a period for morning business not to extend beyond 9:30 a.m., with Senators permitted to speak therein, with the following Senators recognized to speak for the time indicated: Senators BOND and MCCONNELL for 15 minutes equally divided, Senator LIEBERMAN for up to 7 minutes; that at 9:30 a.m., without intervening action or debate, the Senate vote on adoption of the conference report accompanying H.R. 2100, the Department of Defense authorization bill; that upon disposition of the conference report, the Senate then proceed to the consideration of House Joint Resolution 157, the supplemental appropriations bill, and that the cloture vote on the motion to proceed to House Joint Resolution 157 be vitiated; that the Rules Committee now be discharged from further consideration of Senate Resolution 198, a resolution amending Senate Resolution 62 of the 102d Congress to authorize the Committee on Foreign Relations to exercise certain investigatory powers in connection with its inquiry into the release of the United States hostages in Iran, and the resolution be placed on the calendar; that a motion to proceed to the consideration of the resolution be deemeed to have been made, a cloture motion on that motion to proceed, which Senator MITCHELL will send to the desk later this evening, to be filed against that motion, and the motion to proceed be deemed withdrawn following the filing of that cloture motion; and that notwithstanding the provisions of rule XXII, the vote on the motion to invoke cloture on the motion to proceed to the consideration of Senate Resolution 198 occur at a time on Friday, November 22, to be determined by the majority leader after consultation with the Republican leader with the mandatory live quorum being waived.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. LEVIN. Mr. President, if there is no further business today, I ask unanimous consent that the Senate stand in recess as previously ordered until 9 o'clock tomorrow, Friday, November 22.

There being no objection, the Senate, at 10:55 p.m., recessed until Friday, November 22, 1991, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate November 21, 1991:

FEDERAL ELECTION COMMISSION

TREVOR ALEXANDER MCCLURG POTTER, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 1997, VICE THOMAS JOHN JOSEFIAK, TERM EXPIRED.

SCOTT E. THOMAS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 1997. (REAPPOINTMENT)

CONFIRMATIONS

Executive nominations confirmed by the Senate November 21, 1991:

DEPARTMENT OF COMMERCE

ALAN M. DUNN, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

WILLIAM STEWART JOHNSON, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING MAY 19, 1996.

A. DAVID LESTER, OF COLORADO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR THE REMAINDER OF THE TERM EXPIRING MAY 19, 1994.

PIESTWA ROBERT HAROLD AMES, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING OCTOBER 18, 1996.

WILEY T. BUCHANAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING MAY 19, 1996.

DEPARTMENT OF VETERANS AFFAIRS

SYLVIA CHAVEZ LONG, OF NEW MEXICO, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (CONGRESSIONAL AFFAIRS).

ALLEN B. CLARK, JR., OF TEXAS, TO BE DIRECTOR OF THE NATIONAL CEMETARY SYSTEM, DEPARTMENT OF VETERANS AFFAIRS.

JO ANN KRUKAR WEBB, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (POLICY AND PLANNING).

JAMES ASHLEY ENDICOTT, JR., OF TEXAS, TO BE GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS.

U.S. INTERNATIONAL TRADE COMMISSION

PETER S. WATSON, OF CALIFORNIA, TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION FOR THE TERM EXPIRING DECEMBER 16, 2000.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENTS TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

WILLIAM HO-GONZALEZ, OF VIRGINIA, TO BE SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES FOR A TERM OF 4 YEARS.

THE JUDICIARY

ANNE C. CONWAY, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA.

MONTI L. BELOT, OF KANSAS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF KANSAS.

DAVID C. BRAMLETTE, OF MISSISSIPPI, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

DAVID A. FABER, OF WEST VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.

JOE B. MCDADE, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS.

EDITH BROWN CLEMENT, OF LOUISIANA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA.

SAM SPARKS, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS.